

1998

SESSION LAWS

OF THE

STATE OF WASHINGTON

REGULAR SESSION
FIFTY-FIFTH LEGISLATURE
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DENNIS W. COOPER
Code Reviser

WASHINGTON SESSION LAWS GENERAL INFORMATION

I. EDITIONS AVAILABLE.

- (a) *General Information.* The session laws are printed successively in two editions:
- (i) a temporary pamphlet edition consisting of a series of one or more paper bound books, which are published as soon as possible following the session, at random dates as accumulated; followed by
 - (ii) a permanent hardbound edition containing the accumulation of all laws adopted in the legislative session. Both editions contain a subject index and tables indicating Revised Code of Washington sections affected.
- (b) *Where and how obtained—price.* Both the temporary and permanent session laws may be ordered from the Statute Law Committee, Legislative Building, P.O. Box 40552, Olympia, Washington 98504-0552. The temporary pamphlet edition costs \$21.60 per set (\$20.00 plus \$1.60 for state and local sales tax at 8.0%). The permanent edition costs \$54.00 per set (\$25.00 per volume plus \$4.00 for state and local sales tax at 8.0%). All orders must be accompanied by payment.

2. PRINTING STYLE — INDICATION OF NEW OR DELETED MATTER

Both editions of the session laws present the laws 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) Vetoes 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 1998 regular session to be June 11, 1998 (midnight June 10th).
- (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 1997 1st special session and 1998 laws may be found at the back of the final pamphlet edition and the permanent hardbound edition.

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HISTORY OF STATE MEASURES

CHAPTER 246

[Engrossed Substitute House Bill 2496]
SALMON RECOVERY

AN ACT Relating to salmon recovery planning; amending RCW 90.71.005, 90.71.020, and 90.71.050; adding a new chapter to Title 75 RCW; and providing an expiration date.

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

NEW SECTION. Sec. 1. FINDINGS. The legislature finds that repeated attempts to improve salmonid fish runs throughout the state of Washington have failed to avert listings of salmon and steelhead runs as threatened or endangered under the federal endangered species act (16 U.S.C. Sec. 1531 et seq.). These listings threaten the sport, commercial, and tribal fishing industries as well as the economic well-being and vitality of vast areas of the state. It is the intent of the legislature to begin activities required for the recovery of salmon stocks as soon as possible, although the legislature understands that successful recovery efforts may not be realized for many years because of the life cycle of salmon and the complex array of natural and human-caused problems they face.

The legislature finds that it is in the interest of the citizens of the state of Washington for the state to retain primary responsibility for managing the natural resources of the state, rather than abdicate those responsibilities to the federal government. The legislature also finds that there is a substantial link between the provisions of the federal endangered species act and the federal clean water act (33 U.S.C. Sec. 1251 et seq.). The legislature further finds that habitat restoration is a vital component of salmon recovery efforts. Therefore, it is the intent of the legislature to specifically address salmon habitat restoration in a coordinated manner and to develop a structure that allows for the coordinated delivery of federal, state, and local assistance to communities for habitat projects that will assist in the recovery and enhancement of salmon stocks.

The legislature also finds that credible scientific review and oversight is essential for any salmon recovery effort to be successful.

The legislature therefore finds that a coordinated framework for responding to the salmon crisis is needed immediately. To that end, the salmon recovery office should be created within the governor's office to provide overall coordination of the state's response; an independent science team is needed to provide scientific review and oversight; the appropriate local or tribal government should provide local leadership in identifying and sequencing habitat restoration projects to be funded by state agencies; habitat restoration projects should be implemented without delay; and a strong locally based effort to restore salmon habitat should be established by providing a framework to allow citizen volunteers to work effectively.

NEW SECTION. Sec. 2. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Critical pathways methodology" means a project scheduling and management process for examining interactions between habitat projects and salmonid species, prioritizing habitat projects, and assuring positive benefits from habitat projects.

(3) "Habitat project list" is the list of projects resulting from the critical pathways methodology under section 8(2) of this act. Each project on the list must have a written agreement from the landowner on whose land the project will be implemented. Projects include habitat restoration projects, habitat protection projects, habitat projects that improve water quality, habitat projects that protect water quality, habitat-related mitigation projects, and habitat project maintenance and monitoring activities.

(4) "Habitat work schedule" means those projects from the habitat project list that will be implemented during the current funding cycle. The schedule shall also include a list of the entities and individuals implementing projects, the start date, duration, estimated date of completion, estimated cost, and funding sources for the projects.

(5) "Limiting factors" means conditions that limit the ability of habitat to fully sustain populations of salmon. These factors are primarily fish passage barriers and degraded estuarine areas, riparian corridors, stream channels, and wetlands.

(6) "Project sponsor" is a county, city, special district, tribal government, a combination of such governments through interlocal agreements provided under chapter 39.34 RCW, a nonprofit organization, or one or more private citizens.

(7) "Salmon" includes all species of the family Salmonidae which are capable of self-sustaining, natural production.

(8) "Salmon recovery plan" means a state plan developed in response to a proposed or actual listing under the federal endangered species act that addresses limiting factors including, but not limited to harvest, hatchery, hydropower, habitat, and other factors of decline.

(9) "Tribe" or "tribes" means federally recognized Indian tribes.

(10) "WRIA" means a water resource inventory area established in chapter 173-500 WAC as it existed on January 1, 1997.

(11) "Owner" means the person holding title to the land or the person under contract with the owner to lease or manage the legal owners property.

NEW SECTION. Sec. 3. IMPLEMENTATION—SUMMARY—RECOMMENDATIONS. By December 31, 1998, the governor shall submit a summary of the implementation of this act to the legislature, and include recommendations to the legislature that would further the success of salmon recovery. The recommendations may include:

- (1) The need to expand or improve nonregulatory programs and activities;
- (2) The need to expand or improve state and local laws and regulations; and

(3) The feasibility of forming a state-wide or regional community foundation or any other funding alternatives to assist in financing salmon recovery efforts.

NEW SECTION. Sec. 4. STATE OF THE SALMON REPORT. Beginning in December 2000, the governor shall submit a biennial state of the salmon report to the legislature during the first week of December. The report may include the following:

(1) A description of the amount of in-kind and financial contributions, including volunteer, private, and state, federal, tribal as available, and local government money directly spent on salmon recovery in response to actual, proposed, or expected endangered species act listings;

(2) A summary of habitat projects including but not limited to:

(a) A summary of accomplishments in removing barriers to salmon passage and an identification of existing barriers;

(b) A summary of salmon restoration efforts undertaken in the past two years;

(c) A summary of the role which private volunteer initiatives contribute in salmon habitat restoration efforts; and

(d) A summary of efforts taken to protect salmon habitat;

(3) A summary of collaborative efforts undertaken with adjoining states or Canada;

(4) A summary of harvest and hatchery management activities affecting salmon recovery;

(5) A summary of information regarding impediments to successful salmon recovery efforts;

(6) A summary of the number and types of violations of existing laws pertaining to: (a) Water quality; and (b) salmon. The summary shall include information about the types of sanctions imposed for these violations;

(7) Information on the estimated carrying capacity of new habitat created pursuant to chapter . . . , Laws of 1998 (this act); and

(8) Recommendations to the legislature that would further the success of salmon recovery. The recommendations may include:

(a) The need to expand or improve nonregulatory programs and activities; and

(b) The need to expand or improve state and local laws and regulations.

NEW SECTION. Sec. 5. GOVERNOR'S SALMON RECOVERY OFFICE.

(1) The salmon recovery office is created within the office of the governor to coordinate state strategy to allow for salmon recovery to healthy sustainable population levels with productive commercial and recreational fisheries. The primary purpose of the office is to coordinate and assist in the development of salmon recovery plans for evolutionarily significant units, and submit those plans to the appropriate tribal governments and federal agencies in response to the federal endangered species act. The governor's salmon recovery office may also:

(a) Act as liaison to local governments, the state congressional delegation, the United States congress, federally recognized tribes, and the federal executive

branch agencies for issues related to the state's endangered species act salmon recovery plans; and

(b) Provide the biennial state of the salmon report to the legislature pursuant to section 4 of this act.

(2) This section expires June 30, 2006.

NEW SECTION. Sec. 6. SCIENCE PANEL. (1) The governor shall request the national academy of sciences, the American fisheries society, or a comparable institution to screen candidates to serve as members on the independent science panel. The institution that conducts the screening of the candidates shall submit a list of the nine most qualified candidates to the governor, the speaker of the house of representatives, and the majority leader of the senate. The candidates shall reflect expertise in habitat requirements of salmon, protection and restoration of salmon populations, artificial propagation of salmon, hydrology, or geomorphology.

(2) The speaker of the house of representatives and the majority leader in the senate shall each remove one name from the nomination list. The governor shall consult with tribal representatives and the governor shall appoint five scientists from the remaining names on the nomination list.

(3) The members of the independent science panel shall serve four-year terms. The independent science panel members shall elect the chair of the panel among themselves every two years. The members of the independent science panel shall be compensated as provided in RCW 43.03.250 and reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(4) The independent science panel shall be governed by generally accepted guidelines and practices governing the activities of independent science boards such as the national academy of sciences. The purpose of the independent science panel is to help ensure that sound science is used in salmon recovery efforts. The governor's salmon recovery office shall request review of salmon recovery plans by the science review panel. The science review panel does not have the authority to review individual projects or project lists developed under sections 7, 8, and 9 of this act or to make policy decisions.

(5) The independent science panel shall submit its findings to the legislature and the governor.

NEW SECTION. Sec. 7. HABITAT RESTORATION PROJECT LISTS. (1)(a) Counties, cities, and tribal governments must jointly designate, by official resolution, the area for which a habitat restoration project list is to be developed and the lead entity that is to be responsible for submitting the habitat restoration project list. No project included on a habitat restoration project list shall be considered mandatory in nature and no private landowner may be forced or coerced into participation in any respect. The lead entity may be a county, city, conservation district, special district, tribal government, or other entity.

(b) The lead entity shall establish a committee that consists of representative interests of counties, cities, conservation districts, tribes, environmental groups,

business interests, landowners, citizens, volunteer groups, regional fish enhancement groups, and other restoration interests. The purpose of the committee is to provide a citizen-based evaluation of the projects proposed to promote salmon habitat restoration. The interagency review team may provide the lead entity with organizational models that may be used in establishing the committees.

(c) The committee shall compile a list of habitat restoration projects, establish priorities for individual projects, define the sequence for project implementation, and submit these activities as the habitat restoration project list. The committee shall also identify potential federal, state, local, and private funding sources.

(2) The area covered by the habitat project list must be based, at a minimum, on a WRIA, combination of WRIsAs, an evolutionarily significant unit, or any other area as agreed to by the counties, cities, and tribes meeting the requirements of this subsection. Preference will be given to projects in an area that contain a salmon species that is listed or proposed for listing under the federal endangered species act.

NEW SECTION. **Sec. 8. CRITICAL PATHWAYS METHODOLOGY.** (1) Critical pathways methodology shall be used to develop a habitat project list and a habitat work schedule that ensures salmon restoration activities will be prioritized and implemented in a logical sequential manner that produces habitat capable of sustaining healthy populations of salmon.

(2) The critical pathways methodology shall:

(a) Include a limiting factors analysis for salmon in streams, rivers, tributaries, estuaries, and subbasins in the region. The technical advisory group shall have responsibility for the limiting factors analysis;

(b) Identify local habitat projects that sponsors are willing to undertake. The projects identified must have a written agreement from the landowner on which the project is to be implemented. Project sponsors shall have the lead responsibility for this task;

(c) Identify how projects will be monitored and evaluated. The project sponsor, in consultation with the technical advisory group and the appropriate landowner, shall have responsibility for this task; and

(d) Describe the adaptive management strategy that will be used. The committee established under section 7 of this act shall have responsibility for this task. If a committee has not been formed, the technical advisory group shall have the responsibility for this task.

(3) The habitat work list shall include all projects developed pursuant to subsection (2) of this section as well as any other salmon habitat restoration project implemented in the region. The work list shall also include the start date, duration, estimated date of completion, estimated cost, and, if appropriate, the affected salmonid species of each project. Each schedule shall be updated on an annual basis to depict new activities.

NEW SECTION. Sec. 9. INTERAGENCY REVIEW TEAM PROJECT FUNDING. (1) Representatives from the conservation commission, the department of transportation, and the department of fish and wildlife shall establish an interagency review team. Except as provided in subsection (6) of this section, habitat restoration project lists shall be submitted to the interagency review team by January 1st and July 1st of each year beginning in 1999.

(2) If no lead entity has been formed under section 7 of this act, the interagency review team shall rank, prioritize, and dispense funds for habitat restoration projects by giving preference to the projects that:

- (a) Provide a greater benefit to salmon recovery;
- (b) Will be implemented in a more critical area;
- (c) Are the most cost-effective;
- (d) Have the greatest matched, or in-kind funding; and
- (e) Will be implemented by a sponsor with a successful record of project implementation.

(3) If a lead entity established under section 7 of this act has been formed, the interagency review team shall evaluate project lists and may remove, but not add, projects from a habitat project list.

(4) The interagency review team shall provide a summary of funding for habitat restoration project lists to the governor and to the legislature by December 1st of each year.

(5) The interagency review team may annually establish a maximum amount of funding available for any individual project, subject to available funding. The interagency review team shall attempt to assure a geographical balance in assigning priorities to projects.

(6) For fiscal year 1998, the department of fish and wildlife, the conservation commission, and the department of transportation may authorize, subject to appropriations, expenditures for projects that have been developed to restore salmon habitat before completion of the project lists required in section 7(2) of this act.

(7) Where a lead entity has been established pursuant to section 7 of this act, the interagency review team may provide block grants to the lead entity, subject to available funding.

NEW SECTION. Sec. 10. TECHNICAL ADVISORY GROUPS. (1) The conservation commission, in consultation with local government and the tribes, shall invite private, federal, state, tribal, and local government personnel with appropriate expertise to act as a technical advisory group.

(2) For state personnel, involvement on the technical advisory group shall be at the discretion of the particular agency. Unless specifically provided for in the budget, technical assistance participants shall be provided from existing full-time equivalent employees.

(3) The technical advisory group shall identify the limiting factors for salmonids to respond to the limiting factors relating to habitat pursuant to section 8(2) of this act.

(4) Where appropriate, the conservation district within the area implementing this chapter shall take the lead in developing and maintaining relationships between the technical advisory group and the private landowners under section 9 of this act. The conservation districts may assist landowners to organize around river, tributary, estuary, or subbasins of a watershed.

(5) Fishery enhancement groups and other volunteer organizations may participate in the activities under this section.

NEW SECTION. Sec. 11. THE SEA GRANT PROGRAM. The sea grant program at the University of Washington is authorized to provide technical assistance to volunteer groups and other project sponsors in designing and performing habitat restoration projects that address the limiting factors analysis of regional habitat work plans. The cost for such assistance may be covered on a fee-for-service basis.

NEW SECTION. Sec. 12. SOUTHWEST WASHINGTON SALMON RECOVERY. The southwest Washington salmon recovery region, whose boundaries are provided in chapter . . . , Laws of 1998 (Engrossed Second Substitute House Bill No. 2836), is created. If Engrossed Second Substitute House Bill No. 2836 is not enacted by July 1, 1998, this section is null and void.

Sec. 13. RCW 90.71.005 and 1996 c 138 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) Puget Sound and related inland marine waterways of Washington state represent a unique and unparalleled resource. A rich and varied range of marine organisms, comprising an interdependent, sensitive communal ecosystem reside in these sheltered waters. Residents of this region enjoy a way of life centered around the waters of Puget Sound, featuring accessible recreational opportunities, world-class port facilities and water transportation systems, harvest of marine food resources, shoreline-oriented life styles, water-dependent industries, tourism, irreplaceable aesthetics, and other activities, all of which to some degree depend upon a clean and healthy marine resource;

(b) The Puget Sound water quality authority has done an excellent job in developing a comprehensive plan to identify actions to restore and protect the biological health and diversity of Puget Sound;

(c) The large number of governmental entities that now have regulatory programs affecting the water quality of Puget Sound have diverse interests and limited jurisdictions that cannot adequately address the cumulative, wide-ranging impacts that contribute to the degradation of Puget Sound; and

(d) Coordination of the regulatory programs, at the state and local level, is best accomplished through the development of interagency mechanisms that allow these entities to transcend their diverse interests and limited jurisdictions.

(2) It is therefore the policy of the state of Washington to coordinate the activities of state and local agencies by establishing a biennial work plan that clearly delineates state and local actions necessary to protect and restore the

biological health and diversity of Puget Sound. It is further the policy of the state to implement the Puget Sound water quality management plan to the maximum extent possible. To further the policy of the state, a recovery plan developed under the federal endangered species act for a portion or all of the Puget Sound shall be considered for inclusion into the Puget Sound water quality management plan.

Sec. 14. RCW 90.71.020 and 1996 c 138 s 3 are each amended to read as follows:

(1) The Puget Sound action team is created. The action team shall consist of: The directors of the departments of ecology; agriculture; natural resources; fish and wildlife; and community, trade, and economic development; the secretaries of the departments of health and transportation; the director of the parks and recreation commission; the director of the interagency committee for outdoor recreation; the administrative officer of the conservation commission designated in RCW 89.08.050; one person representing cities, appointed by the governor; one person representing counties, appointed by the governor; one person representing federally recognized tribes, appointed by the governor; and the chair of the action team. The action team shall also include the following ex officio nonvoting members: The regional director of the United States environmental protection agency; the regional administrator of the national marine fisheries service; and the regional supervisor of the United States fish and wildlife service. The members representing cities and counties shall each be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The action team shall:

(a) Prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget;

(b) Coordinate monitoring and research programs as provided in RCW 90.71.060;

(c) Work under the direction of the action team chair as provided in RCW 90.71.040;

(d) Coordinate permitting requirements as necessary to expedite permit issuance for any local watershed plan developed pursuant to rules adopted under this chapter;

(e) Identify and resolve any policy or rule conflicts that may exist between one or more agencies represented on the action team;

(f) Periodically amend the Puget Sound management plan;

(g) Enter into, amend, and terminate contracts with individuals, corporations, or research institutions for the purposes of this chapter;

(h) Receive such gifts, grants, and endowments, in trust or otherwise, for the use and benefit of the purposes of the action team. The action team may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(i) Promote extensive public participation, and otherwise seek to broadly disseminate information concerning Puget Sound;

(j) Receive and expend funding from other public agencies;

(k) To reduce costs and improve efficiency, review by December 1, 1996, all requirements for reports and documentation from state agencies and local governments specified in the plan for the purpose of eliminating and consolidating reporting requirements; and

(1) Beginning in December 1998, and every two years thereafter, submit a report to the appropriate policy and fiscal committees of the legislature that describes and evaluates the successes and shortcomings of the current work plan relative to the priority problems identified for each geographic area of Puget Sound.

(3) By July 1, 1996, the action team shall begin developing its initial work plan, which shall include the coordination of necessary support staff.

(4) The action team shall incorporate, to the maximum extent possible, the recommendations of the council regarding amendments to the Puget Sound (~~((management))~~) management plan and the work plan.

(5) All proceedings of the action team are subject to the open public meetings act under chapter 42.30 RCW.

Sec. 15. RCW 90.71.050 and 1996 c 138 s 6 are each amended to read as follows:

(1)(a) Each biennium, the action team shall prepare a Puget Sound work plan and budget for inclusion in the governor's biennial budget. The work plan shall prescribe the necessary federal, state, and local actions to maintain and enhance Puget Sound water quality, including but not limited to, enhancement of recreational opportunities, and restoration of a balanced population of indigenous shellfish, fish, and wildlife. The work plan and budget shall include specific actions and projects pertaining to salmon recovery plans.

(b) In developing a work plan, the action team shall meet the following objectives:

(i) Use the plan elements of the Puget Sound management plan to prioritize local and state actions necessary to restore and protect the biological health and diversity of Puget Sound;

(ii) Consider the problems and priorities identified in local plans; and

(iii) Coordinate the work plan activities with other relevant activities, including but not limited to, agencies' activities that have not been funded through the plan, local plans, and governmental and nongovernmental watershed restoration activities.

(c) In developing a budget, the action team shall identify:

(i) The total funds to implement local projects originating from the planning process developed for nonpoint pollution; and

(ii) The total funds to implement any other projects designed primarily to restore salmon habitat.

(2) In addition to the requirements identified under RCW 90.71.020(2)(a), the work plan and budget shall:

(a) Identify and prioritize the local and state actions necessary to address the water quality problems in the following locations:

- (i) Area 1: Island and San Juan counties;
- (ii) Area 2: Skagit and Whatcom counties;
- (iii) Area 3: Clallam and Jefferson counties;
- (iv) Area 4: Snohomish, King, and Pierce counties; and
- (v) Area 5: Kitsap, Mason, and Thurston counties;

(b) Provide sufficient funding to characterize local watersheds, provide technical assistance, and implement state responsibilities identified in the work plan. The number and qualifications of staff assigned to each region shall be determined by the types of problems identified pursuant to (a) of this subsection;

(c) Provide sufficient funding to implement and coordinate the Puget Sound ambient monitoring plan pursuant to RCW 90.71.060;

(d) Provide funds to assist local jurisdictions to implement elements of the work plan assigned to local governments and to develop and implement local plans;

(e) Provide sufficient funding to provide support staff for the action team; and

(f) Describe any proposed amendments to the Puget Sound (~~management~~) management plan.

(3) The work plan shall be submitted to the appropriate policy and fiscal committees of the legislature by December 20th of each even-numbered year.

(4) The work plan shall be implemented consistent with the legislative provisos of the biennial appropriation acts.

NEW SECTION. **Sec. 16. WORK GROUP.** (1) The departments of transportation, fish and wildlife, and ecology, and tribes shall convene a work group to develop policy guidance to evaluate mitigation alternatives. The policy guidance shall be designed to enable committees established under section 7 of this act to develop and implement habitat project lists that maximize environmental benefits from project mitigation while reducing project design and permitting costs. The work group shall seek technical assistance to ensure that federal, state, treaty right, and local environmental laws and ordinances are met. The purpose of this section is not to increase regulatory requirements or expand departmental authority.

(2) The work group shall develop guidance for determining alternative mitigation opportunities. Such guidance shall include criteria and procedures for identifying and evaluating mitigation opportunities within a watershed. Such guidance shall create procedures that provide alternative mitigation that has a low risk to the environment, yet has high net environmental, social, and economic benefits compared to status quo options.

(3) The evaluation shall include:

(a) All elements of mitigation, including but not limited to data requirements, decision making, state and tribal agency coordination, and permitting; and

(b) Criteria and procedures for identifying and evaluating mitigation opportunities, including but not limited to the criteria in chapter 90.74 RCW.

(4) Committees established under section 7 of this act shall coordinate voluntary collaborative efforts between habitat project proponents and mitigation project proponents. Mitigation funds may be used to implement projects identified by a work plan to mitigate for the impacts of a transportation or other development proposal or project.

(5) For the purposes of this section, "mitigation" has the same meaning as provided in RCW 90.74.010.

NEW SECTION. **Sec. 17.** Only those funds appropriated for the habitat restoration projects under this chapter are subject to the requirements of section 9 of this act.

NEW SECTION. **Sec. 18.** CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. **Sec. 19.** Sections 1 through 12 and 16 through 18 of this act constitute a new chapter in Title 75 RCW.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 247

[Engrossed Substitute House Bill 2514]
WATERSHED MANAGEMENT

AN ACT Relating to watershed management; amending RCW 90.82.040, 43.27A.090, and 90.54.040; adding new sections to chapter 90.82 RCW; adding a new section to chapter 43.27A RCW; adding a new section to chapter 90.54 RCW; and creating new sections.

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

Sec. 1. RCW 90.82.040 and 1997 c 442 s 105 are each amended to read as follows:

(1) Once a WRIA planning unit has been ~~((organized))~~ initiated under section 2 of this act and ~~((designated))~~ a lead agency has been designated, it shall notify the department and may apply to the department for funding assistance for conducting the planning. Funds shall be provided from and to the extent of appropriations made by the legislature to the department expressly for this purpose.

(2) Each planning unit that has complied with subsection (1) of this section is eligible to receive ~~((fifty thousand dollars for each WRIA to initiate the planning process. The department shall allocate additional funds to WRIA planning units based on need demonstrated by a detailed proposed budget submitted by the planning unit for carrying out the duties of the planning unit. Each WRIA planning unit may receive up to two hundred fifty thousand dollars~~

~~for each WRIA during the first two-year period of planning, with a maximum allocation of five hundred thousand dollars for each WRIA. Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose)) watershed planning grants in the following amounts for three phases of watershed planning:~~

~~(a) Initiating governments may apply for an initial organizing grant of up to fifty thousand dollars for a single WRIA or up to seventy-five thousand dollars for a multi-WRIA management area in accordance with section 2(4) of this act;~~

~~(b) A planning unit may apply for up to two hundred thousand dollars for each WRIA in the management area for conducting watershed assessments in accordance with section 3 of this act; and~~

~~(c) A planning unit may apply for up to two hundred fifty thousand dollars for each WRIA in the management area for developing a watershed plan and making recommendations for actions by local, state, and federal agencies, tribes, private property owners, private organizations, and individual citizens, including a recommended list of strategies and projects that would further the purpose of the plan in accordance with sections 2, 3, 4, 5, and 6 of this act.~~

~~(3) ((Preference shall be given to planning units requesting funding for conducting multi-WRIA planning under section 108 of this act)) (a) The department shall use the eligibility criteria in this subsection (3) instead of rules, policies, or guidelines when evaluating grant applications at each stage of the grants program.~~

~~(b) In reviewing grant applications under this subsection (3), the department shall evaluate whether:~~

~~(i) The planning unit meets all of the requirements of this chapter;~~

~~(ii) The application demonstrates a need for state planning funds to accomplish the objectives of the planning process; and~~

~~(iii) The application and supporting information evidences a readiness to proceed.~~

~~(c) In ranking grant applications submitted at each stage of the grants program, the department shall give preference to applications in the following order of priority:~~

~~(i) Applications from existing planning groups that have been in existence for at least one year;~~

~~(ii) Applications that address protection and enhancement of fish habitat in watersheds that have aquatic fish species listed or proposed to be listed as endangered or threatened under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. and for which there is evidence of an inability to supply adequate water for population and economic growth from:~~

~~(A) First, multi-WRIA planning; and~~

~~(B) Second, single WRIA planning;~~

~~(iii) Applications that address protection and enhancement of fish habitat in watersheds or for which there is evidence of an inability to supply adequate water for population and economic growth from:~~

(A) First, multi-WRIA planning; and

(B) Second, single WRIA planning.

(d) The department may not impose any local matching fund requirement as a condition for grant eligibility or as a preference for receiving a grant.

(4) The department may retain up to one percent of funds allocated under this section to defray administrative costs.

(5) Planning under this chapter should be completed as expeditiously as possible, with the focus being on local stakeholders cooperating to meet local needs.

(6) Funding provided under this section shall be considered a contractual obligation against the moneys appropriated for this purpose.

NEW SECTION. Sec. 2. INITIATION OF WATERSHED PLANNING.

(1) Planning conducted under this chapter must provide for a process to allow the local citizens within a WRIA or multi-WRIA area to join together in an effort to: (a) Assess the status of the water resources of their WRIA or multi-WRIA area; and (b) determine how best to manage the water resources of the WRIA or multi-WRIA area to balance the competing resource demands for that area within the parameters under section 8 of this act.

(2) Watershed planning under this chapter may be initiated for a WRIA only with the concurrence of: (a) All counties within the WRIA; (b) the largest city or town within the WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water from the WRIA. To apply for a grant for organizing the planning unit as provided for under RCW 90.82.040(2)(a), these entities shall designate the entity that will serve as the lead agency for the planning effort and indicate how the planning unit will be staffed.

(3) Watershed planning under this chapter may be initiated for a multi-WRIA area only with the concurrence of: (a) All counties within the multi-WRIA area; (b) the largest city or town in each WRIA unless the WRIA does not contain a city or town; and (c) the water supply utility obtaining the largest quantity of water in each WRIA.

(4) If entities in subsection (2) or (3) of this section decide jointly and unanimously to proceed, they shall invite all tribes with reservation lands within the management area.

(5) The entities in subsection (2) or (3) of this section, including the tribes if they affirmatively accept the invitation, constitute the initiating governments for the purposes of this section.

(6) The organizing grant shall be used to organize the planning unit and to determine the scope of the planning to be conducted. In determining the scope of the planning activities, consideration shall be given to all existing plans and related planning activities. The scope of planning must include water quantity elements as provided in section 3 of this act, and may include water quality elements as contained in section 5 of this act, habitat elements as contained in section 6 of this act, and instream flow elements as contained in section 4 of this act. The initiating governments shall work with state government, other local

governments within the management area, and affected tribal governments, in developing a planning process. The initiating governments may hold public meetings as deemed necessary to develop a proposed scope of work and a proposed composition of the planning unit. In developing a proposed composition of the planning unit, the initiating governments shall provide for representation of a wide range of water resource interests.

(7) Each state agency with regulatory or other interests in the WRIA or multi-WRIA area to be planned shall assist the local citizens in the planning effort to the greatest extent practicable, recognizing any fiscal limitations. In providing such technical assistance and to facilitate representation on the planning unit, state agencies may organize and agree upon their representation on the planning unit. Such technical assistance must only be at the request of and to the extent desired by the planning unit conducting such planning. The number of state agency representatives on the planning unit shall be determined by the initiating governments in consultation with the governor's office.

(8) As used in this section, "lead agency" means the entity that coordinates staff support of its own or of other local governments and receives grants for developing a watershed plan.

NEW SECTION. Sec. 3. WATER QUANTITY. Watershed planning under this chapter shall address water quantity in the management area by undertaking an assessment of water supply and use in the management area and developing strategies for future use.

(1) The assessment shall include:

(a) An estimate of the surface and ground water present in the management area;

(b) An estimate of the surface and ground water available in the management area, taking into account seasonal and other variations;

(c) An estimate of the water in the management area represented by claims in the water rights claims registry, water use permits, certificated rights, existing minimum instream flow rules, federally reserved rights, and any other rights to water;

(d) An estimate of the surface and ground water actually being used in the management area;

(e) An estimate of the water needed in the future for use in the management area;

(f) An identification of the location of areas where aquifers are known to recharge surface bodies of water and areas known to provide for the recharge of aquifers from the surface; and

(g) An estimate of the surface and ground water available for further appropriation, taking into account the minimum instream flows adopted by rule or to be adopted by rule under this chapter for streams in the management area including the data necessary to evaluate necessary flows for fish.

(2) Strategies for increasing water supplies in the management area, which may include, but are not limited to, increasing water supplies through water

conservation, water reuse, the use of reclaimed water, voluntary water transfers, aquifer recharge and recovery, additional water allocations, or additional water storage and water storage enhancements. The objective of these strategies is to supply water in sufficient quantities to satisfy the minimum instream flows for fish and to provide water for future out-of-stream uses for water identified in subsection (1)(e) and (g) of this section and to ensure that adequate water supplies are available for agriculture, energy production, and population and economic growth under the requirements of the state's growth management act, chapter 36.70A RCW. These strategies, in and of themselves, shall not be construed to confer new water rights. The watershed plan must address the strategies required under this subsection.

NEW SECTION. **Sec. 4. INSTREAM FLOWS.** (1)(a) If the initiating governments choose, by majority vote, to include an instream flow component, it shall be accomplished in the following manner:

(i) If minimum instream flows have already been adopted by rule for a stream within the management area, unless the members of the local governments and tribes on the planning unit by a recorded unanimous vote request the department to modify those flows, the minimum instream flows shall not be modified under this chapter. If the members of local governments and tribes request the planning unit to modify instream flows and unanimous approval of the decision to modify such flow is not achieved, then the instream flows shall not be modified under this section;

(ii) If minimum stream flows have not been adopted by rule for a stream within the management area, setting the minimum instream flows shall be a collaborative effort between the department and members of the planning unit. The department must attempt to achieve consensus and approval among the members of the planning unit regarding the minimum flows to be adopted by the department. Approval is achieved if all government members and tribes that have been invited and accepted on the planning unit present for a recorded vote unanimously vote to support the proposed minimum instream flows, and all nongovernmental members of the planning unit present for the recorded vote, by a majority, vote to support the proposed minimum instream flows.

(b) The department shall undertake rule making to adopt flows under (a) of this subsection. The department may adopt the rules either by the regular rules adoption process provided in chapter 34.05 RCW, the expedited rules adoption process as set forth in RCW 34.05.230, or through a rules adoption process that uses public hearings and notice provided by the county legislative authority to the greatest extent possible. Such rules do not constitute significant legislative rules as defined in RCW 34.05.328, and do not require the preparation of small business economic impact statements.

(c) If approval is not achieved within four years of the date the planning unit first receives funds from the department for conducting watershed assessments under RCW 90.82.040, the department may promptly initiate rule making under chapter 34.05 RCW to establish flows for those streams and shall have two

additional years to establish the instream flows for those streams for which approval is not achieved.

(2)(a) Notwithstanding RCW 90.03.345, minimum instream flows set under this section for rivers or streams that do not have existing minimum instream flow levels set by rule of the department shall have a priority date of two years after funding is first received from the department under RCW 90.82.040, unless determined otherwise by a unanimous vote of the members of the planning unit but in no instance may it be later than the effective date of the rule adopting such flow.

(b) Any increase to an existing minimum instream flow set by rule of the department shall have a priority date of two years after funding is first received for planning in the WRIA or multi-WRIA area from the department under RCW 90.82.040 and the priority date of the portion of the minimum instream flow previously established by rule shall retain its priority date as established under RCW 90.03.345.

(c) Any existing minimum instream flow set by rule of the department that is reduced shall retain its original date of priority as established by RCW 90.03.345 for the revised amount of the minimum instream flow level.

(3) Before setting minimum instream flows under this section, the department shall engage in government-to-government consultation with affected tribes in the management area regarding the setting of such flows.

(4) Nothing in this chapter either: (a) Affects the department's authority to establish flow requirements or other conditions under RCW 90.48.260 or the federal clean water act (33 U.S.C. Sec. 1251 et seq.) for the licensing or relicensing of a hydroelectric power project under the federal power act (16 U.S.C. Sec. 791 et seq.); or (b) affects or impairs existing instream flow requirements and other conditions in a current license for a hydroelectric power project licensed under the federal power act.

(5) If the planning unit is unable to obtain unanimity under subsection (1) of this section, the department may adopt rules setting such flows.

NEW SECTION. Sec. 5. WATER QUALITY. If the initiating governments choose to include a water quality component, the watershed plan shall include the following elements:

(1) An examination based on existing studies conducted by federal, state, and local agencies of the degree to which legally established water quality standards are being met in the management area;

(2) An examination based on existing studies conducted by federal, state, and local agencies of the causes of water quality violations in the management area, including an examination of information regarding pollutants, point and nonpoint sources of pollution, and pollution-carrying capacities of water bodies in the management area. The analysis shall take into account seasonal stream flow or level variations, natural events, and pollution from natural sources that occurs independent of human activities;

(3) An examination of the legally established characteristic uses of each of the nonmarine bodies of water in the management area;

(4) An examination of any total maximum daily load established for nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under section 2 of this act.

(5) An examination of existing data related to the impact of fresh water on marine water quality;

(6) A recommended approach for implementing the total maximum daily load established for achieving compliance with water quality standards for the nonmarine bodies of water in the management area, unless a total maximum daily load process has begun in the management area as of the date the watershed planning process is initiated under section 2 of this act; and

(7) Recommended means of monitoring by appropriate government agencies whether actions taken to implement the approach to bring about improvements in water quality are sufficient to achieve compliance with water quality standards.

This chapter does not obligate the state to undertake analysis or to develop strategies required under the federal clean water act (33 U.S.C. Sec. 1251 et seq.). This chapter does not authorize any planning unit, lead agency, or local government to adopt water quality standards or total maximum daily loads under the federal clean water act.

NEW SECTION. **Sec. 6. HABITAT.** If the initiating governments choose to include a habitat component, the watershed plan shall be coordinated or developed to protect or enhance fish habitat in the management area. Such planning must rely on existing laws, rules, or ordinances created for the purpose of protecting, restoring, or enhancing fish habitat, including the shoreline management act, chapter 90.58 RCW, the growth management act, chapter 36.70A RCW, and the forest practices act, chapter 76.09 RCW. Planning established under this section shall be integrated with strategies developed under other processes to respond to potential and actual listings of salmon and other fish species as being threatened or endangered under the federal endangered species act, 16 U.S.C. Sec. 1531 et seq. Where habitat restoration activities are being developed under chapter . . . , Laws of 1998 (Engrossed Substitute House Bill No. 2496), such activities shall be relied on as the primary nonregulatory habitat component for fish habitat under this chapter.

NEW SECTION. **Sec. 7. IDENTIFICATION OF PROJECTS AND ACTIVITIES.** The planning unit shall review historical data such as fish runs, weather patterns, land use patterns, seasonal flows, and geographic characteristics of the management area, and also review the planning, projects, and activities that have already been completed regarding natural resource management or enhancement in the management area and the products or status of those that have been initiated but not completed for such management in the management area,

and incorporate their products as appropriate so as not to duplicate the work already performed or underway.

The planning group is encouraged to identify projects and activities that are likely to serve both short-term and long-term management goals and that warrant immediate financial assistance from the state, federal, or local government. If there are multiple projects, the planning group shall give consideration to ranking projects that have the greatest benefit and schedule those projects that should be implemented first.

NEW SECTION. Sec. 8. PLAN PARAMETERS. (1) Watershed planning developed and approved under this chapter shall not contain provisions that: (a) Are in conflict with existing state statutes, federal laws, or tribal treaty rights; (b) impair or diminish in any manner an existing water right evidenced by a claim filed in the water rights claims registry established under chapter 90.14 RCW or a water right certificate or permit; (c) require a modification in the basic operations of a federal reclamation project with a water right the priority date of which is before the effective date of this section or alter in any manner whatsoever the quantity of water available under the water right for the reclamation project, whether the project has or has not been completed before the effective date of this section; (d) affect or interfere with an ongoing general adjudication of water rights; (e) modify or require the modification of any waste discharge permit issued under chapter 90.48 RCW; (f) modify or require the modification of activities or actions taken or intended to be taken under a habitat restoration work schedule developed under chapter . . . , Laws of 1998 (Engrossed Substitute House Bill No. 2496); or (g) modify or require the modification of activities or actions taken to protect or enhance fish habitat if the activities or actions are: (i) Part of an approved habitat conservation plan and an incidental take permit, an incidental take statement, a management or recovery plan, or other cooperative or conservation agreement entered into with a federal or state fish and wildlife protection agency under its statutory authority for fish and wildlife protection that addresses the affected habitat; or (ii) part of a water quality program adopted by an irrigation district under chapter 87.03 RCW or a board of joint control under chapter 87.80 RCW. This subsection (1)(g) applies as long as the activities or actions continue to be taken in accordance with the plan, agreement, permit, or statement. Any assessment conducted under section 3, 5, or 6 of this act shall take into consideration such activities and actions and those taken under the forest practices rules, including watershed analysis adopted under the forest practices act, chapter 76.09 RCW.

(2) Watershed planning developed and approved under this chapter shall not change existing local ordinances or existing state rules or permits, but may contain recommendations for changing such ordinances or rules.

(3) Notwithstanding any other provision of this chapter, watershed planning shall take into account forest practices rules under the forest practices act, chapter 76.09 RCW, and shall not create any obligations or restrictions on forest practices

additional to or inconsistent with the forest practices act and its implementing rules, whether watershed planning is approved by the counties or the department.

NEW SECTION. Sec. 9. DECISIONS—HEARINGS—APPROVAL. (1)(a) Upon completing its proposed watershed plan, the planning unit may approve the proposal by consensus of all of the members of the planning unit or by consensus among the members of the planning unit appointed to represent units of government and a majority vote of the nongovernmental members of the planning unit.

(b) If the proposal is approved by the planning unit, the unit shall submit the proposal to the counties with territory within the management area. If the planning unit has received funding beyond the initial fifty thousand dollars under RCW 90.82.040, such a proposal approved by the planning unit shall be submitted to the counties within four years of the date the funding was first received by the planning unit.

(c) If the watershed plan is not approved by the planning unit, the planning unit may submit the components of the plan for which agreement is achieved using the procedure under (a) of this subsection, or the planning unit may terminate the planning process.

(2)(a) The legislative authority of each of the counties with territory in the management area shall provide public notice of and conduct at least one public hearing on the proposed watershed plan submitted under this section. After the public hearings, the legislative authorities of these counties shall convene in joint session to consider the proposal. The counties may approve or reject the proposed watershed plan for the management area, but may not amend it. Approval of such a proposal shall be made by a majority vote of the members of each of the counties with territory in the management area.

(b) If a proposed watershed plan is not approved, it shall be returned to the planning unit with recommendations for revisions. Approval of such a revised proposal by the planning unit and the counties shall be made in the same manner provided for the original watershed plan. If approval of the revised plan is not achieved, the process shall terminate.

(3) The planning unit shall not add an element to its watershed plan that creates an obligation unless each of the governments to be obligated has at least one representative on the planning unit and the respective members appointed to represent those governments agree to adding the element that creates the obligation. A member's agreeing to add an element shall be evidenced by a recorded vote of all members of the planning unit in which the members record support for adding the element. If the watershed plan is approved under subsections (1) and (2) of this section and the plan creates obligations: (a) For agencies of state government, the agencies shall adopt by rule the obligations of both state and county governments and rules implementing the state obligations, the obligations on state agencies are binding upon adoption of the obligations into rule, and the agencies shall take other actions to fulfill their obligations as soon as possible; or (b) for counties, the obligations are binding on the counties and the

counties shall adopt any necessary implementing ordinances and take other actions to fulfill their obligations as soon as possible.

(4) As used in this section, "obligation" means any action required as a result of this chapter that imposes upon a tribal government, county government, or state government, either: A fiscal impact; a redeployment of resources; or a change of existing policy.

***NEW SECTION. Sec. 10. PERMIT PROCESSING.** *Nothing in this chapter may be interpreted as authorizing or directing the department to establish a moratorium on the investigation of and decisions on applications for permits for the withdrawal of surface water or ground water, or changes or transfers of water rights under existing permits.*

*Sec. 10 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 11.** *A new section is added to chapter 43.27A RCW to read as follows:*

If planning is being conducted under chapter 90.82 RCW or a plan has been adopted under section 9 of this act, the department shall not conduct planning under this chapter that conflicts with the planning being conducted under chapter 90.82 RCW or a plan that has been adopted under section 9 of this act.

*Sec. 11 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 12.** *A new section is added to chapter 90.54 RCW to read as follows:*

If planning is being conducted under chapter 90.82 RCW or a plan has been adopted under section 9 of this act, the department shall not conduct planning under this chapter that conflicts with the planning being conducted under chapter 90.82 RCW or a plan that has been adopted under section 9 of this act.

*Sec. 12 was vetoed. See message at end of chapter.

***Sec. 13. RCW 43.27A.090 and 1988 c 127 s 25 are each amended to read as follows:**

The department shall be empowered as follows:

(1) To represent the state at, and fully participate in, the activities of any basin or regional commission, interagency committee, or any other joint interstate or federal-state agency, committee or commission, or publicly financed entity engaged in the planning, development, administration, management, conservation or preservation of the water resources of the state.

(2) To prepare the views and recommendations of the state of Washington on any project, plan or program relating to the planning, development, administration, management, conservation and preservation of any waters located in or affecting the state of Washington, including any federal permit or license proposal, and appear on behalf of, and present views and recommendations of the state at any proceeding, negotiation or hearing conducted by the federal government, interstate agency, state or other agency.

(3) To cooperate with, assist, advise and coordinate plans with the federal government and its officers and agencies, and serve as a state liaison agency with the federal government in matters relating to the use, conservation, preservation, quality, disposal or control of water and activities related thereto.

(4) To cooperate with appropriate agencies of the federal government and/ or agencies of other states, to enter into contracts, and to make appropriate contributions to federal or interstate projects and programs and governmental bodies to carry out the provisions of this chapter.

(5) To apply for, accept, administer and expend grants, gifts and loans from the federal government or any other entity to carry out the purposes of this chapter and make contracts and do such other acts as are necessary insofar as they are not inconsistent with other provisions hereof.

(6) To develop and maintain a coordinated and comprehensive state water and water resources related development plan, and adopt, with regard to such plan, such policies as are necessary to insure that the waters of the state are used, conserved and preserved for the best interest of the state. There shall be included in the state plan a description of developmental objectives and a statement of the recommended means of accomplishing these objectives. To the extent the director deems desirable, the plan shall integrate into the state plan, the plans, programs, reports, research and studies of other state agencies. A plan adopted under chapter 90.82 RCW satisfies the requirements of planning under this section.

(7) To assemble and correlate information relating to water supply, power development, irrigation, watersheds, water use, future possibilities of water use and prospective demands for all purposes served through or affected by water resources development.

(8) To assemble and correlate state, local and federal laws, regulations, plans, programs and policies affecting the beneficial use, disposal, pollution, control or conservation of water, river basin development, flood prevention, parks, reservations, forests, wildlife refuges, drainage and sanitary systems, waste disposal, water works, watershed protection and development, soil conservation, power facilities and area and municipal water supply needs, and recommend suitable legislation or other action to the legislature, the congress of the United States, or any city, municipality, or to responsible state, local or federal executive departments or agencies.

(9) To cooperate with federal, state, regional, interstate and local public and private agencies in the making of plans for drainage, flood control, use, conservation, allocation and distribution of existing water supplies and the development of new water resource projects.

(10) To encourage, assist and advise regional, and city and municipal agencies, officials or bodies responsible for planning in relation to water aspects of their programs, and coordinate local water resources activities, programs, and plans.

(11) To promulgate such rules and regulations as are necessary to carry out the purposes of this chapter.

(12) To hold public hearings, and make such investigations, studies and surveys as are necessary to carry out the purposes of the chapter.

(13) To subpoena witnesses, compel their attendance, administer oaths, take the testimony of any person under oath and require the production of any books or papers when the department deems such measures necessary in the exercise of its rule-making power or in determining whether or not any license, certificate, or permit shall be granted or extended.

*Sec. 13 was vetoed. See message at end of chapter.

*Sec. 14. RCW 90.54.040 and 1997 c 32 s 2 are each amended to read as follows:

(1) The department, through the adoption of appropriate rules, is directed, as a matter of high priority to insure that the waters of the state are utilized for the best interests of the people, to develop and implement in accordance with the policies of this chapter a comprehensive state water resources program which will provide a process for making decisions on future water resource allocation and use. The department may develop the program in segments so that immediate attention may be given to waters of a given physioeconomic region of the state or to specific critical problems of water allocation and use. A plan adopted under chapter 90.82 RCW satisfies the requirements of planning under this section.

(2) In relation to the management and regulatory programs relating to water resources vested in it, the department is further directed to modify existing regulations and ndopt new regulations, when needed and possible, to insure that existing regulatory programs are in accord with the water resource policy of this chapter and the program established in subsection (1) of this section.

(3) The department is directed to review all statutes relating to water resources which it is responsible for implementing. When any of the same appear to the department to be ambiguous, unclear, unworkable, unnecessary, or otherwise deficient, it shall make recommendations to the legislature including appropriate proposals for statutory modifications or additions. Whenever it appears that the policies of any such statutes are in conflict with the policies of this chapter, and the department is unable to fully perform as provided in subsection (2) of this section, the department is directed to submit statutory modifications to the legislature which, if enacted, would allow the department to carry out such statutes in harmony with this chapter.

*Sec. 14 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 15. CAPTIONS. As used in this act, captions constitute no part of the law.

NEW SECTION. Sec. 16. Sections 2 through 10 of this act are each added to chapter 90.82 RCW.

NEW SECTION. Sec. 17. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 10 through 14, Engrossed Substitute House Bill No. 2514 entitled:

"AN ACT Relating to watershed management;"

ESHB 2514 establishes a watershed management process to develop in-stream flow levels, water quality and habitat plans. A primary purpose of the watershed management planning under this bill is to address listed and soon-to-be listed salmon stocks under the federal Endangered Species Act, as well as finding ways to meet the needs of those who rely upon out-of-stream uses of water.

This bill has the potential to resolve the long-standing stalemate over setting in-stream flow levels in Washington and to resolve other important issues dealing with water quality and fish habitat. I commend the Legislature for its leadership in this regard.

ESHB 2514 makes a strong choice to rely on watershed planning processes to resolve these issues. Primary responsibility lies with the planning units authorized by this bill to meet the requirements of state and federal law. Given the status of our water and fisheries resources, we cannot afford to approach these problems without a sense of urgency and determination. If progress is not being made in this area, I am prepared to utilize existing authority to protect our water and fish habitat, and will be prepared to propose further legislative changes next year.

ESHB 2514 has one problem in that tribal governments are relegated to a secondary role throughout the planning process, despite treaty rights and fishery co-management responsibilities. To address that problem, I am directing the Department of Ecology to consult with affected tribes, including those with usual and accustomed territory or ceded lands, before committing to obligate the state on any particular in-stream flow levels or other issues that affect tribal treaty rights and co-management responsibilities.

Section 10 of this bill would prohibit the Department from establishing a moratorium on water right processing while planning is underway. In some select instances, the Department of Ecology may need to impose a moratorium on water right processing in order to preserve options for future water allocations by the watershed planning unit.

Sections 11 through 14 would require that plans developed under this bill preempt water-related planning processes established under other statutes. This language would remove any flexibility of the state to use other authorities to correct any deficiencies that emerge from plans adopted under the process provided in this bill. If such plans turn out to be inadequate due to new information and situations, the state would be prohibited by these sections from correcting the problems.

For these reasons, I have vetoed sections 10 through 14 of Engrossed Substitute House Bill No. 2514.

With the exception of sections 10 through 14, Engrossed Substitute House Bill No. 2514 is approved."

CHAPTER 248

[Engrossed Second Substitute House Bill 2339]
WETLANDS MITIGATION BANKING

AN ACT Relating to wetlands mitigation banking; adding a new chapter to Title 90 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. (1) The legislature finds that wetlands mitigation banks are an important tool for providing compensatory mitigation for unavoidable impacts to wetlands. The legislature further finds that the benefits of mitigation banks include: (a) Maintenance of the ecological functioning of a watershed by consolidating compensatory mitigation into a single large parcel rather than smaller individual parcels; (b) increased potential for the establishment and long-term management of successful mitigation by bringing together financial resources, planning, and scientific expertise not practicable for many project-specific mitigation proposals; (c) increased certainty over the success of mitigation and reduction of temporal losses of wetlands since mitigation banks are typically implemented and functioning in advance of project impacts; (d) potential enhanced protection and preservation of the state's highest value and highest functioning wetlands; (e) a reduction in permit processing times and increased opportunity for more cost-effective compensatory mitigation for development projects; and (f) the ability to provide compensatory mitigation in an efficient, predictable, and economically and environmentally responsible manner. Therefore, the legislature declares that it is the policy of the state to authorize wetland mitigation banking.

(2) The purpose of this chapter is to support the establishment of mitigation banks by: (a) Authorizing state agencies and local governments, as well as private entities, to achieve the goals of this chapter; and (b) providing a predictable, efficient, regulatory framework, including timely review of mitigation bank proposals. The legislature intends that, in the development and adoption of rules for banks, the department establish and use a collaborative process involving interested public and private entities.

NEW SECTION. Sec. 2. This chapter does not create any new authority for regulating wetlands or wetlands banks beyond what is specifically provided for in this chapter. No authority is granted to the department under this chapter to adopt rules or guidance that apply to wetland projects other than banks under this chapter.

NEW SECTION. Sec. 3. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Banking instrument" means the documentation of agency and bank sponsor concurrence on the objectives and administration of the bank that describes in detail the physical and legal characteristics of the bank, including the service area, and how the bank will be established and operated.

(2) "Bank sponsor" means any public or private entity responsible for establishing and, in most circumstances, operating a bank.

(3) "Credit" means a unit of trade representing the increase in the ecological value of the site, as measured by acreage, functions, and/or values, or by some other assessment method.

(4) "Department" means the department of ecology.

(5) "Wetlands mitigation bank" or "bank" means a site where wetlands are restored, created, enhanced, or in exceptional circumstances, preserved expressly for the purpose of providing compensatory mitigation in advance of authorized impacts to similar resources.

(6) "Mitigation" means sequentially avoiding impacts, minimizing impacts, and compensating for remaining unavoidable impacts.

(7) "Practicable" means available and capable of being done after taking into consideration cost, existing technology, and logistics in light of overall project purposes.

(8) "Service area" means the designated geographic area in which a bank can reasonably be expected to provide appropriate compensation for unavoidable impacts to wetlands.

(9) "Unavoidable" means adverse impacts that remain after all appropriate and practicable avoidance and minimization have been achieved.

NEW SECTION. Sec. 4. Subject to the requirements of this chapter, the department, through a collaborative process, shall adopt rules for:

(1) Certification, operation, and monitoring of wetlands mitigation banks. The rules shall include procedures to assure that:

(a) Priority is given to banks providing for the restoration of degraded or former wetlands;

(b) Banks involving the creation and enhancement of wetlands are certified only where there are adequate assurances of success and that the bank will result in an overall environmental benefit; and

(c) Banks involving the preservation of wetlands or associated uplands are certified only when the preservation is in conjunction with the restoration, enhancement, or creation of a wetland, or in other exceptional circumstances as determined by the department consistent with this chapter;

(2) Determination and release of credits from banks. Procedures regarding credits shall authorize the use and sale of credits to offset adverse impacts and the phased release of credits as different levels of the performance standards are met;

(3) Public involvement in the certification of banks, using existing statutory authority;

(4) Coordination of governmental agencies;

(5) Establishment of criteria for determining service areas for each bank;

(6) Performance standards; and

(7) Long-term management, financial assurances, and remediation for certified banks.

Before adopting rules under this chapter, the department shall submit the proposed rules to the appropriate standing committees of the legislature. By January 30, 1999, the department shall submit a report to the appropriate standing committees of the legislature on its progress in developing rules under this chapter.

NEW SECTION. Sec. 5. (1) The department may certify only those banks that meet the requirements of this chapter. Certification shall be accomplished through a banking instrument. The local jurisdiction in which the bank is located shall be signatory to the banking instrument.

(2) State agencies and local governments may approve use of credits from a bank for any mitigation required under a permit issued or approved by that state agency or local government to compensate for the proposed impacts of a specific public or private project.

NEW SECTION. Sec. 6. Prior to authorizing use of credits from a bank as a means of mitigation under a permit issued or approved by the department, the department must assure that all appropriate and practicable steps have been undertaken to first avoid and then minimize adverse impacts to wetlands. In determining appropriate steps to avoid and minimize adverse impacts to wetlands, the department shall take into consideration the functions and values of the wetland, including fish habitat, ground water quality, and protection of adjacent properties. The department may approve use of credits from a bank when:

(1) The credits represent the creation, restoration, or enhancement of wetlands of like kind and in close proximity when estuarine wetlands are being mitigated;

(2) There is no practicable opportunity for on-site compensation; or

(3) Use of credits from a bank is environmentally preferable to on-site compensation.

NEW SECTION. Sec. 7. The interpretation of this chapter and rules adopted under this chapter must be consistent with applicable federal guidance for the establishment, use, and operation of wetlands mitigation banks as it existed on the effective date of this section, or such subsequent date as may be provided by the department by rule, consistent with the purposes of this chapter.

NEW SECTION. Sec. 8. This chapter applies to public and private mitigation banks.

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.

NEW SECTION. Sec. 10. The director of the department of ecology may take the necessary steps to ensure that this act is implemented on its effective date.

NEW SECTION. Sec. 11. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

NEW SECTION. Sec. 12. Sections 1 through 9 of this act constitute a new chapter in Title 90 RCW.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 249

[Second Substitute House Bill 2879]

FISH HABITAT ENHANCEMENT PROJECTS—REVIEW AND APPROVAL

AN ACT Relating to facilitating the review and approval of fish habitat enhancement projects; amending RCW 90.58.147, 35.63.230, 35A.63.250, 36.70.992, 36.70A.460, 43.21C.0382, and 89.08.470; adding a new section to chapter 75.20 RCW; adding a new section to chapter 36.70 RCW; adding a new section to chapter 35.21 RCW; adding a new section to chapter 35A.21 RCW; adding a new section to chapter 19.27 RCW; adding a new section to chapter 75.50 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that fish habitat enhancement projects play a key role in the state's salmon and steelhead recovery efforts. The legislature finds that there are over two thousand barriers to fish passage at road crossings throughout the state, blocking fish access to as much as three thousand miles of freshwater spawning and rearing habitat. The legislature further finds that removal of these barriers and completion of other fish habitat enhancement projects should be done in a cost-effective manner, which includes providing technical assistance and training to people who will undertake projects such as removal of barriers to salmon passage and minimizing the expense and delays of various permitting processes. The purpose of this act is to take immediate action to facilitate the review and approval of fish habitat enhancement projects, to encourage efforts that will continue to improve the process in the future, to address known fish passage barriers immediately, and to develop over time a comprehensive system to inventory and prioritize barriers on a state-wide basis.

NEW SECTION. Sec. 2. The department of ecology permit assistant center shall immediately modify the joint aquatic resource permit application form to incorporate the permit process established in section 3 of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 75.20 RCW to read as follows:

(I) In order to receive the permit review and approval process created in this section, a fish habitat enhancement project must meet the criteria under (a) and (b) of this subsection:

(a) A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:

(i) Elimination of human-made fish passage barriers, including culvert repair and replacement;

(ii) Restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or

(iii) Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks.

The department shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this section if the department determines that the scale of the project raises concerns regarding public health and safety; and

(b) A fish habitat enhancement project must be approved in one of the following ways:

(i) By the department pursuant to chapter 75.50 or 75.52 RCW;

(ii) By the sponsor of a watershed restoration plan as provided in chapter 89.08 RCW;

(iii) By the department as a department-sponsored fish habitat enhancement or restoration project;

(iv) Through the review and approval process for the jobs for the environment program;

(v) Through the review and approval process for conservation district-sponsored projects, where the project complies with design standards established by the conservation commission through interagency agreement with the United States fish and wildlife service and the natural resource conservation service;

(vi) Through a formal grant program established by the legislature or the department for fish habitat enhancement or restoration; and

(vii) Through other formal review and approval processes established by the legislature.

(2) Fish habitat enhancement projects meeting the criteria of subsection (1) of this section are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of subsection (1) of this section and being reviewed and approved according to the provisions of this section are not subject to the requirements of RCW 43.21C.030(2)(c).

(3) Hydraulic project approval is required for projects that meet the criteria of subsection (1) of this section and are being reviewed and approved under this section. An applicant shall use a joint aquatic resource permit application form developed by the department of ecology permit assistance center to apply for approval under this chapter. On the same day, the applicant shall provide copies

of the completed application form to the department and to each appropriate local government. Local governments shall accept the application as notice of the proposed project. The department shall provide a fifteen-day comment period during which it will receive comments regarding environmental impacts. In no more than forty-five days, the department shall either issue hydraulic project approval, with or without conditions, deny approval, or make a determination that the review and approval process created by this section is not appropriate for the proposed project. The department shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by hydraulic project approval. If the department determines that the review and approval process created by this section is not appropriate for the proposed project, the department shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes.

Any person aggrieved by the approval, denial, conditioning, or modification of hydraulic project approval under this section may formally appeal the decision to the hydraulic appeals board pursuant to the provisions of this chapter.

(4) No local government may require permits or charge fees for fish habitat enhancement projects that meet the criteria of subsection (1) of this section and that are reviewed and approved according to the provisions of this section.

Sec. 4. RCW 90.58.147 and 1995 c 333 s 1 are each amended to read as follows:

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

~~((1))~~ (a) The project has been approved by the department of fish and wildlife;

~~((2))~~ (b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 75.20 RCW; and

~~((3))~~ (c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of section 3 of this act are determined to be consistent with local shoreline master programs.

Sec. 5. RCW 35.63.230 and 1995 c 378 s 8 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of section 3(1) of this act shall be reviewed and approved according to the provisions of section 3 of this act.

Sec. 6. RCW 35A.63.250 and 1995 c 378 s 9 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of section 3(1) of this act shall be reviewed and approved according to the provisions of section 3 of this act.

Sec. 7. RCW 36.70.992 and 1995 c 378 s 10 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of section 3(1) of this act shall be reviewed and approved according to the provisions of section 3 of this act.

NEW SECTION. **Sec. 8.** A new section is added to chapter 36.70 RCW to read as follows:

A county is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of section 3 of this act and has been permitted by the department of fish and wildlife.

NEW SECTION. **Sec. 9.** A new section is added to chapter 35.21 RCW to read as follows:

A city or town is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of section 3 of this act and has been permitted by the department of fish and wildlife.

NEW SECTION. **Sec. 10.** A new section is added to chapter 35A.21 RCW to read as follows:

A code city is not liable for adverse impacts resulting from a fish enhancement project that meets the criteria of section 3 of this act and has been permitted by the department of fish and wildlife.

Sec. 11. RCW 36.70A.460 and 1995 c 378 s 11 are each amended to read as follows:

A permit required under this chapter for a watershed restoration project as defined in RCW 89.08.460 shall be processed in compliance with RCW 89.08.450 through 89.08.510. A fish habitat enhancement project meeting the criteria of section 3(1) of this act shall be reviewed and approved according to the provisions of section 3 of this act.

Sec. 12. RCW 43.21C.0382 and 1995 c 378 s 12 are each amended to read as follows:

Decisions pertaining to watershed restoration projects as defined in RCW 89.08.460 are not subject to the requirements of RCW 43.21C.030(2)(c). Decisions pertaining to fish habitat enhancement projects meeting the criteria of section 3(1) of this act and being reviewed and approved according to the

provisions of section 3 of this act are not subject to the requirements of RCW 43.21C.030(2)(c).

Sec. 13. RCW 89.08.470 and 1995 c 378 s 3 are each amended to read as follows:

(1) By January 1, 1996, the Washington conservation commission shall develop, in consultation with other state agencies, tribes, and local governments, a consolidated application process for permits for a watershed restoration project developed by an agency or sponsored by an agency on behalf of a volunteer organization. The consolidated process shall include a single permit application form for use by all responsible state and local agencies. The commission shall encourage use of the consolidated permit application process by any federal agency responsible for issuance of related permits. The permit application forms to be consolidated shall include, at a minimum, applications for: ~~((+))~~ (a) Approvals related to water quality standards under chapter 90.48 RCW; ~~((2))~~ (b) hydraulic project approvals under chapter 75.20 RCW; and ~~((3))~~ (c) section 401 water quality certifications under 33 U.S.C. Sec. 1341 and chapter 90.48 RCW.

(2) If a watershed restoration project is also a fish habitat enhancement project that meets the criteria of section 3(1) of this act, the project sponsor shall instead follow the permit review and approval process established in section 3 of this act with regard to state and local government permitting requirements. The sponsor shall so notify state and local permitting authorities.

NEW SECTION. **Sec. 14.** A new section is added to chapter 19.27 RCW to read as follows:

A fish habitat enhancement project meeting the criteria of section 3(1) of this act is not subject to grading permits, inspections, or fees and shall be reviewed according to the provisions of section 3 of this act.

NEW SECTION. **Sec. 15.** The legislature finds that, while the process created in this act can improve the speed with which fish habitat enhancement projects are put into place, additional efforts can improve the review and approval process for the future. The legislature directs the department of fish and wildlife, the conservation commission, local governments, fish habitat enhancement project applicants, and other interested parties to work together to continue to improve the permitting review and approval process. Specific efforts shall include the following:

(1) Development of common acceptable design standards, best management practices, and standardized hydraulic project approval conditions for each type of fish habitat enhancement project;

(2) An evaluation of the potential for using technical evaluation teams in evaluating specific project proposals or stream reaches;

(3) An evaluation of techniques appropriate for restoration and enhancement of pasture and crop land adjacent to riparian areas;

(4) A review of local government shoreline master plans to identify and correct instances where the local plan does not acknowledge potentially beneficial instream work;

(5) An evaluation of the potential for local governments to incorporate fish habitat enhancement projects into their comprehensive planning process; and

(6) Continued work with the federal government agencies on federal permitting for fish habitat enhancement projects.

The department of fish and wildlife shall coordinate this joint effort and shall report back to the legislature on the group's progress by December 1, 1998.

NEW SECTION. Sec. 16. A new section is added to chapter 75.50 RCW to read as follows:

(1) The department of transportation is authorized to administer a grant program to assist state agencies, local governments, private landowners, tribes, and volunteer groups in identifying and removing impediments to anadromous fish passage. The program shall be administered consistent with the following:

(a) Eligible projects include corrective projects, inventory, assessment, and prioritization efforts;

(b) Projects shall be subject to a competitive application process;

(c) Priority shall be given to projects that immediately increase access to available and improved spawning and rearing habitat for depressed, threatened, and endangered stocks. Priority shall also be given to project applications that are coordinated with other efforts within a watershed;

(d) All projects shall be reviewed and approved by the fish passage barrier removal task force; and

(e) A match of at least twenty-five percent per project shall be required. For local, private, and volunteer projects, in-kind contributions may be counted toward the match requirement.

(2) The department of transportation shall proceed expeditiously in implementing the grant program during the 1998 summer construction season.

NEW SECTION. Sec. 17. By January 1, 1999, the fish passage barrier removal task force as specified in RCW 75.50.160 shall report to the legislature on its progress in implementing the provisions in sections 16 and 19 of this act. The report shall also include recommendations on future governance and administrative structures to coordinate local, state, and private fish passage correction projects and to administer state fish passage grants.

NEW SECTION. Sec. 18. 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 the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 250

[Second Substitute Senate Bill 6264]

MASS MARKETING OF CHINOOK SALMON

AN ACT Relating to mass marking of chinook salmon; amending RCW 75.08.510; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that mass marking of hatchery-raised salmon is an effective tool for implementing selective salmon fisheries in this state. Mass marking of coho salmon is currently underway and holds great promise for maintaining both recreational and commercial fishing opportunities while protecting wild stocks. In view of the anticipated listing of Puget Sound chinook salmon as endangered under the federal endangered species act, the legislature finds that it is essential to expeditiously proceed with implementing a mass marking program for chinook salmon in Puget Sound and elsewhere in the state.

Through a cooperative effort by state and federal agencies and private enterprise, appropriate technologies have been developed for marking chinook salmon. It is the intent of the legislature to use these newly developed tools to implement chinook salmon mass marking beginning in April 1999.

Sec. 2. RCW 75.08.510 and 1995 c 372 s 2 are each amended to read as follows:

The department shall mark appropriate coho salmon that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers for the purpose of maximized catch while sustaining wild and hatchery reproduction.

The department shall mark all appropriate chinook salmon targeted for contribution to the Washington catch that are released from department operated hatcheries and rearing ponds in such a manner that the fish are externally recognizable as hatchery origin salmon by fishers.

The goal of the marking program is: (1) The annual marking by June 30, 1997, of all appropriate hatchery origin ((~~chinook and~~) coho salmon produced by the department with marking to begin with the 1994 Puget Sound coho brood; and (2) the annual marking by June 30, 1999, of all appropriate hatchery origin chinook salmon produced by the department with marking to begin with the 1998 chinook brood. The department may experiment with different methods for marking hatchery salmon with the primary objective of maximum survival of hatchery marked fish, maximum contribution to fisheries, and minimum cost consistent with the other goals.

The department shall coordinate with other entities that are producing hatchery chinook and coho salmon for release into public waters to enable the broadest application of the marking program to all hatchery produced chinook and coho salmon. The department shall work with the treaty Indian tribes in order to reach mutual agreement on the implementation of the mass marking program. The department shall report to the appropriate legislative committees by January

1, 1999, on the progress made in reaching mutual agreement with the treaty Indian tribes and any Pacific coast state or province to achieve the goal of coast-wide marking of chinook and coho salmon. The ultimate goal of the program is the coast-wide marking of appropriate hatchery origin chinook and coho salmon, and the protection of all wild chinook and coho salmon, where appropriate.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 251

[Substitute Senate Bill 6324]

FISH ENHANCEMENT WITH REMOTE SITE INCUBATORS

AN ACT Relating to fish enhancement with remote site incubators; adding a new section to chapter 75.50 RCW; and creating new sections.

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

NEW SECTION. Sec. 1. The legislature finds that trout and salmon populations are depleted in many state waters. Restoration of these populations to a healthy status requires improved protection of these species and their habitats. However, in some instances restoration of self-sustaining populations also requires the reintroduction of the fish into their native habitat.

Remote site incubators have been shown to be a cost-effective means of bypassing the early period of high mortality experienced by salmonid eggs that are naturally spawned in streams. In addition, remote site incubators provide an efficient method for reintroduction of fish into areas that are not seeded by natural spawning. The technology for remote site incubators is well developed, and their application is easily accomplished in a wide variety of habitat by persons with a moderate level of training.

It is a goal of the remote site incubator program to assist the reestablishment of wild salmon and trout populations that are self-sustaining through natural spawning. In other cases, where the habitat has been permanently damaged and natural populations cannot sustain themselves, the remote site incubator program may become a cost-effective long-term solution for supplementation of fish populations.

NEW SECTION. Sec. 2. A new section is added to chapter 75.50 RCW to read as follows:

(1) The department shall develop and implement a program utilizing remote site incubators in Washington state. The program shall identify sites in tributaries that are suitable for reestablishing self-sustaining, locally adapted populations of

coho, chum, or chinook salmon. The initial selection of sites shall be completed by July 1, 1999, and updated annually thereafter.

(2) The department may only approve a remote site incubator project if the department deems it is consistent with the conservation of wild salmon and trout. The department shall only utilize appropriate salmonid eggs in remote site incubators, and may acquire eggs by gift or purchase.

(3) The department shall depend chiefly upon volunteer efforts to implement the remote site incubator program through volunteer cooperative projects and the regional fisheries enhancement groups. The department may prioritize remote site incubator projects within regional enhancement areas.

(4) The department may purchase remote site incubators and may use agency employees to construct remote site incubators. The director and the secretary of the department of corrections shall jointly investigate the potential of producing remote site incubators through the prison industries program of the department of corrections, and shall jointly report their finding to the natural resources committees of the house of representatives and the senate by December 1, 1999.

(5) The department shall investigate the use of the remote site incubator technology for the production of warm water fish.

(6) The department shall evaluate the initial results of the program and report to the legislature by December 1, 2000. Annual reports on the progress of the program shall be provided to the fish and wildlife commission.

NEW SECTION. Sec. 3. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 252

[House Bill 1309]

DISARMING A LAW ENFORCEMENT OR CORRECTIONS OFFICER

AN ACT Relating to disarming an officer; adding new sections to chapter 9A.76 RCW; and prescribing penalties.

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

NEW SECTION. Sec. 1. (1) A person is guilty of disarming a law enforcement officer if with intent to interfere with the performance of the officer's duties the person knowingly removes a firearm or weapon from the person of a law enforcement officer or corrections officer or deprives a law enforcement officer or corrections officer of the use of a firearm or weapon, when the officer is acting within the scope of the officer's duties, does not consent to the removal, and the person has reasonable cause to know or knows that the individual is a law enforcement or corrections officer.

(2) Disarming a law enforcement or corrections officer is a class C felony unless the firearm involved is discharged when the person removes the firearm, in which case the offense is a class B felony.

NEW SECTION. Sec. 2. A person who commits another crime during the commission of the crime of disarming a law enforcement or corrections officer may be punished for the other crime as well as for disarming a law enforcement officer and may be prosecuted separately for each crime.

NEW SECTION. Sec. 3. Sections 1 and 2 of this act do not apply when the law enforcement officer or corrections officer is engaged in criminal conduct.

NEW SECTION. Sec. 4. Sections 1 through 3 of this act are added to chapter 9A.76 RCW.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 253

[Engrossed House Bill 1408]

CARRYING OF A CONCEALED PISTOL BY PERSONS FROM ANOTHER STATE

AN ACT Relating to the carrying of a concealed pistol by persons from another state; and amending RCW 9.41.050 and 9.41.060.

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

***Sec. 1.** *RCW 9.41.050 and 1997 c 200 s 1 are each amended to read as follows:*

(1)(a) Except in the person's place of abode or fixed place of business, a person shall not carry a pistol concealed on his or her person without a license to carry a concealed pistol issued under RCW 9.41.070, unless the person holds a valid permit or license issued by a state or local agency in another state authorizing the person to carry a concealed firearm.

(b) Every licensee shall have his or her concealed pistol license in his or her immediate possession at all times that he or she is required by this section to have a concealed pistol license and shall display the same upon demand to any police officer or to any other person when and if required by law to do so. Any violation of this subsection (1)(b) shall be a class 1 civil infraction under chapter 7.80 RCW and shall be punished accordingly pursuant to chapter 7.80 RCW and the infraction rules for courts of limited jurisdiction. This subsection applies also to a concealed pistol license issued in another state.

(2) A person shall not carry or place a loaded pistol in any vehicle unless the person has a license to carry a concealed pistol and: (a) The pistol is on the licensee's person, (b) the licensee is within the vehicle at all times that the pistol is there, or (c) the licensee is away from the vehicle and the pistol is locked within the vehicle and concealed from view from outside the vehicle.

(3) A person at least eighteen years of age who is in possession of an unloaded pistol shall not leave the unloaded pistol in a vehicle unless the unloaded pistol is locked within the vehicle and concealed from view from outside the vehicle.

(4) Violation of any of the prohibitions of subsections (2) and (3) of this section is a misdemeanor.

(5) Nothing in this section permits the possession of firearms illegal to possess under state or federal law.

****Sec. 1 was vetoed. See message at end of chapter.***

Sec. 2. RCW 9.41.060 and 1996 c 295 s 5 are each amended to read as follows:

The provisions of RCW 9.41.050 shall not apply to:

(1) Marshals, sheriffs, prison or jail wardens or their deputies, or other law enforcement officers of this state or another state;

(2) Members of the armed forces of the United States or of the national guard or organized reserves, when on duty;

(3) Officers or employees of the United States duly authorized to carry a concealed pistol;

(4) Any person engaged in the business of manufacturing, repairing, or dealing in firearms, or the agent or representative of the person, if possessing, using, or carrying a pistol in the usual or ordinary course of the business;

(5) Regularly enrolled members of any organization duly authorized to purchase or receive pistols from the United States or from this state;

(6) Regularly enrolled members of clubs organized for the purpose of target shooting, when those members are at or are going to or from their places of target practice;

(7) Regularly enrolled members of clubs organized for the purpose of modern and antique firearm collecting, when those members are at or are going to or from their collector's gun shows and exhibits;

(8) Any person engaging in a lawful outdoor recreational activity such as hunting, fishing, camping, hiking, or horseback riding, only if, considering all of the attendant circumstances, including but not limited to whether the person has a valid hunting or fishing license, it is reasonable to conclude that the person is participating in lawful outdoor activities or is traveling to or from a legitimate outdoor recreation area;

(9) Any person while carrying a pistol unloaded and in a closed opaque case or secure wrapper; or

(10) Law enforcement officers retired for service or physical disabilities, except for those law enforcement officers retired because of mental or stress-related disabilities. This subsection applies only to a retired officer who has: (a) Obtained documentation from a law enforcement agency within Washington state from which he or she retired that is signed by the agency's chief law enforcement officer and that states that the retired officer was retired for service or physical

disability; and (b) not been convicted of a crime making him or her ineligible for a concealed pistol license.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 1 of Engrossed House Bill No. 1408 entitled:

"AN ACT Relating to the carrying of a concealed pistol by persons from another state;"

Section 1 of EHB 1408 would allow a non-resident to bring a concealed handgun into the state as long as he or she has a license from some other state. A number of states issue licenses without the strict standards and background checks Washington law requires, and section 1 would force our law enforcement agencies to honor all those permits. In addition, the practical effect of section 1 would be to require prosecutors to check with all 50 states in order to convict a person of violating our law against carrying a concealed handgun without a license. This is tantamount to repeal of the concealed handgun license law.

For these reasons, I have vetoed section 1 of Engrossed House Bill No. 1408.

With the exception of section 1, Engrossed House Bill No. 1408 is approved."

CHAPTER 254

[House Bill 2371]

MEDICAL EXPENSE PLAN FOR CERTAIN RETIREES

AN ACT Relating to a medical expense plan for certain retirees; amending RCW 41.04.340; and creating a new section.

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

Sec. 1. RCW 41.04.340 and 1997 c 232 s 2 are each amended to read as follows:

(1) An attendance incentive program is established for all eligible employees. As used in this section the term "eligible employee" means any employee of the state, other than eligible employees of the community and technical colleges and the state board for community and technical colleges identified in RCW 28B.50.553, and teaching and research faculty at the state and regional universities and The Evergreen State College, entitled to accumulate sick leave and for whom accurate sick leave records have been maintained. No employee may receive compensation under this section for any portion of sick leave accumulated at a rate in excess of one day per month. The state and regional universities and The Evergreen State College shall maintain complete and accurate sick leave records for all teaching and research faculty.

(2) In January of the year following any year in which a minimum of sixty days of sick leave is accrued, and each January thereafter, any eligible employee may receive remuneration for unused sick leave accumulated in the previous year at a rate equal to one day's monetary compensation of the employee for each four

full days of accrued sick leave in excess of sixty days. Sick leave for which compensation has been received shall be deducted from accrued sick leave at the rate of four days for every one day's monetary compensation.

(3) At the time of separation from state service due to retirement or death, an eligible employee or the employee's estate may elect to receive remuneration at a rate equal to one day's current monetary compensation of the employee for each four full days of accrued sick leave.

~~(4) (Pursuant to this subsection, in lieu of cash remuneration the state may, with equivalent funds, provide eligible employees with a benefit plan providing for reimbursement of medical expenses. The committee for deferred compensation shall develop any benefit plan established under this subsection, but may offer and administer the plan only if (a) each eligible employee has the option of whether to receive cash remuneration or to have his or her employer transfer equivalent funds to the plan; and (b) the committee has received an opinion from the United States internal revenue service stating that participating employees, prior to the time of receiving reimbursement for expenses, will incur no United States income tax liability on the amount of the equivalent funds transferred to the plan.~~

—(5)) Remuneration or benefits received under this section shall not be included for the purpose of computing a retirement allowance under any public retirement system in this state.

~~((6) With the exception of subsection (4) of this section))~~ (5) Except as provided in subsections (7) through (9) of this section for employees not covered by chapter 41.06 RCW, this section shall be administered, and rules shall be adopted to carry out its purposes, by the Washington personnel resources board for persons subject to chapter 41.06 RCW: PROVIDED, That determination of classes of eligible employees shall be subject to approval by the office of financial management.

~~((7))~~ (6) Should the legislature revoke any remuneration or benefits granted under this section, no affected employee shall be entitled thereafter to receive such benefits as a matter of contractual right.

(7) In lieu of remuneration for unused sick leave at retirement as provided in subsection (3) of this section, an agency head or designee may with equivalent funds, provide eligible employees with a benefit plan that provides for reimbursement for medical expenses. This plan shall be implemented only after consultation with affected groups of employees. For eligible employees covered by chapter 41.06 RCW, procedures for the implementation of these plans shall be adopted by the Washington personnel resources board. For eligible employees exempt from chapter 41.06 RCW, and classified employees who have opted out of coverage of chapter 41.06 RCW as provided in RCW 41.56.201, implementation procedures shall be adopted by an agency head having jurisdiction over the employees.

(8) Implementing procedures adopted by the Washington personnel resources board or agency heads shall require that each medical expense plan authorized by

subsection (7) of this section apply to all eligible employees in any one of the following groups: (a) Employees in an agency; (b) employees in a major organizational subdivision of an agency; (c) employees at a major operating location of an agency; (d) exempt employees under the jurisdiction of an elected or appointed Washington state executive; (e) Employees of the Washington state senate; (f) employees of the Washington state house of representatives; (g) classified employees in a bargaining unit established by the Washington personnel resources board; or (h) other group of employees defined by an agency head that is not designed to provide an individual-employee choice regarding participation in a medical expense plan. However, medical expense plans for eligible employees in any of the groups under (a) through (h) of this subsection who are covered by a collective bargaining agreement shall be implemented only by written agreement with the bargaining unit's exclusive representative and a separate medical expense plan may be provided for unrepresented employees.

(9) Medical expense plans authorized by subsection (7) of this section must require as a condition of participation in the plan that employees in the group affected by the plan sign an agreement with the employer. The agreement must include a provision to hold the employer harmless should the United States government find that the employer or the employee is in debt to the United States as a result of the employee not paying income taxes due on the equivalent funds placed into the plan, or as a result of the employer not withholding or deducting a tax, assessment, or other payment on the funds as required by federal law. The agreement must also include a provision that requires an eligible employee to forfeit remuneration under subsection (3) of this section if the employee belongs to a group that has been designated to participate in the medical expense plan permitted under this section and the employee refuses to execute the required agreement.

NEW SECTION. Sec. 2. If any part of RCW 41.04.340 (7) through (9) is found to be in conflict with federal tax laws or rulings or regulations of the federal internal revenue service, the conflicting part is inoperative solely to the extent of the conflict and such a finding shall not affect the remainder of section 1, chapter . . . , Laws of 1998 (section 1 of this act).

Passed the House February 16, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 255

[Substitute House Bill 2611]

MORTGAGE INSURANCE REGULATIONS

AN ACT Relating to mortgage insurance; adding a new chapter to Title 61 RCW; and providing an effective date.

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

NEW SECTION. Sec. 1. As used in this chapter:

(1) "Institutional third party" means the federal national mortgage association, the federal home loan mortgage corporation, the government national mortgage association, and other substantially similar institutions, whether public or private, provided the institutions establish and adhere to rules applicable to the right of cancellation of mortgage insurance, which are the same or substantially the same as those utilized by the institutions named in this subsection.

(2) "Mortgage insurance" means insurance, including mortgage guarantee insurance, against financial loss by reason of nonpayment of principal, interest, and other sums agreed to be paid in a residential mortgage transaction.

(3) "Residential mortgage transaction" means entering into a loan for personal, family, household, or purchase money purposes that is secured by a deed of trust or mortgage on owner-occupied, one-to-four unit, residential real property located in the state of Washington.

NEW SECTION. Sec. 2. (1) If a borrower is required to obtain and maintain mortgage insurance as a condition of entering into a residential mortgage transaction, the lender shall disclose to the borrower whether and under what conditions the borrower has the right to cancel the mortgage insurance in the future. This disclosure shall include:

(a) Any identifying loan or insurance information, or other information, necessary to permit the borrower to communicate with the servicer or lender concerning the private mortgage insurance;

(b) The conditions that are required to be satisfied before the mortgage insurance may be canceled; and

(c) The procedures required to be followed by the borrower to cancel the mortgage insurance.

The disclosure required in this subsection shall be made in writing at the time the transaction is entered into.

(2) For residential mortgage transactions with mortgage insurance, the lender, or the person servicing the residential mortgage transaction if it is not the lender, annually shall provide the borrower with:

(a) A notice containing the same information as required to be disclosed under subsection (1) of this section; or

(b) A statement indicating that the borrower may be able to cancel the mortgage insurance and that the borrower may contact the lender or loan servicer at a designated address and phone number to find out whether the insurance can be canceled and the conditions and procedures to effect cancellation.

The notice or statement required by this subsection shall be provided in writing in a clear and conspicuous manner in or with each annual statement of account.

(3) The notices and statements required in this section shall be provided without cost to the borrower.

(4) Any borrower in a residential mortgage transaction who is harmed by a violation of this section may obtain injunctive relief, may recover from the party who caused such harm by failure to comply with this section up to three times the amount of mortgage insurance premiums wrongly collected, and may recover reasonable attorneys' fees and costs of such action.

(5) This section does not apply to any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan or to loans insured by the federal housing administration or the veterans administration.

(6) Subsection (1) of this section applies to residential mortgage transactions entered into on or after July 1, 1998. Subsection (2) of this section applies to any residential mortgage transaction existing on the effective date of this section or entered into on or after the effective date of this section.

(7) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, prescribing mortgage insurance disclosures and notifications shall be deemed in compliance with this section.

NEW SECTION. Sec. 3. (1) Except when a statute, regulation, rule, or written guideline promulgated by an institutional third party applicable to a residential mortgage transaction purchased in whole or in part by an institutional third party specifically prohibits cancellation during the term of indebtedness, the lender or servicer of a residential mortgage transaction may not charge or collect future payments from a borrower for mortgage insurance, and the borrower is not obligated to make such payments, if all of the following conditions are satisfied:

(a) The borrower makes a written request to terminate the obligation to make future payments for mortgage insurance;

(b) The residential mortgage transaction is at least two years old;

(c) The outstanding principal balance of the residential loan is not greater than eighty percent of the current fair market value of the property and is:

(i) For loans made for the purchase of the property, less than eighty percent of the lesser of the sales price or the appraised value at the time the transaction is entered into; or

(ii) For all other residential mortgage transactions, less than eighty percent of the appraised value at the time the residential loan transaction was entered into.

The lender or servicer may request that a current appraisal be done to verify the outstanding principal balance is less than eighty percent of the current fair market value of the property; unless otherwise agreed to in writing, the lender or servicer selects the appraiser and splits the cost with the borrower;

(d) The borrower's scheduled payment of monthly installments or principal, interest, and any escrow obligations is current at the time the borrower requests termination of his or her obligation to continue to pay for mortgage insurance, those installments have not been more than thirty days late in the last twelve months, and the borrower has not been assessed more than one late penalty over the past twelve months;

(e) A notice of default has not been recorded against the property as the result of a nonmonetary default in the previous twelve months.

(2) This section applies to residential mortgage transactions entered into on or after July 1, 1998.

(3) This section does not apply to:

(a) Any residential mortgage transaction that is funded in whole or in part pursuant to authority granted by statute, regulation, or rule that, as a condition of that funding, prohibits or limits termination of payments for mortgage insurance during the term of the indebtedness; or

(b) Any mortgage funded with bond proceeds issued under an indenture requiring mortgage insurance for the life of the loan.

(4) If the residential mortgage transaction will be or has been sold in whole or in part to an institutional third party, adherence to the institutional third party's standards for termination of future payments for mortgage insurance shall be deemed in compliance with this section.

(5) A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the cancellation of mortgage insurance shall be deemed in compliance with this section.

NEW SECTION. Sec. 4. On or after July 1, 1998, no borrower entering into a residential mortgage transaction in which the principal amount of the loan is less than eighty percent of the fair market value of the property shall be required to obtain mortgage insurance. Fair market value for a purchase money loan is the lesser of the sales price or the appraised value. This section shall not apply to residential mortgage transactions in an amount in excess of the maximum limits established by institutional third parties where the borrower and the lender have agreed in writing to mortgage insurance.

A lender or person servicing a residential mortgage transaction who complies with federal requirements, as now or hereafter enacted, governing the requirement of obtaining mortgage insurance shall be deemed in compliance with this section.

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 takes effect July 1, 1998.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act constitute a new chapter in Title 61 RCW.

Passed the House March 9, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 256

[Substitute House Bill 3001]

AUTHORIZING WINERIES TO FURNISH WINE TO
NONPROFIT CHARITABLE ORGANIZATIONS

AN ACT Relating to the furnishing of wine by wineries to nonprofit charitable organizations; and amending RCW 66.28.040.

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

Sec. 1. RCW 66.28.040 and 1997 c 39 s 1 are each amended to read as follows:

Except as permitted by the board under RCW 66.20.010, no brewer, wholesaler, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, by himself or herself, a clerk, servant, or agent, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewer, wholesaler, winery, distiller, 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 brewery, winery, distillery, or wholesaler from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or wholesaler 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 ~~((any)) that uses wine so furnished ((shall be used))~~ solely for such educational purposes~~((; provided that the wine furnished shall be subject to the taxes imposed by RCW 66.24.210))~~ or a domestic winery from furnishing wine without charge or a domestic brewery from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a brewer 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; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises.

Passed the House March 12, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 257

[Second Substitute House Bill 3058]

WASTE REDUCTION, RECYCLING, AND LITTER CONTROL—REVISIONS

AN ACT Relating to waste reduction, recycling, and litter control; amending RCW 70.93.010, 70.93.020, 70.93.030, 70.93.090, 70.93.180, 82.19.010, 70.93.200, 70.93.210, 70.93.250, and 47.36.400; and adding a new section to chapter 70.93 RCW.

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

Sec. 1. RCW 70.93.010 and 1992 c 175 s 1 are each amended to read as follows:

- (1) The legislature finds:
 - (a) Washington state is experiencing rapid population growth and its citizens are increasingly mobile;
 - (b) There is a fundamental need for a healthful, clean, and beautiful environment;
 - (c) The proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard;
 - (d) There is a need to conserve energy and natural resources, and the effective litter control and recovery and recycling of litter materials will serve to accomplish such conservation;
 - (e) In addition to effective litter control, there must be effective programs to accomplish waste reduction, the state's highest waste management priority; and
 - (f) There must also be effective systems to accomplish all components of recycling, including collection(;) and processing(~~(—and the marketing of recyclable materials and recycled content products)~~).
- (2) Recognizing the multifaceted nature of the state's solid waste management problems, the legislation enacted in 1971 and entitled the "Model Litter Control and Recycling Act" is hereby renamed the "waste reduction, recycling, and model litter control act."

Sec. 2. RCW 70.93.020 and 1992 c 175 s 2 are each amended to read as follows:

The purpose of this chapter is to accomplish litter control, increase waste reduction, and stimulate all components of recycling throughout this state by delegating to the department of ecology the authority to:

- (1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;
- (2) Recover and recycle waste materials related to litter and littering;
- (3) Foster public and private recycling of recyclable materials; (~~and~~)
- (4) Increase public awareness of the need for waste reduction, recycling, and litter control; and
- (5) Coordinate the litter collection efforts and expenditure of funds for litter collection by other agencies identified in this chapter.

~~((It is further the intent and purpose of this chapter to promote markets for recyclable materials through programs of the clean Washington center and other means:))~~

It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts.

Sec. 3. RCW 70.93.030 and 1991 c 319 s 102 are each amended to read as follows:

As used in this chapter unless the context indicates otherwise:

- (1) "Department" means the department of ecology;
- (2) "Director" means the director of the department of ecology;
- (3) "Disposable package or container" means all packages or containers defined as such by rules and regulations adopted by the department of ecology;
- (4) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing;
- (5) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity;
- (6) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter;
- (7) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever;
- (8) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration;
- (9) "Recycling center" means a central collection point for recyclable materials;
- (10) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks;
- (11) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.
- (12) "Watercraft" means any boat, ship, vessel, barge, or other floating craft;

~~((+2))~~ (13) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

Sec. 4. RCW 70.93.090 and 1979 c 94 s 5 are each amended to read as follows:

The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

~~((The department shall establish a system of grants to aid cities, towns, and counties with populations under twenty-five thousand in procuring and placing such litter receptacles. Such grants shall be on a matching basis under which the local government involved electing to participate in this program shall be required to pay at least fifty percent of the total costs of procurement of receptacles sufficient in number to meet departmental guidelines established by rule pursuant to this section. The amount of the grant shall be determined on a case-by-case basis by the director after consideration of need, available departmental and local government funds, degree of prior compliance by the local government involved in placement of receptacles, and other relevant criteria. The responsibility for maintaining and emptying such receptacles shall remain with the unit of local government.))~~

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation.

Sec. 5. RCW 70.93.180 and 1992 c 175 s 8 are each amended to read as follows:

(1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

~~(a) (From July 1, 1992, to June 30, 1993, funds shall be used for programs to: Control litter; encourage recycling; develop markets for recyclable materials; and enforce compliance with the litter tax imposed in RCW 82.19.010.~~

~~—(b) After June 30, 1993, funds shall be used as follows:~~

~~—(i) Not less than forty percent nor more than fifty percent for a litter patrol program to employ youth from the state to remove litter from places and areas that are most visible to the public and to enforce compliance with the litter tax imposed in RCW 82.19.010; and~~

~~—(ii) Not more than sixty percent for the following purposes: Public education and awareness programs to control litter; programs to promote public education and awareness of the model litter control and recycling act; programs to foster private local recycling efforts, encourage recycling, and develop markets for recyclable materials; and compliance with the litter tax imposed in RCW 82.19.010)~~ Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under section 6 of this act. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts state-wide, for the biennial litter survey under RCW 70.93.200(8), and for state-wide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section(~~(, and except as required to be otherwise distributed under RCW 70.93.070)~~).

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every

biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in section 6 of this act for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal.

NEW SECTION. Sec. 6. A new section is added to chapter 70.93 RCW to read as follows:

(1) The department of ecology is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70.93.180, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs, as requested by the department of ecology. Beginning in the year 2000, this information shall be provided to the department by March of even-numbered years. In 1998, this information shall be provided by July 1st.

(4) By December 1998, and in every even-numbered year thereafter, the department shall provide a report to the legislature summarizing biennial waste reduction, litter control, and recycling activities by state agencies and submitting the coordinated litter budget request of all agencies.

Sec. 7. RCW 82.19.010 and 1992 c 175 s 3 are each amended to read as follows:

(1) In addition to any other taxes, there is hereby levied and there shall be collected by the department of revenue from every person for the privilege of engaging within this state in business as a manufacturer, as a wholesaler, or as a retailer, ~~((an annual))~~ a litter tax equal to the value of products listed in RCW 82.19.020, including byproducts, manufactured within this state, multiplied by fifteen one-thousandths of one percent in the case of manufacturers, and equal to the gross proceeds of sales of the products listed in RCW 82.19.020 that are sold within this state multiplied by fifteen one-thousandths of one percent in the case of wholesalers and retailers.

(2) Beginning January 1999, and in January of every odd-numbered year thereafter, the department shall submit to the appropriate committees of the senate and the house of representatives a report on compliance with the litter tax. The report shall address:

(a) The litter tax reported voluntarily and litter tax assessed through enforcement; and

(b) Total litter tax revenues reported on an industry basis.

(3) Beginning January 1999, the frequency and time of collection of the tax will be changed to coincide with the reporting periods by payers of their business and occupation tax.

Sec. 8. RCW 70.93.200 and 1979 c 94 s 7 are each amended to read as follows:

In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, and recycling efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, and recycling under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

~~((3))~~ (4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, and recycling efforts;

~~((4))~~ (5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and ~~((t))~~ foster recycling;

~~((5))~~ (6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

~~((6))~~ (7) Develop state-wide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, and recycling efforts to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials;

(8) Conduct a biennial state-wide litter survey targeted at litter composition, sources, demographics, and geographic trends; and

(9) Provide a biennial summary of all waste reduction, litter control, and recycling efforts state-wide including those of the department of ecology, and other state agencies and local governments funded for such programs under this chapter. This report is due to the legislature in March of even-numbered years.

Sec. 9. RCW 70.93.210 and 1979 c 94 s 8 are each amended to read as follows:

To aid in the state-wide waste reduction, anti-litter, and recycling campaign, the state legislature requests that the payers of the waste reduction, recycling, and litter control tax and the various industry organizations which are active in waste reduction, anti-litter, and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the waste reduction, anti-litter, and recycling campaign of the state of Washington.

Sec. 10. RCW 70.93.250 and 1990 c 66 s 3 are each amended to read as follows:

(1) The department shall provide ~~((grants))~~ funding to local units of government to establish, conduct, and evaluate community service and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for ~~((grants))~~ funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in section 6 of this act, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. The department shall report to the appropriate standing committees of the legislature by December ~~((31, 1991,))~~ of even-numbered years on the effectiveness of ~~((community service))~~ local government waste reduction, litter ~~((cleanup)), and recycling programs funded ~~((from grants))~~ under this section.~~

***Sec. 11.** RCW 47.36.400 and 1991 c 94 s 4 are each amended to read as follows:

The department may install adopt-a-highway signs, with the following restrictions:

(1) *Signs shall be designed by the department and may only include the words "adopt-a-highway litter control next XX miles" and the name of the litter control area sponsor. The sponsor's name shall not be displayed more predominantly than the remainder of the sign message. ~~((No))~~ Trademarks or business logos may be displayed;*

(2) *Signs may be placed along interstate, primary, and scenic system highways;*

(3) For each litter control area designated by the department, one sign may be placed visible to traffic approaching from each direction;

(4) Signs shall be located so as not to detract from official traffic control signs installed pursuant to the manual on uniform traffic control devices adopted by the department;

(5) Signs shall be located so as not to restrict sight distance on approaches to intersections or interchanges;

(6) The department may charge reasonable fees to defray the cost of manufacture, installation, and maintenance of adopt-a-highway signs.

*Sec. 11 was vetoed. See message at end of chapter.

Passed the House February 25, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 11, Second Substitute House Bill No. 3058 entitled:

"AN ACT Relating to waste reduction;"

Since 1971, manufacturers and other businesses have paid a tax on the sale of certain products that contribute to litter. The revenues generated from that tax are deposited into the state Litter Account and are used by state and local governments for litter collection and waste reduction and recycling programs. This bill fine tunes those programs to ensure that the most effective litter and waste reduction programs are funded. It also dedicates a portion of the funding to local governments and provides them with greater flexibility in the use of those funds.

Section 11 of this bill would allow the use of logos on adopt-a-highway signs to recognize business participation in litter control. A substantially similar provision was passed by the Legislature in Substitute House Bill 3057, which I signed on March 27, 1998.

For this reason, I have vetoed section 11 of Second Substitute House Bill No. 3058.

With the exception of section 11, Second Substitute House Bill No. 3058 is approved."

CHAPTER 258

[House Bill 3060]

SUFFICIENT CAUSE FOR NONUSE OF WATER RIGHTS—REVISIONS

AN ACT Relating to sufficient cause for nonuse of water rights; and amending RCW 90.14.140.

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

Sec. 1. RCW 90.14.140 and 1987 c 125 s 1 are each amended to read as follows:

(1) For the purposes of RCW 90.14.130 through 90.14.180, "sufficient cause" shall be defined as the nonuse of all or a portion of the water by the owner of a water right for a period of five or more consecutive years where such nonuse occurs as a result of:

(a) Drought, or other unavailability of water;

(b) Active service in the armed forces of the United States during military crisis;

(c) Nonvoluntary service in the armed forces of the United States;

(d) The operation of legal proceedings;

(e) Federal or state agency leases of or options to purchase lands or water rights which preclude or reduce the use of the right by the owner of the water right;

(f) Federal laws imposing land or water use restrictions either directly or through the voluntary enrollment of a landowner in a federal program implementing those laws, or acreage limitations, or production quotas.

(2) Notwithstanding any other provisions of RCW 90.14.130 through 90.14.180, there shall be no relinquishment of any water right:

(a) If such right is claimed for power development purposes under chapter 90.16 RCW and annual license fees are paid in accordance with chapter 90.16 RCW(~~(-or)~~);

(b) If such right is used for a standby or reserve water supply to be used in time of drought or other low flow period so long as withdrawal or diversion facilities are maintained in good operating condition for the use of such reserve or standby water supply(~~(-or)~~);

(c) If such right is claimed for a determined future development to take place either within fifteen years of July 1, 1967, or the most recent beneficial use of the water right, whichever date is later(~~(-or)~~);

(d) If such right is claimed for municipal water supply purposes under chapter 90.03 RCW(~~(-or)~~);

(e) If such waters are not subject to appropriation under the applicable provisions of RCW 90.40.030 (~~(as now or hereafter amended)~~); or

(f) If such right or portion of the right is leased to another person for use on land other than the land to which the right is appurtenant as long as the lessee makes beneficial use of the right in accordance with this chapter and a transfer or change of the right has been approved by the department in accordance with RCW 90.03.380, 90.03.383, 90.03.390, or 90.44.100.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 259

[Substitute Senate Bill 5582]

PROHIBITION OF LIQUOR PURCHASES AND CONSUMPTION BY PERSONS APPARENTLY UNDER THE INFLUENCE OF LIQUOR

AN ACT Relating to liquor purchases by persons apparently under the influence of liquor; amending RCW 66.44.200; and prescribing penalties.

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

Sec. 1. RCW 66.44.200 and 1933 ex.s. c 62 s 36 are each amended to read as follows:

(1) No person shall sell any liquor to any person apparently under the influence of liquor.

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

(c) A defendant's intoxication may not be used as a defense in an action under this subsection.

(d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.

(3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 260

[Engrossed Substitute Senate Bill 5760]

MENTALLY ILL OFFENDERS—EVALUATION AND TREATMENT

AN ACT Relating to mentally ill offenders; amending RCW 9.94A.110; reenacting and amending RCW 9.94A.120 and 9.94A.200; and creating new sections.

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

NEW SECTION. **Sec. 1.** It is the intent of the legislature to decrease the likelihood of recidivism and reincarceration by mentally ill offenders under correctional supervision in the community by authorizing:

(1) The courts to request presentence reports from the department of corrections when a relationship between mental illness and criminal behavior is suspected, and to order a mental status evaluation and treatment for offenders whose criminal behavior is influenced by a mental illness; and

(2) Community corrections officers to work with community mental health providers to support participation in treatment by mentally ill offenders on community placement or community supervision.

Sec. 2. RCW 9.94A.110 and 1988 c 60 s 1 are each amended to read as follows:

Before imposing a sentence upon a defendant, the court shall conduct a sentencing hearing. The sentencing hearing shall be held within forty court days

following conviction. Upon the motion of either party for good cause shown, or on its own motion, the court may extend the time period for conducting the sentencing hearing.

The court shall order the department to complete a presentence report before imposing a sentence upon a defendant who has been convicted of a felony sexual offense. The department of corrections shall give priority to presentence investigations for sexual offenders. If the court determines that the defendant may be a mentally ill person as defined in RCW 71.24.025, although the defendant has not established that at the time of the crime he or she lacked the capacity to commit the crime, was incompetent to commit the crime, or was insane at the time of the crime, the court shall order the department to complete a presentence report before imposing a sentence.

The court shall consider the presentence reports, if any, including any victim impact statement and criminal history, and allow arguments from the prosecutor, the defense counsel, the offender, the victim, the survivor of the victim, or a representative of the victim or survivor, and an investigative law enforcement officer as to the sentence to be imposed.

If the court is satisfied by a preponderance of the evidence that the defendant has a criminal history, the court shall specify the convictions it has found to exist. All of this information shall be part of the record. Copies of all presentence reports presented to the sentencing court and all written findings of facts and conclusions of law as to sentencing entered by the court shall be sent to the department by the clerk of the court at the conclusion of the sentencing and shall accompany the offender if the offender is committed to the custody of the department. Court clerks shall provide, without charge, certified copies of documents relating to criminal convictions requested by prosecuting attorneys.

Sec. 3. RCW 9.94A.120 and 1997 c 340 s 2, 1997 c 338 s 4, 1997 c 144 s 2, 1997 c 121 s 2, and 1997 c 69 s 1 are each reenacted and amended to read as follows:

When a person is convicted of a felony, the court shall impose punishment as provided in this section.

(1) Except as authorized in subsections (2), (4), (5), (6), and (8) of this section, the court shall impose a sentence within the sentence range for the offense.

(2) The court may impose a sentence outside the standard sentence range for that offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(3) Whenever a sentence outside the standard 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 range shall be a determinate sentence.

(4) A persistent offender shall be sentenced to a term of total confinement for life without the possibility of parole or, when authorized by RCW 10.95.030 for the crime of aggravated murder in the first degree, sentenced to death,

notwithstanding the maximum sentence under any other law. An offender convicted of the crime of murder in the first degree shall be sentenced to a term of total confinement not less than twenty years. An offender convicted of the crime of assault in the first degree or assault of a child in the first degree where the offender used force or means likely to result in death or intended to kill the victim shall be sentenced to a term of total confinement not less than five years. An offender convicted of the crime of rape in the first degree shall be sentenced to a term of total confinement not less than five years. The foregoing minimum terms of total confinement are mandatory and shall not be varied or modified as provided in subsection (2) of this section. In addition, all offenders subject to the provisions of this subsection shall not be eligible for community custody, earned early release time, furlough, home detention, partial confinement, work crew, work release, or any other form of early release as defined under RCW 9.94A.150 (1), (2), (3), (5), (7), or (8), or any other form of authorized leave of absence from the correctional facility while not in the direct custody of a corrections officer or officers during such minimum terms of total confinement except in the case of an offender in need of emergency medical treatment or for the purpose of commitment to an inpatient treatment facility in the case of an offender convicted of the crime of rape in the first degree.

(5) In sentencing a first-time offender the court may waive the imposition of a sentence within the sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. The sentence may also include up to two years of community supervision, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

- (a) Devote time to a specific employment or occupation;
- (b) Undergo available outpatient treatment for up to two years, or inpatient treatment not to exceed the standard range of confinement for that offense;
- (c) Pursue a prescribed, secular course of study or vocational training;
- (d) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (e) Report as directed to the court and a community corrections officer; or
- (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community service work.

(6)(a) An offender is eligible for the special drug offender sentencing alternative if:

- (i) The offender is convicted of the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or a felony that is, under chapter 9A.28 RCW or RCW 69.50.407, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes, and the violation does not involve a sentence enhancement under RCW 9.94A.310 (3) or (4);

(ii) The offender has no prior convictions for a felony in this state, another state, or the United States; and

(iii) The offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance.

(b) If the midpoint of the standard range is greater than one year and the sentencing judge determines that the offender is eligible for this option and that the offender and the community will benefit from the use of the special drug offender sentencing alternative, the judge may waive imposition of a sentence within the standard range and impose a sentence that must include a period of total confinement in a state facility for one-half of the midpoint of the standard range. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections. If the midpoint of the standard range is twenty-four months or less, no more than three months of the sentence may be served in a work release status. The court shall also impose one year of concurrent community custody and community supervision that must include appropriate outpatient substance abuse treatment, crime-related prohibitions including a condition not to use illegal controlled substances, and a requirement to submit to urinalysis or other testing to monitor that status. The court may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program. The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring. In addition, the court shall impose three or more of the following conditions:

(i) Devote time to a specific employment or training;

(ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer before any change in the offender's address or employment;

(iii) Report as directed to a community corrections officer;

(iv) Pay all court-ordered legal financial obligations;

(v) Perform community service work;

(vi) Stay out of areas designated by the sentencing judge.

(c) If the offender violates any of the sentence conditions in (b) of this subsection, the department shall impose sanctions administratively, with notice to the prosecuting attorney and the sentencing court. Upon motion of the court or the prosecuting attorney, a violation hearing shall be held by the court. If the court finds that conditions have been willfully violated, the court may impose confinement consisting of up to the remaining one-half of the midpoint of the standard range. All total confinement served during the period of community custody shall be credited to the offender, regardless of whether the total

confinement is served as a result of the original sentence, as a result of a sanction imposed by the department, or as a result of a violation found by the court. The term of community supervision shall be tolled by any period of time served in total confinement as a result of a violation found by the court.

(d) The department shall determine the rules for calculating the value of a day fine based on the offender's income and reasonable obligations which the offender has for the support of the offender and any dependents. These rules shall be developed in consultation with the administrator for the courts, the office of financial management, and the commission.

(7) If a sentence range has not been established for the defendant's crime, the court shall impose a determinate sentence which may include not more than one year of confinement, community service work, a term of community supervision not to exceed one year, and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement if the court finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence.

(8)(a)(i) When an offender is convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense and has no prior convictions for a sex offense or any other felony sex offenses in this or any other state, the sentencing court, on its own motion or the motion of the state or the defendant, may order an examination to determine whether the defendant is amenable to treatment.

The report of the examination shall include at a minimum the following: The defendant's version of the facts and the official version of the facts, the defendant's offense history, an assessment of problems in addition to alleged deviant behaviors, the offender's social and employment situation, and other evaluation measures used. The report shall set forth the sources of the evaluator's information.

The examiner shall assess and report regarding the defendant's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

- (A) Frequency and type of contact between offender and therapist;
- (B) Specific issues to be addressed in the treatment and description of planned treatment modalities;
- (C) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;
- (D) Anticipated length of treatment; and
- (E) Recommended crime-related prohibitions.

The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The evaluator shall be selected by the party making the motion. The defendant shall pay the cost of any second examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(ii) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this special sex offender sentencing alternative and consider the victim's opinion whether the offender should receive a treatment disposition under this subsection. If the court determines that this special sex offender sentencing alternative is appropriate, the court shall then impose a sentence within the sentence range. If this sentence is less than eleven years of confinement, the court may suspend the execution of the sentence and impose the following conditions of suspension:

(A) The court shall place the defendant on community custody for the length of the suspended sentence or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section;

(B) The court shall order treatment for any period up to three years in duration. The court in its discretion shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court, and shall not change providers without court approval after a hearing if the prosecutor or community corrections officer object to the change. In addition, as conditions of the suspended sentence, the court may impose other sentence conditions including up to six months of confinement, not to exceed the sentence range of confinement for that offense, crime-related prohibitions, and requirements that the offender perform any one or more of the following:

(I) Devote time to a specific employment or occupation;

(II) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;

(III) Report as directed to the court and a community corrections officer;

(IV) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030, perform community service work, or any combination thereof; or

(V) Make recoupment to the victim for the cost of any counseling required as a result of the offender's crime; and

(C) Sex offenders sentenced under this special sex offender sentencing alternative are not eligible to accrue any earned early release time while serving a suspended sentence.

(iii) The sex offender therapist shall submit quarterly reports on the defendant's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, defendant's compliance with requirements, treatment activities, the defendant's relative progress in treatment, and any other material as specified by the court at sentencing.

(iv) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment. Prior to the treatment termination hearing, the treatment professional and community corrections officer shall submit written reports to the court and parties regarding the defendant's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community supervision conditions. Either party may request and the court may order another evaluation regarding the advisability of termination from treatment. The defendant shall pay the cost of any additional evaluation ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost. At the treatment termination hearing the court may: (A) Modify conditions of community custody, and either (B) terminate treatment, or (C) extend treatment for up to the remaining period of community custody.

(v) If a violation of conditions occurs during community custody, the department shall either impose sanctions as provided for in RCW 9.94A.205(2)(a) or refer the violation to the court and recommend revocation of the suspended sentence as provided for in (a)(vi) of this subsection.

(vi) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (A) The defendant violates the conditions of the suspended sentence, or (B) the court finds that the defendant is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

(vii) Except as provided in (a)(viii) of this subsection, after July 1, 1991, examinations and treatment ordered pursuant to this subsection shall only be conducted by sex offender treatment providers certified by the department of health pursuant to chapter 18.155 RCW.

(viii) A sex offender therapist who examines or treats a sex offender pursuant to this subsection (8) does not have to be certified by the department of health pursuant to chapter 18.155 RCW if the court finds that: (A) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (B) no certified providers are available for treatment within a reasonable geographical distance of the offender's home; and (C) the evaluation and treatment plan comply with this subsection (8) and the rules adopted by the department of health.

(ix) For purposes of this subsection (8), "victim" means any person who has sustained emotional, psychological, physical, or financial injury to person or property as a result of the crime charged. "Victim" also means a parent or guardian of a victim who is a minor child unless the parent or guardian is the perpetrator of the offense.

(x) If the defendant was less than eighteen years of age when the charge was filed, the state shall pay for the cost of initial evaluation and treatment.

(b) When an offender commits any felony sex offense on or after July 1, 1987, and is sentenced to a term of confinement of more than one year but less than six years, the sentencing court may, on its own motion or on the motion of the offender or the state, request the department of corrections to evaluate whether the offender is amenable to treatment and the department may place the offender in a treatment program within a correctional facility operated by the department.

Except for an offender who has been convicted of a violation of RCW 9A.44.040 or 9A.44.050, if the offender completes the treatment program before the expiration of his or her term of confinement, the department of corrections may request the court to convert the balance of confinement to community supervision and to place conditions on the offender including crime-related prohibitions and requirements that the offender perform any one or more of the following:

- (i) Devote time to a specific employment or occupation;
- (ii) Remain within prescribed geographical boundaries and notify the court or the community corrections officer prior to any change in the offender's address or employment;
- (iii) Report as directed to the court and a community corrections officer;
- (iv) Undergo available outpatient treatment.

If the offender violates any of the terms of his or her community supervision, the court may order the offender to serve out the balance of his or her community supervision term in confinement in the custody of the department of corrections.

Nothing in this subsection (8)(b) shall confer eligibility for such programs for offenders convicted and sentenced for a sex offense committed prior to July 1, 1987. This subsection (8)(b) does not apply to any crime committed after July 1, 1990.

(c) Offenders convicted and sentenced for a sex offense committed prior to July 1, 1987, may, subject to available funds, request an evaluation by the department of corrections to determine whether they are amenable to treatment. If the offender is determined to be amenable to treatment, the offender may request placement in a treatment program within a correctional facility operated by the department. Placement in such treatment program is subject to available funds.

(9)(a) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense or a serious violent offense committed after July 1, 1988, but before July 1, 1990, assault in the second degree, assault of a child in the second degree, any crime against a person where it is determined in accordance with RCW 9.94A.125 that the defendant or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW not sentenced under subsection (6) of this section, committed on or after July 1, 1988, the court shall in addition to the other terms of the sentence, sentence the offender to a one-year term of community placement beginning either upon completion of the term of confinement or at such time as the offender is transferred to

community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of such community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence.

(b) When a court sentences a person to a term of total confinement to the custody of the department of corrections for an offense categorized as a sex offense committed on or after July 1, 1990, but before June 6, 1996, a serious violent offense, vehicular homicide, or vehicular assault, committed on or after July 1, 1990, the court shall in addition to other terms of the sentence, sentence the offender to community placement for two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community placement shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2). When the court sentences an offender under this subsection to the statutory maximum period of confinement then the community placement portion of the sentence shall consist entirely of the community custody to which the offender may become eligible, in accordance with RCW 9.94A.150 (1) and (2). Any period of community custody actually served shall be credited against the community placement portion of the sentence. Unless a condition is waived by the court, the terms of community placement for offenders sentenced pursuant to this section shall include the following conditions:

(i) The offender shall report to and be available for contact with the assigned community corrections officer as directed;

(ii) The offender shall work at department of corrections-approved education, employment, and/or community service;

(iii) The offender shall not possess or consume controlled substances except pursuant to lawfully issued prescriptions;

(iv) The offender shall pay supervision fees as determined by the department of corrections;

(v) The residence location and living arrangements are subject to the prior approval of the department of corrections during the period of community placement; and

(vi) The offender shall submit to affirmative acts necessary to monitor compliance with the orders of the court as required by the department.

(c) As a part of any sentence imposed under (a) or (b) of this subsection, the court may also order any of the following special conditions:

(i) The offender shall remain within, or outside of, a specified geographical boundary;

(ii) The offender shall not have direct or indirect contact with the victim of the crime or a specified class of individuals;

(iii) The offender shall participate in crime-related treatment or counseling services;

(iv) The offender shall not consume alcohol;

(v) The offender shall comply with any crime-related prohibitions; or

(vi) For an offender convicted of a felony sex offense against a minor victim after June 6, 1996, the offender shall comply with any terms and conditions of community placement imposed by the department of corrections relating to contact between the sex offender and a minor victim or a child of similar age or circumstance as a previous victim.

(d) Prior to transfer to, or during, community placement, any conditions of community placement may be removed or modified so as not to be more restrictive by the sentencing court, upon recommendation of the department of corrections.

(10)(a) When a court sentences a person to the custody of the department of corrections for an offense categorized as a sex offense committed on or after June 6, 1996, the court shall, in addition to other terms of the sentence, sentence the offender to community custody for three years or up to the period of earned early release awarded pursuant to RCW 9.94A.150 (1) and (2), whichever is longer. The community custody shall begin either upon completion of the term of confinement or at such time as the offender is transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.150 (1) and (2).

(b) Unless a condition is waived by the court, the terms of community custody shall be the same as those provided for in subsection (9)(b) of this section and may include those provided for in subsection (9)(c) of this section. As part of any sentence that includes a term of community custody imposed under this subsection, the court shall also require the offender to comply with any conditions imposed by the department of corrections under subsection (14) of this section.

(c) At any time prior to the completion of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions imposed pursuant to this section for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody. If a violation of a condition extended under this subsection occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.195 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(11) If the court imposes a sentence requiring confinement of thirty days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(12) If a sentence imposed includes payment of a legal financial obligation, the sentence shall specify the total amount of the legal financial obligation owed,

and shall require the offender to pay a specified monthly sum toward that legal financial obligation. Restitution to victims shall be paid prior to any other payments of monetary obligations. Any legal financial obligation that is imposed by the court may be collected by the department, which shall deliver the amount paid to the county clerk for credit. The offender's compliance with payment of legal financial obligations shall be supervised by the department for ten years following the entry of the judgment and sentence or ten years following the offender's release from total confinement. All monetary payments ordered shall be paid no later than ten years after the last date of release from confinement pursuant to a felony conviction or the date the sentence was entered unless the superior court extends the criminal judgment an additional ten years. If the legal financial obligations including crime victims' assessments are not paid during the initial ten-year period, the superior court may extend jurisdiction under the criminal judgment an additional ten years as provided in RCW 9.94A.140, 9.94A.142, and 9.94A.145. If jurisdiction under the criminal judgment is extended, the department is not responsible for supervision of the offender during the subsequent period. Independent of the department, the party or entity to whom the legal financial obligation is owed shall have the authority to utilize any other remedies available to the party or entity to collect the legal financial obligation. Nothing in this section makes the department, the state, or any of its employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations. If an order includes restitution as one of the monetary assessments, the county clerk shall make disbursements to victims named in the order.

(13) Except as provided under RCW 9.94A.140(1) and 9.94A.142(1), a court may not impose a sentence providing for a term of confinement or community supervision or community placement which exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(14) All offenders sentenced to terms involving community supervision, community service, community placement, or legal financial obligation shall be under the supervision of the department of corrections and shall follow explicitly the instructions and conditions of the department of corrections. The department may require an offender to perform affirmative acts it deems appropriate to monitor compliance with the conditions of the sentence imposed.

(a) The instructions shall include, at a minimum, reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, notifying the community corrections officer of any change in the offender's address or employment, and paying the supervision fee assessment.

(b) For offenders sentenced to terms involving community custody for crimes committed on or after June 6, 1996, the department may include, in addition to the instructions in (a) of this subsection, any appropriate conditions of supervision, including but not limited to, prohibiting the offender from having contact with any other specified individuals or specific class of individuals. The conditions authorized under this subsection (14)(b) may be imposed by the

department prior to or during an offender's community custody term. If a violation of conditions imposed by the court or the department pursuant to subsection (10) of this section occurs during community custody, it shall be deemed a violation of community placement for the purposes of RCW 9.94A.207 and shall authorize the department to transfer an offender to a more restrictive confinement status as provided in RCW 9.94A.205. At any time prior to the completion of a sex offender's term of community custody, the department may recommend to the court that any or all of the conditions imposed by the court or the department pursuant to subsection (10) of this section be continued beyond the expiration of the offender's term of community custody as authorized in subsection (10)(c) of this section.

The department may require offenders to pay for special services rendered on or after July 25, 1993, including electronic monitoring, day reporting, and telephone reporting, dependent upon the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(15) All offenders sentenced to terms involving community supervision, community service, or community placement under the supervision of the department of corrections shall not own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the appropriate violation process and sanctions. "Constructive possession" as used in this subsection means the power and intent to control the firearm or ammunition. "Firearm" as used in this subsection means a weapon or device from which a projectile may be fired by an explosive such as gunpowder.

(16) The sentencing court shall give the offender credit for all confinement time served before the sentencing if that confinement was solely in regard to the offense for which the offender is being sentenced.

(17) A departure from the standards in RCW 9.94A.400 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in subsections (2) and (3) of this section, and may be appealed by the defendant or the state as set forth in RCW 9.94A.210 (2) through (6).

(18) The court shall order restitution whenever the offender is convicted of a felony that results in injury to any person or damage to or loss of property, whether the offender is sentenced to confinement or placed under community supervision, unless extraordinary circumstances exist that make restitution inappropriate in the court's judgment. The court shall set forth the extraordinary circumstances in the record if it does not order restitution.

(19) As a part of any sentence, the court may impose and enforce an order that relates directly to the circumstances of the crime for which the offender has been convicted, prohibiting the offender from having any contact with other specified individuals or a specific class of individuals for a period not to exceed the maximum allowable sentence for the crime, regardless of the expiration of the offender's term of community supervision or community placement.

(20) The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

(21) In any sentence of partial confinement, the court may require the defendant to serve the partial confinement in work release, in a program of home detention, on work crew, or in a combined program of work crew and home detention.

~~((21))~~ (22) All court-ordered legal financial obligations collected by the department and remitted to the county clerk shall be credited and paid where restitution is ordered. Restitution shall be paid prior to any other payments of monetary obligations.

Sec. 4. RCW 9.94A.200 and 1995 c 167 s 1 and 1995 c 142 s 1 are each reenacted and amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, the court may modify its order of judgment and sentence and impose further punishment in accordance with this section.

(2) In cases where conditions from a second or later sentence of community supervision begin prior to the term of the second or later sentence, the court shall treat a violation of such conditions as a violation of the sentence of community supervision currently being served.

(3) If an offender fails to comply with any of the requirements or conditions of a sentence the following provisions apply:

(a)(i) Following the violation, if the offender and the department make a stipulated agreement, the department may impose sanctions such as work release, home detention with electronic monitoring, work crew, community service, inpatient treatment, daily reporting, curfew, educational or counseling sessions, supervision enhanced through electronic monitoring, jail time, or other sanctions available in the community.

(ii) Within seventy-two hours of signing the stipulated agreement, the department shall submit a report to the court and the prosecuting attorney outlining the violation or violations, and sanctions imposed. Within fifteen days of receipt of the report, if the court is not satisfied with the sanctions, the court may schedule a hearing and may modify the department's sanctions. If this occurs, the offender may withdraw from the stipulated agreement.

(iii) If the offender fails to comply with the sanction administratively imposed by the department, the court may take action regarding the original

noncompliance. Offender failure to comply with the sanction administratively imposed by the department may be considered an additional violation.

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in (a) of this subsection, the court, upon the motion of the state, or upon its own motion, shall require the offender to show cause why the offender should not be punished for the noncompliance. The court may issue a summons or a warrant of arrest for the offender's appearance;

(c) The state has the burden of showing noncompliance by a preponderance of the evidence. If the court finds that the violation has occurred, it may order the offender to be confined for a period not to exceed sixty days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community service obligation to total or partial confinement, (iii) convert monetary obligations, except restitution and the crime victim penalty assessment, to community service hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community service, or (iv) order one or more of the penalties authorized in (a)(i) of this subsection. Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement order by the court; (~~and~~)

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community service obligations; and

(e) If the violation involves a failure to undergo or comply with mental status evaluation and/or outpatient mental health treatment, the community corrections officer shall consult with the treatment provider or proposed treatment provider. Enforcement of orders concerning outpatient mental health treatment must reflect the availability of treatment and must pursue the least restrictive means of promoting participation in treatment. If the offender's failure to receive care essential for health and safety presents a risk of serious physical harm or probable harmful consequences, the civil detention and commitment procedures of chapter 71.05 RCW shall be considered in preference to incarceration in a local or state correctional facility.

(4) The community corrections officer may obtain information from the offender's mental health treatment provider on the offender's status with respect to evaluation, application for services, registration for services, and compliance with the supervision plan, without the offender's consent, as described under RCW 71.05.630.

(5) An offender under community placement or community supervision who is civilly detained under chapter 71.05 RCW, and subsequently discharged or conditionally released to the community, shall be under the supervision of the department of corrections for the duration of his or her period of community placement or community supervision. During any period of inpatient mental health treatment that falls within the period of community placement or community supervision, the inpatient treatment provider and the supervising

community corrections officer shall notify each other about the offender's discharge, release, and legal status, and shall share other relevant information.

(6) Nothing in this section prohibits the filing of escape charges if appropriate.

NEW SECTION. Sec. 5. In collaboration with the department of social and health services, the department of corrections shall track outcomes and submit to the legislature a report of services and outcomes by December 31, 1999. The report shall describe the extent to which the provisions of this act are applied by the courts, the effectiveness of court orders in inducing offenders to undergo and comply with needed mental health treatment, and the usage of civil commitment or incarceration to enforce orders concerning mental health treatment. It shall further include recommendations for any needed modifications in these provisions to increase effectiveness.

NEW SECTION. Sec. 6. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 7, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 261

[Engrossed Substitute Senate Bill 5936]

REPORT ON ALTERNATIVES FOR OFFENDER ACCESS TO POSTSECONDARY ACADEMIC EDUCATION AND VOCATIONAL OPPORTUNITIES

AN ACT Relating to offender education; amending RCW 72.09.480; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The department shall prepare and submit a report to the legislature not later than December 1, 1998, on alternatives for increasing offender access to postsecondary academic education and vocational opportunities. In preparing the report, the department shall consult with representatives from the community colleges and other educational service providers currently contracting with the department.

(2) The report shall present alternatives for increasing access within existing resources as well as alternatives that may require additional funding.

(3) At a minimum, the report shall include the following:

(a) A plan, to be implemented within existing resources, for pilot projects utilizing fee-based programs for postsecondary academic and vocational study. The pilot projects shall offer instruction in academic subjects and employment skills not presently available at the pilot institutions. Fees charged for the pilot programs shall be consistent with the provisions of RCW 72.09.460;

(b) Recommendations on approaches to facilitate offender access to postsecondary academic correspondence courses and video telecourses; and

(c) Recommendations on the feasibility and desirability of connecting department facilities to the K-20 technology network.

Sec. 2. RCW 72.09.480 and 1997 c 165 s 1 are each amended to read as follows:

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(2) When an inmate receives any funds in addition to his or her wages or gratuities, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(3) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(4) The deductions required under subsection (2) of this section shall not apply to funds received by the department on behalf of an offender for payment of one fee-based education or vocational program that is associated with an inmate's work program or a placement decision made by the department under RCW 72.09.460 to prepare an inmate for work upon release.

Passed the Senate February 9, 1998.

Passed the House March 3, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 262

[Substitute Senate Bill 6161]

DAIRY NUTRIENT MANAGEMENT PROGRAM

AN ACT Relating to dairy nutrient management; amending RCW 90.64.005, 90.64.010, 90.64.030, 90.64.050, 90.64.070, 90.64.080, 90.48.465, and 43.21B.110; adding new sections to chapter 90.64 RCW; creating new sections; repealing RCW 90.64.060 and 90.64.090; prescribing penalties; and declaring an emergency.

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

Sec. 1. RCW 90.64.005 and 1993 c 221 s 1 are each amended to read as follows:

The legislature finds that there is a need to establish a clear and understandable process that provides for the proper and effective management of dairy ((waste)) nutrients that affect((s)) the quality of surface or ground waters in the state of Washington. The legislature finds that there is a need for a program that will provide a stable and predictable business climate upon which dairy farms may base future investment decisions.

The legislature finds that federal regulations require a permit program for dairies (({with})) with over seven hundred head of mature cows and, other specified dairy farms that directly discharge into waters or are otherwise significant contributors of pollution. The legislature finds that significant work has been ongoing over a period of time and that the intent of this chapter is to take the consensus that has been developed and place it into statutory form.

It is also the intent of this chapter to establish an inspection and technical assistance program for dairy farms to address the discharge of pollution to surface and ground waters of the state that will lead to water quality compliance by the industry. A further purpose is to create a balanced program involving technical assistance, regulation, and enforcement with coordination and oversight of the program by a committee composed of industry, agency, and other representatives. Furthermore, it is the objective of this chapter to maintain the administration of the water quality program as it relates to dairy operations at the state level.

It is also the intent of this chapter to recognize the existing working relationships between conservation districts, the conservation commission, and the department of ecology in protecting water quality of the state. A further purpose of this chapter is to provide statutory recognition of the coordination of the functions of conservation districts, the conservation commission, and the department of ecology pertaining to development of dairy waste management plans for the protection of water quality.

Sec. 2. RCW 90.64.010 and 1993 c 221 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) "Advisory and oversight committee" means a balanced committee of agency, dairy farm, and interest group representatives convened to provide oversight and direction to the dairy nutrient management program.

(2) "Bypass" means the intentional diversion of waste streams from any portion of a treatment facility.

(3) "Catastrophic" means a tornado, hurricane, earthquake, flood, or other extreme condition that causes an overflow from a required waste retention structure.

(4) "Certification" means:

(a) The acknowledgment by a local conservation district that a dairy producer has constructed or otherwise put in place the elements necessary to implement his or her dairy nutrient management plan; and

(b) The acknowledgment by a dairy producer that he or she is managing dairy nutrients as specified in his or her approved dairy nutrient management plan.

(5) "Chronic" means a series of wet weather events that precludes the proper operation of a dairy nutrient management system that is designed for the current herd size.

(6) "Conservation commission" or "commission" means the conservation commission under chapter 89.08 RCW.

~~((2))~~ (7) "Conservation districts" or "district" means a subdivision of state government organized under chapter 89.08 RCW.

~~((3))~~ (8) "Concentrated dairy animal feeding operation" means a dairy animal feeding operation subject to regulation under this chapter which the director designates under RCW ~~((90.64.030))~~ 90.64.020 or meets the following criteria:

(a) Has more than seven hundred mature dairy cows, whether milked or dry cows, that are confined; or

(b) Has more than two hundred head of mature dairy cattle, whether milked or dry cows, that are confined and either:

(i) From which pollutants are discharged into navigable waters through a manmade ditch, flushing system, or other similar manmade device; or

(ii) From which pollutants are discharged directly into surface or ground waters of the state that originate outside of and pass over, across, or through the facility or otherwise come into direct contact with the animals confined in the operation.

~~((4))~~ (9) "Dairy animal feeding operation" means a lot or facility where the following conditions are met:

(a) Dairy animals that have been, are, or will be stabled or confined and fed for a total of forty-five days or more in any twelve-month period; and

(b) Crops, vegetation forage growth, or postharvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more dairy animal feeding operations under common ownership are considered, for the purposes of this chapter, to be a single dairy animal feeding operation if they adjoin each other or if they use a common area for land application of wastes.

~~((5))~~ (10) "Dairy farm" means any farm that is licensed to produce milk under chapter 15.36 RCW.

(11) "Dairy nutrient" means any organic waste produced by dairy cows or a dairy farm operation.

(12) "Dairy nutrient management plan" means a plan meeting the requirements established under section 6 of this act.

(13) "Dairy nutrient management technical assistance team" means one or more professional engineers and local conservation district employees convened to serve one of four distinct geographic areas in the state.

(14) "Dairy producer" means a person who owns or operates a dairy farm.

(15) "Department" means the department of ecology under chapter 43.21A RCW.

((6)) (16) "Director" means the director of the department of ecology, or his or her designee.

(17) "Upset" means an exceptional incident in which there is an unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the dairy. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

(18) "Violation" means the following acts or omissions:

(a) A discharge of pollutants into the waters of the state, except those discharges that are due to a chronic or catastrophic event, or to an upset as provided in 40 C.F.R. Sec. 122.41, or to a bypass as provided in 40 C.F.R. Sec. 122.41, and that occur when:

(i) A dairy producer has a current national pollutant discharge elimination system permit with a wastewater system designed, operated, and maintained for the current herd size and that contains all process-generated wastewater plus average annual precipitation minus evaporation plus contaminated storm water runoff from a twenty-five year, twenty-four hour rainfall event for that specific location, and the dairy producer has complied with all permit conditions, including dairy nutrient management plan conditions for appropriate land application practices; or

(ii) A dairy producer does not have a national pollutant discharge elimination system permit, but has complied with all of the elements of a dairy nutrient management plan that: Prevents the discharge of pollutants to waters of the state, is commensurate with the dairy producer's current herd size, and is approved and certified under section 6 of this act;

(b) Failure to register as required under section 3 of this act; or

(c) The lack of an approved dairy nutrient management plan by July 1, 2002;

or

(d) The lack of a certified dairy nutrient management plan for a dairy farm after December 31, 2003.

NEW SECTION. Sec. 3. (1) Every dairy producer licensed under chapter 15.36 RCW shall register with the department by September 1, 1998, and shall reregister with the department by September 1st of every even-numbered year. Every dairy producer licensed after September 1, 1998, shall register with the department within sixty days of licensing. The purpose of registration is to provide and update baseline information for the dairy nutrient management program.

(2) To facilitate registration, the department shall obtain from the food safety and animal health division of the department of agriculture a current list of all

licensed dairy producers in the state and mail a registration form to each licensed dairy producer no later than July 15, 1998.

(3) At a minimum, the form shall require the following information as of the date the form is completed:

- (a) The name and address of the operator of the dairy farm;
- (b) The name and address of the dairy farm;
- (c) The telephone number of the dairy farm;
- (d) The number of cows in the dairy farm;
- (e) The number of young stock in the dairy farm;
- (f) The number of acres owned and rented in the dairy farm;
- (g) Whether the dairy producer, to the best of his or her knowledge, has a plan for managing dairy nutrient discharges that is commensurate with the size of his or her herd, and whether the plan is being fully implemented; and
- (h) If the fields where dairy nutrients are being applied belong to someone other than the dairy producer whose farm operation generated the nutrients, the name, address, and telephone number of the owners of the property accepting the dairy nutrients.

(4) In the mailing to dairy producers containing the registration form, the department shall also provide clear and comprehensive information regarding the requirements of this chapter.

(5) The department shall require the registrant to provide only information that is not already available from other sources accessible to the department, such as dairy licensing information.

NEW SECTION. **Sec. 4.** Before October 1, 1998, the department and conservation commission shall jointly sponsor and hold an educational workshop for conservation districts from around the state. The purpose of the workshop is to inform local conservation districts about the requirements of this chapter, and for local conservation districts, the conservation commission, and the department to clearly understand their respective roles and responsibilities in carrying out these requirements.

NEW SECTION. **Sec. 5.** (1) By October 1, 1998, the department shall initiate an inspection program of all dairy farms in the state. The purpose of the inspections is to:

- (a) Survey for evidence of violations;
- (b) Identify corrective actions for actual or imminent discharges that violate or could violate the state's water quality standards;
- (c) Monitor the development and implementation of dairy nutrient management plans; and
- (d) Identify dairy producers who would benefit from technical assistance programs.

(2) Local conservation district employees may, at their discretion, accompany department inspectors on any scheduled inspection of dairy farms except random, unannounced inspections.

(3) Follow-up inspections shall be conducted by the department to ensure that corrective and other actions as identified in the course of initial inspections are being carried out. The department shall also conduct such additional inspections as are necessary to ensure compliance with state and federal water quality requirements, provided that all licensed dairy farms shall be inspected once within two years of the start of this program. The department, in consultation with the advisory and oversight committee established in section 8 of this act, shall develop performance-based criteria to determine the frequency of inspections.

(4) Dairy farms shall be prioritized for inspection based on the development of criteria that include, but are not limited to, the following factors:

- (a) Existence or implementation of a dairy nutrient management plan;
- (b) Proximity to impaired waters of the state; and
- (c) Proximity to all other waters of the state. The criteria developed to implement this subsection (4) shall be reviewed by the advisory and oversight committee.

NEW SECTION. Sec. 6. (1) Except for those producers who already have a certified dairy nutrient management plan as required under the terms and conditions of an individual or general national pollutant discharge elimination system permit, all dairy producers licensed under chapter 15.36 RCW, regardless of size, shall prepare a dairy nutrient management plan. If at any time a dairy nutrient management plan fails to prevent the discharge of pollutants to waters of the state, it shall be required to be updated.

(2) By November 1, 1998, the conservation commission, in conjunction with the advisory and oversight committee established under section 8 of this act shall develop a document clearly describing the elements that a dairy nutrient management plan must contain to gain local conservation district approval.

(3) In developing the elements that an approved dairy nutrient management plan must contain, the commission may authorize the use of other methods and technologies than those developed by the natural resources conservation service when such alternatives have been evaluated by the advisory and oversight committee. Alternative methods and technologies shall meet the standards and specifications of:

- (a) The natural resources conservation service as modified by the geographically based standards developed under section 10 of this act; or
- (b) A professional engineer with expertise in the area of dairy nutrient management.

(4) In evaluating alternative technologies and methods, the principal objectives of the committee's evaluation shall be determining:

- (a) Whether there is a substantial likelihood that, once implemented, the alternative technologies and methods would not violate water quality requirements;
- (b) Whether more cost-effective methods can be successfully implemented in some or all categories of dairy operations; and

(c) Whether the technologies and methods approved or provided by the natural resources conservation service for use by confined animal feeding operations are necessarily required for other categories of dairy operations.

In addition, the committee shall encourage the conservation commission and the conservation districts to apply in dairy nutrient management plans technologies and methods that are appropriate to the needs of the specific type of operation and the specific farm site and to avoid imposing requirements that are not necessary for the specific dairy producer to achieve compliance with water quality requirements.

(5) Such plans shall be submitted for approval to the local conservation district where the dairy farm is located, and shall be approved by conservation districts no later than by July 1, 2002. The conservation commission, in conjunction with conservation districts, shall develop a state-wide schedule of plan development and approval to ensure adequate resources are available to have all plans approved by July 1, 2002.

(6) If a dairy producer leases land for dairy production from an owner who has prohibited the development of capital improvements, such as storage lagoons, on the leased property, the dairy producer shall indicate in his or her dairy nutrient management plan that such improvements are prohibited by the landowner and shall describe other methods, such as land application, that will be employed by the dairy producer to manage dairy nutrients.

(7) Notwithstanding the timelines in this section, any dairy farm licensed after September 1, 1998, shall have six months from the date of licensing to develop a dairy nutrient management plan and another eighteen months to fully implement that plan.

(8) If a plan contains the elements identified in subsection (2) of this section, a conservation district shall approve the plan no later than ninety days after receiving the plan. If the plan does not contain the elements identified in subsection (2) of this section, the local conservation district shall notify the dairy producer in writing of modifications needed in the plan no later than ninety days after receiving the plan. The dairy producer shall provide a revised plan that includes the needed modifications within ninety days of the date of the local conservation district notification. If the dairy producer does not agree with, or otherwise takes exception to, the modifications requested by the local conservation district, the dairy producer may initiate the appeals process described in section 7 of this act within thirty days of receiving the letter of notification.

(9) An approved plan shall be certified by a conservation district and a dairy producer when the elements necessary to implement the plan have been constructed or otherwise put in place, and are being used as designed and intended. A certification form shall be developed by the conservation commission for use state-wide and shall provide for a signature by both a conservation district representative and a dairy producer. Certification forms shall be signed by December 31, 2003, and a copy provided to the department for recording in the data base established in section 9 of this act.

(10) The ability of dairy producers to comply with the planning requirements of this chapter depends, in many cases, on the availability of federal and state funding to support technical assistance provided by local conservation districts. Dairy producers shall not be held responsible for noncompliance with the planning requirements of this chapter if conservation districts are unable to perform their duties under this chapter because of insufficient funding.

NEW SECTION. Sec. 7. (1) Conservation district decisions pertaining to denial of approval or denial of certification of a dairy nutrient management plan; modification or amendment of a plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and the failure to adhere to plan review and approval timelines identified in section 6 of this act are appealable under this chapter. Department actions pertaining to water quality violations are appealable under chapter 90.48 RCW.

In addition, a dairy producer who is constrained from complying with the planning requirements of this chapter because of financial hardship or local permitting delays may request a hearing before the conservation commission and may request an extension of up to one year beyond the approval and certification dates prescribed in this chapter for plan approval and certification.

(2) Within thirty days of receiving a local conservation district notification regarding any of the decisions identified in subsection (1) of this section, a dairy producer who disagrees with any of these decisions may request an informal hearing before the conservation commission or may appeal directly to the pollution control hearings board. The commission shall issue a written decision no later than thirty days after the informal hearing.

(3) If the conservation commission reverses the decision of the conservation district, the conservation district may appeal this reversal to the pollution control hearings board according to the procedure in chapter 43.21B RCW within thirty days of receipt of the commission's decision.

(4) When an appeals process is initiated under this section, the length of time extending from the start of the appeals process to its conclusion shall be added onto the timelines provided in this chapter for plan development, approval, and certification only if an appeal is heard by the pollution control hearings board.

***NEW SECTION.** Sec. 8. (1) *A dairy nutrient management program advisory and oversight committee is established. The committee shall be cochaired by the executive director of the conservation commission and a dairy industry representative. The purpose of the committee is to provide direction to and oversight of the dairy nutrient management inspection program, as well as to encourage the use of appropriate alternative technologies and methods for managing dairy nutrients.*

(2) *The committee shall include no less than eleven, and no more than thirteen members, including one representative from the department, one representative of the dairy industry from each of four geographic areas as*

referenced in section 10 of this act, one representative from the conservation commission, two representatives from local conservation districts, one representative from a local health department, one representative of an environmental organization, and one representative from the shellfish industry. In addition, the natural resources conservation service and the federal environmental protection agency shall each be invited to appoint a representative to the committee.

(3) The conservation commission shall contact agencies and organizations representing the interests identified in subsection (2) of this section and request that they notify their employees and membership of the opportunity to serve on the advisory and oversight committee. The commission shall also extend the invitations to the natural resources conservation service and the federal environmental protection agency. An association representing the dairy industry shall solicit interest broadly from both within and outside of the association. Persons interested in serving on the advisory and oversight committee shall submit their names to the conservation commission no later than May 1, 1998. By June 1, 1998, the commission shall appoint the required number of members from the nominations received.

(4) Advisory and oversight committee members shall be compensated under RCW 43.03.230 and shall be reimbursed for expenses as provided under RCW 43.03.050 and 43.03.060.

(5) The committee shall perform the following functions:

- (a) Meet at least four times per calendar year;*
- (b) Maintain meeting minutes and account for the resolution of issues jointly identified by the committee chairs as needing to be addressed;*
- (c) Review the development of the data base, the quarterly data base summary, and the annual report provided by the department under section 9 of this act and RCW 90.64.050;*
- (d) Act as a forum to hear suggestions from any interested parties, including dairy farmers, regarding implementation of the dairy nutrient management program;*
- (e) Review and recommend standardized dairy farm inspection procedures, prioritization criteria, and frequencies and a reporting format to be used by the department;*
- (f) Assist the department and the conservation commission in developing reports to the legislature as required in section 17 of this act; and*
- (g) Review and recommend dairy nutrient management technologies and methods other than those approved or provided by the natural resources conservation service for use as components of nutrient management plans under this chapter.*

**Sec. 8 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 9. (1) By October 1, 1998, the department, in consultation with the advisory and oversight committee, shall develop and maintain a data base to account for the implementation of this chapter.

(2) The data base shall track registrations; inspection dates and results, including findings of violations; regulatory and enforcement actions; and the status of dairy nutrient management plans. In addition, the number of dairy farm inspections by inspector shall be tallied by month. A summary of data base information shall be provided quarterly to the advisory and oversight committee.

(3) Any information entered into the data base by the department about any aspect of a particular dairy operation may be reviewed by the affected dairy producer upon request. The department shall correct any information in the data base upon a showing that the information is faulty or inaccurate. Complaints that have been filed with the department and determined to be unfounded, invalid, or without merit shall not be recorded in the data base. Appeals of decisions related to dairy nutrient management plans to the pollution control hearings board or to any court shall be recorded, as well as the decisions of those bodies.

NEW SECTION. Sec. 10. (1) The conservation commission shall establish four dairy nutrient management technical assistance teams by June 1, 1998. The teams shall be geographically located throughout the state. Each team shall consist of one or more professional engineers, local conservation district employees, and dairy nutrient management experts from Washington State University. The purpose of the teams is to:

(a) Actively develop and promote new cost-effective approaches for managing dairy nutrients; and

(b) Assist dairy farms in developing dairy nutrient management plans.

(2) By January 1, 1999, each team shall develop one or more initial sets of standards and specifications to assist dairy producers in developing and implementing dairy nutrient management plans. Standards and specifications developed by a technical assistance team shall be appropriate to the soils and other conditions within that geographic area and shall be reviewed by the advisory and oversight committee.

Sec. 11. RCW 90.64.030 and 1993 c 221 s 4 are each amended to read as follows:

~~((Upon receiving a complaint or upon its own determination that a dairy animal feeding operation is a likely source of water quality degradation,))~~ (1) Under the inspection program established in section 5 of this act, the department may investigate a dairy ((animal feeding operation)) farm to determine whether the operation is discharging ((directly)) pollutants or ((recently)) has ((discharged directly)) 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 ((ten)) 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. A copy of the findings shall be provided (~~upon request~~) to the dairy (~~animal feeding operation~~) producer subject to the complaint within twenty days. Only findings of violations shall be entered into the data base identified in section 9 of this act.

~~((Those dairy animal feeding operations that are))~~ (3) A dairy farm that is determined to be a significant contributor of pollution based on actual water quality tests, photographs, or other pertinent information ((if immediate corrective actions are not possible, shall be designated as a concentrated dairy animal feeding operation and shall be)) 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.

(4) 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.

(5) 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.

(6) 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(18). 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.

(7) 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.

(8) 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.

(9) 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. Failure to register as required in section 3 of this act shall subject a dairy producer to a maximum penalty of one hundred dollars. Penalties shall be levied by the department.

Sec. 12. RCW 90.64.050 and 1993 c 221 s 6 are each amended to read as follows:

(1) The department has the following duties:

(a) Identify existing or potential water quality problems resulting from dairy farms through implementation of the inspection program in section 5 of this act;

(b) Inspect a dairy farm upon the request of a dairy producer;

(c) Receive, process, and verify complaints concerning discharge of pollutants from all dairy farms ~~((regardless of size));~~

~~((e))~~ (d) Determine if a dairy-related water quality problem requires immediate corrective action under the Washington state water pollution control laws, chapter 90.48 RCW, or the Washington state water quality standards adopted under chapter 90.48 RCW ~~((, or other authorities))~~. The department shall maintain the lead enforcement responsibility;

~~((d))~~ (e) Administer and enforce national pollutant ~~((s))~~ discharge elimination system permits for operators of concentrated dairy animal feeding operations, where required by federal regulations ~~((;))~~ and ~~((administer))~~ state laws or upon request of a dairy producer;

~~((e))~~ ~~Appoint representatives, including dairy industry representatives, to participate in the compliance review committee that will annually review and update policy and disseminate information as needed;~~

(f) Participate on the advisory and oversight committee;

(g) Encourage communication and cooperation between local department personnel and the appropriate conservation district personnel;

~~((g))~~ ~~Encourage~~ (h) Require the use of ~~((federal soil conservation service standards and specifications in designing best management practices for))~~ dairy ~~((waste))~~ nutrient management plans ~~((to protect water quality))~~ as required under this chapter for entities required to plan under this chapter; and

~~((h))~~ (i) Provide to the commission and the advisory and oversight committee an annual report of dairy ~~((waste-pollution))~~ farm inspection and enforcement activities.

(2) The department may not delegate its responsibilities in enforcement.

Sec. 13. RCW 90.64.070 and 1993 c 221 s 8 are each amended to read as follows:

(1) The conservation district has the following duties:

(a) ~~((Adopt and annually update the water quality section in the conservation district dairy waste management plan))~~ Provide technical assistance to the department in identifying and correcting existing water quality problems resulting from dairy farms through implementation of the inspection program in section 5 of this act;

(b) ~~((As part of the district annual report, include a water quality progress report on dairy waste management activities conducted that are related to this chapter))~~ Immediately refer complaints received from the public regarding discharge of pollutants to the department;

(c) Encourage communication and cooperation between the conservation district personnel and local department personnel;

(d) ~~((Adopt and carry out a compliance option from level 1, level 2, level 3, or level 4))~~ Provide technical assistance to dairy producers in developing and implementing a dairy nutrient management plan; and

(e) Review, approve, and certify dairy nutrient management plans that meet the minimum standards developed under this chapter.

(2) The district's capability to carry out its responsibilities ~~((in the four levels of compliance))~~ under this chapter is contingent upon the availability of funding and resources to implement a dairy ~~((waste))~~ nutrient management program.

Sec. 14. RCW 90.64.080 and 1993 c 221 s 9 are each amended to read as follows:

(1) The conservation commission has the following duties:

(a) ~~((Forward to the department the dairy waste management plan progress reports;~~

~~—(b))~~ Provide assistance as may be appropriate to the conservation districts in the discharge of their responsibilities as management agencies in dairy ~~((waste))~~ nutrient management program implementation;

~~((e))~~ (b) Provide coordination for conservation district programs at the state level through special arrangements with appropriate federal and state agencies, including oversight of the review, approval, and certification of dairy nutrient management plans;

~~((d))~~ (c) Inform conservation districts of activities and experiences of other conservation districts relative to agricultural water quality protection, and facilitate an interchange of advice, experience, and cooperation between the districts;

(d) Provide an informal hearing for disputes between dairy producers and local conservation districts pertaining to: (i) Denial of approval or denial of certification of dairy nutrient management plans; (ii) modification or amendment of plans; (iii) conditions contained in plans; (iv) application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and (v) the failure to adhere to the plan review and approval timelines

identified in section 6 of this act. An informal hearing may also provide an opportunity for dairy producers who are constrained from timely compliance with the planning requirements of this chapter because of financial hardship or local permitting delays to petition for additional time to comply.

(e) Encourage communication between the conservation district personnel and local department personnel;

(f) ~~Accept nominations and appoint ((conservation district representatives)) members to serve on the ((compliance review)) advisory and oversight committee with advice of the Washington association of conservation districts and the department;~~

(g) ~~((Appoint a commission representative to participate on the compliance review committee that will annually review and update policy and disseminate information as needed))~~ Provide a cochair to the advisory and oversight committee;

(h) Report to the legislature by December 1st of each year until 2003 on the status of dairy nutrient management planning and on the technical assistance provided to dairy producers in carrying out the requirements of this chapter; and

(i) Work with the department to provide communication outreach to representatives of agricultural and environmental organizations to receive feedback on implementation of this chapter.

(2) The commission's capability to carry out its responsibilities under this chapter is contingent upon the availability of funding and resources to implement a dairy ~~((waste))~~ nutrient management program.

NEW SECTION. Sec. 15. The dairy waste management account is created in the custody of the state treasurer. All receipts from monetary penalties levied pursuant to violations of this chapter must be deposited into the account. Expenditures from the account may be used only for the commission to provide grants to local conservation districts for the sole purpose of assisting dairy producers to develop and fully implement dairy nutrient management plans. Only the chairman of the commission or the chairman's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Sec. 16. RCW 90.48.465 and 1997 c 398 s 2 are each amended to read as follows:

(1) The department shall establish annual fees to collect expenses for issuing and administering each class of permits under RCW 90.48.160, 90.48.162, and 90.48.260. An initial fee schedule shall be established by rule within one year of March 1, 1989, and thereafter the fee schedule shall be adjusted no more often than once every two years. This fee schedule shall apply to all permits, regardless of date of issuance, and fees shall be assessed prospectively. All fees charged shall be based on factors relating to the complexity of permit issuance and compliance and may be based on pollutant loading and toxicity and be designed to encourage recycling and the reduction of the quantity of pollutants. Fees shall

be established in amounts to fully recover and not to exceed expenses incurred by the department in processing permit applications and modifications, monitoring and evaluating compliance with permits, conducting inspections, securing laboratory analysis of samples taken during inspections, reviewing plans and documents directly related to operations of permittees, overseeing performance of delegated pretreatment programs, and supporting the overhead expenses that are directly related to these activities.

(2) The annual fee paid by a municipality, as defined in 33 U.S.C. Sec. 1362, for all domestic wastewater facility permits issued under RCW 90.48.162 and 90.48.260 shall not exceed the total of a maximum of fifteen cents per month per residence or residential equivalent contributing to the municipality's wastewater system. The department shall adopt by rule a schedule of credits for any municipality engaging in a comprehensive monitoring program beyond the requirements imposed by the department, with the credits available for five years from March 1, 1989, and with the total amount of all credits not to exceed fifty thousand dollars in the five-year period.

(3) The department shall ensure that indirect dischargers do not pay twice for the administrative expense of a permit. Accordingly, administrative expenses for permits issued by a municipality under RCW 90.48.165 are not recoverable by the department.

(4) In establishing fees, the department shall consider the economic impact of fees on small dischargers and the economic impact of fees on public entities required to obtain permits for storm water runoff and shall provide appropriate adjustments.

(5) The fee for an individual permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to one thousand one hundred sixty-seven dollars for fiscal year 1998 and one thousand two hundred fourteen dollars for fiscal year 1999. The fee for a general permit issued for a dairy farm as defined under chapter 90.64 RCW shall be fifty cents per animal unit up to eight hundred seventeen dollars for fiscal year 1998 and eight hundred fifty dollars for fiscal year 1999. Thereafter, these fees may rise in accordance with the fiscal growth factor as provided in chapter 43.135 RCW.

(6) All fees collected under this section shall be deposited in the water quality permit account hereby created in the state treasury. Moneys in the account may be appropriated only for purposes of administering permits under RCW 90.48.160, 90.48.162, and 90.48.260.

~~((6))~~ (7) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the legislature. The report will be due December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

NEW SECTION. Sec. 17. The department, in conjunction with the conservation commission and advisory and oversight committee, shall report to the legislature by December 1st of each year until 2003, on progress made in

implementing chapter . . . , Laws of 1998 (this act). At a minimum, the reports shall include data on inspections, the status of dairy nutrient planning, compliance with water quality standards, and enforcement actions. The report shall also provide recommendations on how implementation of chapter . . . , Laws of 1998 (this act) could be facilitated for dairy producers and generally improved.

The conservation commission shall include in the report to the legislature filed December 1, 1999, an evaluation of whether the fiscal resources available to the commission, to conservation districts, and to Washington State University dairy nutrient management experts are adequate to fund the technical assistance teams established under section 10 of this act and to develop and certify plans as required by the schedule established in section 6 of this act. If the funding is insufficient, the report shall include an estimate of the amount of funding necessary to accomplish the schedule contained in section 6 of this act.

Sec. 18. RCW 43.21B.110 and 1993 c 387 s 22 are each amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local conservation districts, the administrator of the office of marine safety, and the air pollution control boards or authorities as established pursuant to chapter 70.94 RCW, or local health departments:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70.94.431, 70.105.080, 70.107.050, 88.46.090, 90.03.600, 90.48.144, 90.56.310, and 90.56.330.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70.94.211, 70.94.332, 70.105.095, 86.16.020, 88.46.070, 90.14.130, ~~((and))~~ 90.48.120, and 90.56.330.

(c) The issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, or the modification of the conditions or the terms of a waste disposal permit.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70.95 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70.95J.080.

(f) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in section 6 of this act.

(g) Any other decision by the department, the administrator of the office of marine safety, or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(2) The following hearings shall not be conducted by the hearings board:

(a) Hearings required by law to be conducted by the shorelines hearings board pursuant to chapter 90.58 RCW.

(b) Hearings conducted by the department pursuant to RCW 70.94.332, 70.94.390, 70.94.395, 70.94.400, 70.94.405, 70.94.410, and 90.44.180.

(c) Proceedings by the department relating to general adjudications of water rights pursuant to chapter 90.03 or 90.44 RCW.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW.

NEW SECTION. Sec. 19. RCW 90.64.060 and 1993 c 221 s 7 are each repealed.

NEW SECTION. Sec. 20. RCW 90.64.090 and 1993 c 221 s 10 are each repealed.

NEW SECTION. Sec. 21. Sections 3, 5 through 10, 15, and 17 of this act are each added to chapter 90.64 RCW.

NEW SECTION. Sec. 22. 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. 23. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 10, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 8, Substitute Senate Bill No. 6161 entitled:

"AN ACT Relating to dairy nutrient management;"

SSB 6161 makes significant changes in the operation and regulation of dairies in the state of Washington. This bill will be of great benefit to our water quality and the public's health. I commend the dairy industry for its strong support of this bill.

Section 8 of SSB 6161 would create a Dairy Nutrient Management Program Advisory and Oversight Committee, consisting of governmental and non-governmental members. That committee would provide "direction to and oversight of" the dairy nutrient management program. Clearly, the state can benefit from the advice and counsel of those who will be most affected by this bill. However, the dairy inspection program is a governmental program and must be carried out by the Department of Ecology, the responsible governmental entity. It is inappropriate to give directive and oversight responsibilities to a non-governmental body. In addition, the portion of section 8 that provides for compensation of committee members contains drafting errors and is defective.

Very clearly, the advisory functions spelled out in section 8 are beneficial to the effective operation of the program. With this message, I am directing the Department of

Ecology to establish such a committee to perform the advisory functions provided for in section 8(5).

For these reasons, I have vetoed section 8 of Substitute Senate Bill No. 6161.

With the exception of section 8, Substitute Senate Bill No. 6161 is approved."

CHAPTER 263

[Engrossed Substitute Senate Bill 6204]

LIVESTOCK IDENTIFICATION

AN ACT Relating to livestock identification; amending RCW 16.57.010, 16.57.015, 16.57.020, 16.57.030, 16.57.040, 16.57.070, 16.57.080, 16.57.090, 16.57.100, 16.57.105, 16.57.110, 16.57.120, 16.57.130, 16.57.140, 16.57.150, 16.57.160, 16.57.165, 16.57.170, 16.57.180, 16.57.200, 16.57.210, 16.57.220, 16.57.230, 16.57.240, 16.57.260, 16.57.270, 16.57.275, 16.57.280, 16.57.290, 16.57.300, 16.57.310, 16.57.320, 16.57.330, 16.57.340, 16.57.350, 16.57.360, 16.57.370, 16.57.400, 16.57.407, 16.57.410, 16.57.420, 16.58.020, 16.58.030, 16.58.040, 16.58.050, 16.58.060, 16.58.070, 16.58.080, 16.58.095, 16.58.100, 16.58.110, 16.58.120, 16.58.130, 16.58.140, 16.58.150, 16.58.160, 16.65.010, 16.65.015, 16.65.020, 16.65.030, 16.65.037, 16.65.040, 16.65.042, 16.65.050, 16.65.080, 16.65.090, 16.65.100, 16.65.140, 16.65.190, 16.65.200, 16.65.220, 16.65.235, 16.65.250, 16.65.260, 16.65.270, 16.65.280, 16.65.290, 16.65.300, 16.65.310, 16.65.320, 16.65.330, 16.65.340, 16.65.350, 16.65.360, 16.65.420, 16.65.422, 16.65.423, 16.65.424, 16.65.445, 16.65.450, 16.04.025, and 43.23.230; reenacting and amending RCW 41.06.070; adding new sections to chapter 16.57 RCW; adding a new section to chapter 42.17 RCW; creating new sections; repealing RCW 16.57.380 and 16.65.110; repealing 1997 c 356 s 3; repealing 1997 c 356 s 5; repealing 1997 c 356 s 9; repealing 1997 c 356 s 11; and providing an effective date.

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

**Sec. 1. RCW 16.57.010 and 1996 c 105 s 1 are each amended to read as follows:*

For the purpose of this chapter:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or a duly appointed representative.

(3) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

(4) "Livestock" includes, but is not limited to, horses, mules, cattle, sheep, swine, goats, poultry and rabbits.

(5) "Brand" means a permanent fire brand or any artificial mark, other than an individual identification symbol, approved by the ((director)) board to be used in conjunction with a brand or by itself.

(6) "Production record brand" means a number brand which shall be used for production identification purposes only.

(7) "((Brand)) Livestock inspection" means the examination of livestock or livestock hides for brands or any means of identifying livestock or livestock hides and/or the application of any artificial identification such as back tags or ear clips necessary to preserve the identity of the livestock or livestock hides examined.

(8) *"Individual identification symbol" means a permanent mark placed on a horse for the purpose of individually identifying and registering the horse and which has been approved for use as such by the ((director)) board.*

(9) *"Registering agency" means any person issuing an individual identification symbol for the purpose of individually identifying and registering a horse.*

(10) *"Poultry" means chickens, turkeys, ratites, and other domesticated fowl.*

(11) *"Ratite" means, but is not limited to, ostrich, emu, rhea, or other flightless bird used for human consumption, whether live or slaughtered.*

(12) *"Ratite farming" means breeding, raising, and rearing of an ostrich, emu, or rhea in captivity or an enclosure.*

(13) *"Microchipping" means the implantation of an identification microchip or similar electronic identification device to establish the identity of an individual animal:*

(a) *In the pipping muscle of a chick ratite or the implantation of a microchip in the tail muscle of an otherwise unidentified adult ratite;*

(b) *In the nuchal ligament of a horse unless otherwise specified by rule of the ((director)) board; and*

(c) *In locations of other livestock species as specified by rule of the ((director)) board when requested by an association of producers of that species of livestock.*

(14) "Livestock identification board" or "board" means the board established under RCW 16.57.015.

(15) "Certificate of permit" means a form prescribed by and obtained from the board that is completed by the owner or a person authorized to act on behalf of the owner to show the ownership of livestock. It does not evidence inspection of livestock.

(16) "Inspection certificate" means a certificate issued by the board documenting the ownership of livestock based on an inspection of livestock by the board. It includes an individual identification certificate issued by the board.

(17) "Self-inspection certificate" means a form prescribed by and obtained from the board that is used for self-inspection of cattle or horses and is signed by the buyer and seller of the cattle or horses.

*Sec. 1 was vetoed. See message at end of chapter.

*Sec. 2. *RCW 16.57.015 and 1993 c 354 s 10 are each amended to read as follows:*

(1) ((The director shall establish a livestock identification advisory board. The board shall be composed of six members appointed by the director. One member shall represent each of the following groups: Beef producers, public livestock market operators, horse owners, dairy farmers, cattle feeders, and meat processors. In making appointments, the director shall solicit nominations from organizations representing these groups state-wide.

~~— (2) The purpose of the board is to provide advice to the director regarding livestock identification programs administered under this chapter and regarding brand inspection fees and related licensing fees. The director shall consult the board before adopting, amending, or repealing a rule under this chapter or altering a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090. If the director publishes in the state register a proposed rule to be adopted under the authority of this chapter or a proposed rule setting a fee under RCW 16.58.050, 16.58.130, 16.65.030, or 16.65.090 and the rule has not received the approval of the advisory board, the director shall file with the board a written statement setting forth the director's reasons for proposing the rule without the board's approval.~~

~~— (3) The members of the advisory board serve three-year terms. However, the director shall by rule provide shorter initial terms for some of the members of the board to stagger the expiration of the initial terms. The members serve without compensation. The director may authorize the expenses of a member to be reimbursed if the member is selected to attend a regional or national conference or meeting regarding livestock identification. Any such reimbursement shall be in accordance with RCW 43.03.050 and 43.03.060.)~~ There is established a Washington state livestock identification board. The board is composed of the director, who shall be a nonvoting member, and six voting members appointed by the governor as follows: One beef producer, one cattle feeder, one dairy producer, one livestock market owner, one meat packer, and one horse producer. Organizations representing the groups represented on the board may submit nominations for these appointments to the governor for the governor's consideration. Three members of the initial board shall be appointed for two years and three members shall be appointed for three years, thereafter gubernatorially appointed members shall be appointed for a three-year term. Members may succeed themselves. As used in this subsection, "meat packer" means a person licensed to operate a slaughtering establishment under chapter 16.49A RCW.

(2) The board shall be responsible for the administration of the livestock identification program which includes the review of recording and registration of brands, approval of all expenditures from the livestock identification account, administration of this chapter and chapters 16.58 and 16.65 RCW, administration of the inspection, enforcement, and licensing activities, fee setting, and holding hearings and adopting rules for the administration of the livestock identification program. Authorities and responsibilities other than rule making that are granted to the board by this chapter and chapters 16.58 and 16.65 RCW may be delegated by the board to duly authorized representatives of the board. The board shall adopt rules regarding such authorities and responsibilities in accordance with chapter 34.05 RCW.

(3) Until June 30, 2004, the board shall contract with the department for registration and recording and for livestock inspection or investigation work and fix the compensation and terms of the contract. Beginning July 1, 2004, the

board may contract with the department or other entities to provide such registration, recording, inspection, or investigation.

(4) Members of the board shall receive compensation as provided by RCW 43.03.240 and travel expenses to meetings or in otherwise carrying out the duties of the board as provided under RCW 43.03.050 and 43.03.060. The board shall meet at least quarterly in each calendar year. The board shall hire staff as necessary to carry out its duties.

(5) The board may select the area of the state in which to locate its principal office, which may include an area that is, by and large, near the geographic center of the state. The department shall examine the rental and other costs of locating the principal office from which it administers any contract it has with the board in an area that is, by and large, near the geographic center of the state. The department shall compare these costs with those of maintaining the principal office in its current location. The department shall report its findings to the board and shall consider moving its principal office for such administration to such an area if it would be more cost-effective to do so.

*Sec. 2 was vetoed. See message at end of chapter.

*NEW SECTION. Sec. 3. A new section is added to chapter 16.57 RCW to read as follows:

There is established a Washington state livestock identification account in the agricultural local fund created under RCW 43.23.230 into which all moneys collected or received from registration, recording, inspection, or enforcement under this chapter and moneys collected or received by the board under chapters 16.58 and 16.65 RCW shall be deposited. These moneys shall be used solely for the Washington state livestock identification program. Only the board may authorize expenditures from this account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

*Sec. 3 was vetoed. See message at end of chapter.

*Sec. 4. RCW 16.57.020 and 1994 c 46 s 7 are each amended to read as follows:

(1) The ~~((director))~~ board shall be the recorder of livestock brands and such brands shall not be recorded elsewhere in this state. Any person desiring to register a livestock brand shall apply on a form prescribed by the ~~((director))~~ board. Such application shall be accompanied by a facsimile of the brand applied for and a ~~((thirty-five))~~ seventy-dollar recording fee. The ~~((director))~~ board shall, upon ~~((his or her))~~ their satisfaction that the application and brand facsimile meet the requirements of this chapter and/or rules adopted hereunder, record such brand.

(2) As provided in RCW 16.57.015, the director of agriculture may be designated by the board as the recorder of livestock brands. If the director is so designated, the recording fee shall be deposited by the director in the Washington state livestock identification account and shall be used solely for

livestock identification program purposes as provided in this chapter and only as authorized by the board.

(3) This section is null and void unless subsections (1) through (5) of section 2 of this act and section 98 of this act become law.

*Sec. 4 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 5. A new section is added to chapter 16.57 RCW to read as follows:

(1) The board may adopt rules establishing criteria and fees for the permanent renewal of brands registered with the department or with the board but renewed as livestock heritage brands. Such heritage brands are not intended for use on livestock.

(2) If the Washington state livestock identification board with authority and responsibility for administering the livestock identification program is not established by July 31, 1998, the department of agriculture is granted the authorities provided to the board by subsection (1) of this section.

NEW SECTION. Sec. 6. A new section is added to chapter 16.57 RCW to read as follows:

(1) The board may enter into agreements with Washington state licensed and accredited veterinarians, who have been certified by the board, to perform livestock inspection. Fees for livestock inspection performed by a certified veterinarian shall be collected by the veterinarian and remitted to the board. Veterinarians providing livestock inspection may charge a fee for livestock inspection that is in addition to and separate from fees collected under RCW 16.57.220. The board may adopt rules necessary to implement livestock inspection performed by veterinarians and may adopt fees to cover the cost associated with certification of veterinarians.

(2) If the Washington state livestock identification board with authority and responsibility for administering the livestock identification program is not established by July 31, 1998, the department of agriculture is granted all of the authorities provided to the board by subsection (1) of this section.

*Sec. 7. RCW 16.57.030 and 1959 c 54 s 3 are each amended to read as follows:

The ((director)) board shall not record tattoo brands or marks for any purpose subsequent to the enactment of this chapter. However, all tattoo brands and marks of record on the date of the enactment of this chapter shall be recognized as legal ownership brands or marks.

*Sec. 7 was vetoed. See message at end of chapter.

*Sec. 8. RCW 16.57.040 and 1974 ex.s. c 64 s 1 are each amended to read as follows:

The ((director)) board may provide for the use of production record brands. Numbers for such brands shall be issued at the discretion of the ((director)) board and shall be placed on livestock immediately below the registered ownership brand or any other location prescribed by the ((director)) board.

*Sec. 8 was vetoed. See message at end of chapter.

*Sec. 9. RCW 16.57.070 and 1959 c 54 s 7 are each amended to read as follows:

The ~~((director))~~ board shall determine conflicting claims between applicants to a brand, and in so doing shall consider the priority of applicants.

*Sec. 9 was vetoed. See message at end of chapter.

*Sec. 10. RCW 16.57.080 and 1994 c 46 s 16 are each amended to read as follows:

~~((The director shall establish by rule a schedule for the renewal of registered brands.))~~ (1) Except as provided in section 5 of this act, the fee for the renewal of ((the) a brand((s)) registration shall be ((no less than twenty-five)) seventy dollars for each two-year period of brand ownership((, except that)). However, the ((director)) board may((, in adopting a renewal schedule,)) provide for the collection of renewal fees on a prorated basis ((and may by rule increase the registration and renewal fee for brands by no more than fifty percent subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015)). At least sixty days before the expiration of a registered brand, the ((director)) board shall notify by letter the owner of record of the brand that on the payment of the requisite application fee and application of renewal the ((director)) board shall issue the proof of payment allowing the brand owner exclusive ownership and use of the brand for the subsequent registration period. The failure of the registered owner to pay the renewal fee by the date required by rule shall cause such owner's brand to revert to the ((department)) board. The ((director)) board may for a period of one year following such reversion, reissue such brand only to the prior registered owner upon payment of the registration fee and a late filing fee ((to be prescribed by the director by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015,)) of twenty dollars for renewal subsequent to the regular renewal period. The ((director)) board may at the ((director's)) board's discretion, if such brand is not reissued within one year to the prior registered owner, issue such brand to any other applicant.

(2) This section is null and void unless subsections (1) through (5) of section 2 of this act and section 98 of this act become law.

*Sec. 10 was vetoed. See message at end of chapter.

*Sec. 11. RCW 16.57.090 and 1994 c 46 s 17 are each amended to read as follows:

A brand is the personal property of the owner of record. Any instrument affecting the title of such brand shall be acknowledged in the presence of the recorded owner and a notary public. The ~~((director))~~ board shall record such instrument upon presentation and payment of a recording fee not to exceed fifteen dollars to be prescribed by the ~~((director))~~ board by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015. Such recording shall be constructive notice to all the world of the existence and

conditions affecting the title to such brand. A copy of all records concerning the brand, certified by the ((director)) board, shall be received in evidence to all intent and purposes as the original instrument. The ((director)) board shall not be personally liable for failure of the ((director's)) board's agents to properly record such instrument.

*Sec. 11 was vetoed. See message at end of chapter.

**Sec. 12. RCW 16.57.100 and 1971 ex.s. c 135 s 3 are each amended to read as follows:*

The right to use a brand shall be evidenced by the original certificate issued by the ((director)) board showing that the brand is of present record or a certified copy of the record of such brand showing that it is of present record. A healed brand of record on livestock shall be prima facie evidence that the recorded owner of such brand has legal title to such livestock and is entitled to its possession: PROVIDED, That the ((director)) board may require additional proof of ownership of any animal showing more than one healed brand.

*Sec. 12 was vetoed. See message at end of chapter.

**Sec. 13. RCW 16.57.105 and 1967 c 240 s 38 are each amended to read as follows:*

Any person having a brand recorded with the ((department)) board shall have a preemptory right to use such brand and its design under any newly approved method of branding adopted by the ((director)) board.

*Sec. 13 was vetoed. See message at end of chapter.

**Sec. 14. RCW 16.57.110 and 1959 c 54 s 11 are each amended to read as follows:*

No brand shall be placed on livestock that is not permanent in nature and of a size that is not readily visible. The ((director)) board, in order to assure that brands are readily visible, may prescribe the size of branding irons to be used for ownership brands.

*Sec. 14 was vetoed. See message at end of chapter.

**Sec. 15. RCW 16.57.120 and 1991 c 110 s 2 are each amended to read as follows:*

No person shall remove or alter a brand of record on livestock without first having secured the written permission of the ((director)) board. Violation of this section shall be a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

*Sec. 15 was vetoed. See message at end of chapter.

**Sec. 16. RCW 16.57.130 and 1959 c 54 s 13 are each amended to read as follows:*

The ((director)) board shall not record a brand that is identical to a brand of present record; nor a brand so similar to a brand of present record that it will be difficult to distinguish between such brands when applied to livestock.

*Sec. 16 was vetoed. See message at end of chapter.

**Sec. 17. RCW 16.57.140 and 1994 c 46 s 18 are each amended to read as follows:*

The owner of a brand of record may procure from the ((director)) board a certified copy of the record of the owner's brand upon payment of a fee not to exceed seven dollars and fifty cents to be prescribed by the ((director)) board by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.

**Sec. 17 was vetoed. See message at end of chapter.*

**Sec. 18. RCW 16.57.150 and 1974 ex.s. c 64 s 5 are each amended to read as follows:*

The ((director)) board shall publish a book to be known as the "Washington State Brand Book", showing all the brands of record. Such book shall contain the name and address of the owners of brands of record and a copy of the brand laws and regulations. Supplements to such brand book showing newly recorded brands, amendments or newly adopted regulations, shall be published biennially, or prior thereto at the discretion of the ((director)) board: PROVIDED, That whenever ((he deems it)) necessary, the ((director)) board may issue a new brand book.

**Sec. 18 was vetoed. See message at end of chapter.*

**Sec. 19. RCW 16.57.160 and 1991 c 110 s 3 are each amended to read as follows:*

(1) Except as provided in subsection (3) of this section, the ((director)) board may ((by)) adopt rules ((adopted subsequent to a public hearing designate)); Designating any point for mandatory ((brand)) livestock inspection of cattle or horses or the furnishing of proof that cattle passing or being transported through such points have been ((brand)) livestock inspected and are lawfully being moved; providing for self-inspection of cattle and horses; and providing for issuance of individual horse and cattle identification certificates or other means of horse and cattle identification.

((Further,)) (2) The ((director)) board or any peace officer may stop vehicles carrying cattle or horses to determine if ((such)) the cattle or horses are identified, branded, or accompanied by ((the form prescribed by the director under RCW 16.57.240 or a brand certificate issued by the department)) a certificate of permit, inspection certificate, self-inspection certificate, or other satisfactory proof of ownership, as determined by the board.

(3) Inspection shall not be required for:

(a) Any individual private sale of any unbranded dairy breed milk production cattle involving fifteen head or less; or

(b) A sale by the owner of a dairy farm licensed under chapter 15.36 RCW of a male calf or male calves from the farm that are not more than thirty days old, as long as the license number for the dairy is listed on the bill of sale or its equivalent.

**Sec. 19 was vetoed. See message at end of chapter.*

**Sec. 20. RCW 16.57.165 and 1971 ex.s. c 135 s 6 are each amended to read as follows:*

The ((director)) board may, in order to reduce the cost of ((brand)) livestock inspection to livestock owners, enter into agreements with any qualified county, municipal, or other local law enforcement agency, or qualified individuals for the purpose of performing ((brand)) livestock inspection in areas where ((department-brand)) livestock inspection by the department may not readily be available.

**Sec. 20 was vetoed. See message at end of chapter.*

**Sec. 21. RCW 16.57.170 and 1959 c 54 s 17 are each amended to read as follows:*

The ((director)) board may enter at any reasonable time any slaughterhouse or public livestock market to make an examination of the brands on livestock or hides, and may enter at any reasonable time an establishment where hides are held to examine them for brands. The ((director)) board may enter any of these premises at any reasonable time to examine all books and records required by law in matters relating to ((brand)) livestock inspection or other methods of livestock identification.

**Sec. 21 was vetoed. See message at end of chapter.*

**Sec. 22. RCW 16.57.180 and 1959 c 54 s 18 are each amended to read as follows:*

Should the ((director)) board be denied access to any premises or establishment where such access was sought for the purposes set forth in RCW 16.57.170, ((he)) the board may apply to any court of competent jurisdiction for a search warrant authorizing access to such premises or establishment for said purposes. The court may upon such application, issue the search warrant for the purposes requested.

**Sec. 22 was vetoed. See message at end of chapter.*

**Sec. 23. RCW 16.57.200 and 1959 c 54 s 20 are each amended to read as follows:*

Any owner or ((his)) an agent shall make the brand or brands on livestock being ((brand)) livestock inspected readily visible and shall cooperate with the ((director)) board to carry out such ((brand)) livestock inspection in a safe and expeditious manner.

**Sec. 23 was vetoed. See message at end of chapter.*

**Sec. 24. RCW 16.57.210 and 1959 c 54 s 21 are each amended to read as follows:*

The ((director)) board shall have authority to arrest any person without warrant anywhere in the state found in the act of, or whom ((he)) the board has reason to believe is guilty of, driving, holding, selling or slaughtering stolen livestock. Any such person arrested by the ((director)) board shall be turned over to the sheriff of the county where the arrest was made, as quickly as possible.

*Sec. 24 was vetoed. See message at end of chapter.

*Sec. 25. RCW 16.57.220 and 1997 c 356 s 2 are each amended to read as follows:

The ~~((director))~~ livestock identification board shall cause a charge to be made for all ~~((brand))~~ livestock inspection of cattle and horses required under this chapter and rules adopted hereunder. Such charges shall be paid to the ~~((department))~~ board by the owner or person in possession unless requested by the purchaser and then such ~~((brand))~~ livestock inspection shall be paid by the purchaser requesting such ~~((brand))~~ livestock inspection. Except as provided by rule, such inspection charges shall be due and payable at the time ~~((brand))~~ livestock inspection is performed and shall be paid upon billing by the ~~((department))~~ board and if not shall constitute a prior lien on the cattle or cattle hides or horses or horse hides ~~((brand))~~ livestock inspected until such charge is paid. The ~~((director))~~ board in order to best utilize the services of the ~~((department))~~ livestock inspector in performing ~~((brand))~~ livestock inspection may establish schedules by days and hours when a ~~((brand))~~ livestock inspector will be on duty to perform ~~((brand))~~ livestock inspection at established inspection points. The fees for ~~((brand))~~ livestock inspection performed at inspection points according to schedules established by the ~~((director))~~ board shall be seventy-five cents per head for cattle and ~~((not more than))~~ three dollars per head for horses ~~((as prescribed by the director subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015))~~. Fees for ~~((brand))~~ livestock inspection of cattle and horses at points other than those designated by the ~~((director))~~ board or not in accord with the schedules established by the ~~((director))~~ board shall be based on a fee schedule not to exceed actual net cost to the ~~((department))~~ board of performing the ~~((brand))~~ livestock inspection service. For the purpose of this section, actual costs shall mean fifteen dollars per hour and the current mileage rate set by the office of financial management.

*Sec. 25 was vetoed. See message at end of chapter.

*Sec. 26. RCW 16.57.230 and 1995 c 374 s 50 are each amended to read as follows:

No person shall collect or make a charge for ~~((brand))~~ livestock inspection of livestock unless there has been an actual ~~((brand))~~ livestock inspection of such livestock.

*Sec. 26 was vetoed. See message at end of chapter.

*Sec. 27. RCW 16.57.240 and 1995 c 374 s 51 are each amended to read as follows:

~~((Any person purchasing, selling, holding for sale, trading, bartering, transferring title, slaughtering, handling, or transporting cattle shall keep a record on forms prescribed by the director. Such forms))~~ (1) Certificates of permit, inspection certificates, and self-inspection certificates shall show the owner, number, ((specie)) breed, sex, brand or other method of identification of

~~((such)) the cattle or horses and any other necessary information required by the ((director)) board. ((The original shall be kept for a period of three years or shall be furnished to the director upon demand or as prescribed by rule, one copy shall accompany the cattle to their destination and shall be subject to inspection at any time by the director or any peace officer or member of the state patrol: PROVIDED, That in the following instances only, cattle may be moved or transported within this state without being accompanied by an official certificate of permit, brand inspection certificate, bill of sale, or self-inspection slip:~~

~~— (1) When such cattle are moved or transported upon lands under the exclusive control of the person moving or transporting such cattle;~~

~~— (2) When such cattle are being moved or transported for temporary grazing or feeding purposes and have the registered brand of the person having or transporting such cattle.))~~

(2) The board may cause certificate of permit forms to be issued to any person on payment of a fee established by rule.

(3) Inspection certificates, self-inspection certificates, or other proof of ownership deemed satisfactory by the board shall be kept by the owner and/or person in possession of any cattle or horses and shall be furnished to the board or any peace officer upon demand.

(4) Cattle may not be moved or transported within this state without being accompanied by a certificate of permit, inspection certificate, or self-inspection certificate except:

(a) When the cattle are moved or transported upon lands under the exclusive control of the person moving or transporting the cattle; or

(b) When the cattle are being moved or transported for temporary grazing or feeding purposes and have the recorded brand of the person having or transporting the cattle.

(5) Certificates of permit, inspection certificates, or self-inspection certificates accompanying cattle being moved or transported within this state shall be subject to inspection at any time by the board or any peace officer.

*Sec. 27 was vetoed. See message at end of chapter.

*Sec. 28. RCW 16.57.260 and 1981 c 296 s 19 are each amended to read as follows:

It shall be unlawful for any person to remove or cause to be removed or accept for removal from this state, any cattle or horses which are not accompanied at all times by an official ((brand)) livestock inspection certificate issued by the ((director)) board on such cattle or horses, except as provided in RCW 16.57.160.

*Sec. 28 was vetoed. See message at end of chapter.

*Sec. 29. RCW 16.57.270 and 1959 c 54 s 27 are each amended to read as follows:

It shall be unlawful for any person moving or transporting livestock in this state to refuse to assist the ((director)) board or any peace officer in establishing the identity of such livestock being moved or transported.

*Sec. 29 was vetoed. See message at end of chapter.

**Sec. 30. RCW 16.57.275 and 1967 c 240 s 37 are each amended to read as follows:*

Any cattle carcass, or primal part thereof, of any breed or age being transported in this state from other than a state or federal licensed and inspected slaughterhouse or common carrier hauling for such slaughterhouse, shall be accompanied by a certificate of permit signed by the owner of such carcass or primal part thereof and, if such carcass or primal part is delivered to a facility custom handling such carcasses or primal part thereof, such certificate of permit shall be deposited with the owner or manager of such custom handling facility and such certificate of permit shall be retained for a period of one year and be made available to the ((department)) livestock identification board for inspection during reasonable business hours. ~~((The owner of such carcass or primal part thereof shall mail a copy of the said certificate of permit to the department within ten days of said transportation.))~~

*Sec. 30 was vetoed. See message at end of chapter.

**Sec. 31. RCW 16.57.280 and 1995 c 374 s 52 are each amended to read as follows:*

No person shall knowingly have unlawful possession of any livestock marked with a recorded brand or tattoo of another person unless:

- (1) Such livestock lawfully bears the person's own healed recorded brand;*
- or*
- (2) Such livestock is accompanied by a certificate of permit from the owner of the recorded brand or tattoo; or*
- (3) Such livestock is accompanied by a ((brand)) livestock inspection certificate; or*
- (4) Such cattle is accompanied by a self-inspection slip; or*
- (5) Such livestock is accompanied by a bill of sale from the previous owner or other satisfactory proof of ownership.*

A violation of this section constitutes a gross misdemeanor punishable to the same extent as a gross misdemeanor that is punishable under RCW 9A.20.021.

*Sec. 31 was vetoed. See message at end of chapter.

**Sec. 32. RCW 16.57.290 and 1995 c 374 s 53 are each amended to read as follows:*

All unbranded cattle and horses and those bearing brands not recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit, and those bearing brands recorded, in the current edition of this state's brand book, which are not accompanied by a certificate of permit signed by the owner of the brand when presented for inspection by the

((director)) board, shall be sold by the ((director)) board or the ((director's)) board's representative, unless other satisfactory proof of ownership is presented showing the person presenting them to be lawfully in possession. Upon the sale of such cattle or horses, the ((director)) board or the ((director's)) board's representative shall give the purchasers a bill of sale therefor, or, if theft is suspected, the cattle or horses may be impounded by the ((director)) board or the ((director's)) board's representative.

**Sec. 32 was vetoed. See message at end of chapter.*

**Sec. 33. RCW 16.57.300 and 1989 c 286 s 24 are each amended to read as follows:*

The proceeds from the sale of cattle and horses as provided for under RCW 16.57.290, after paying the cost thereof, shall be paid to the ((director)) board, who shall make a record showing the brand or marks or other method of identification of the animals and the amount realized from the sale thereof. However, the proceeds from a sale of such cattle or horses at a licensed public livestock market shall be held by the licensee for a reasonable period not to exceed thirty days to permit the consignor to establish ownership or the right to sell such cattle or horses. If such consignor fails to establish legal ownership or the right to sell such cattle or horses, such proceeds shall be paid to the ((director)) board to be disposed of as any other stray proceeds.

**Sec. 33 was vetoed. See message at end of chapter.*

**Sec. 34. RCW 16.57.310 and 1959 c 54 s 31 are each amended to read as follows:*

When a person has been notified by registered mail that animals bearing his or her recorded brand have been sold by the ((director)) board, he or she shall present to the ((director)) board a claim on the proceeds within ten days from the receipt of the notice or the ((director)) board may decide that no claim exists.

**Sec. 34 was vetoed. See message at end of chapter.*

**Sec. 35. RCW 16.57.320 and 1991 c 110 s 6 are each amended to read as follows:*

If, after the expiration of one year from the date of sale, the person presenting the animals for inspection has not provided the ((director)) board with satisfactory proof of ownership, the proceeds from the sale shall be paid on the claim of the owner of the recorded brand. However, it shall be a gross misdemeanor for the owner of the recorded brand to knowingly accept such funds after he or she has sold, bartered or traded such animals to the claimant or any other person. 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. 35 was vetoed. See message at end of chapter.*

**Sec. 36. RCW 16.57.330 and 1959 c 54 s 33 are each amended to read as follows:*

If, after the expiration of one year from the date of sale, no claim is made, the money shall be credited to the ~~((department of agriculture))~~ board to be expended in carrying out the provisions of this chapter.

*Sec. 36 was vetoed. See message at end of chapter.

**Sec. 37. RCW 16.57.340 and 1959 c 54 s 34 are each amended to read as follows:*

The ~~((director))~~ board shall have the authority to enter into reciprocal agreements with any or all states to prevent the theft, misappropriation or loss of identification of livestock. The ~~((director))~~ board may declare any livestock which is shipped or moved into this state from such states estrays if such livestock is not accompanied by the proper official brand certificate or other such certificates required by the law of the state of origin of such livestock. The ~~((director))~~ board may hold such livestock subject to all costs of holding or sell such livestock and send the funds, after the deduction of the cost of such sale, to the proper authority in the state of origin of such livestock.

*Sec. 37 was vetoed. See message at end of chapter.

**Sec. 38. RCW 16.57.350 and 1994 c 46 s 8 are each amended to read as follows:*

The ~~((director))~~ board may adopt such rules as are necessary to carry out the purposes of this chapter. It shall be the duty of the ~~((director))~~ board to enforce and carry out the provisions of this chapter and/or rules adopted hereunder. No person shall interfere with the ~~((director))~~ board when ~~((he or she))~~ the board is performing or carrying out duties imposed on ~~((him or her))~~ it by this chapter and/or rules adopted hereunder.

*Sec. 38 was vetoed. See message at end of chapter.

**Sec. 39. RCW 16.57.360 and 1991 c 110 s 7 are each amended to read as follows:*

The ~~((department))~~ board is authorized to issue notices of and enforce civil infractions in the manner prescribed under chapter 7.80 RCW.

The violation of any provision of this chapter and/or rules and regulations adopted hereunder shall constitute a class 1 civil infraction as provided under chapter 7.80 RCW unless otherwise specified herein.

*Sec. 39 was vetoed. See message at end of chapter.

**Sec. 40. RCW 16.57.370 and 1959 c 54 s 37 are each amended to read as follows:*

All fees collected under the provisions of this chapter shall be retained and deposited by the ~~((director))~~ board to be used only for the enforcement of this chapter.

*Sec. 40 was vetoed. See message at end of chapter.

**Sec. 41. RCW 16.57.400 and 1994 c 46 s 20 are each amended to read as follows:*

The ~~((director))~~ board may provide by rules ~~((and regulations))~~ adopted pursuant to chapter 34.05 RCW for the issuance of individual horse and cattle

identification certificates or other means of horse and cattle identification deemed appropriate. Such certificates or other means of identification shall be valid only for the use of the horse and cattle owner in whose name it is issued.

Horses and cattle identified pursuant to the provisions of this section and the rules ((and regulations)) adopted hereunder shall not be subject to ((brand)) livestock inspection except when sold at points provided for in RCW ((16.57.380)) 16.57.160. The ((director)) board shall charge a fee for the certificates or other means of identification authorized pursuant to this section and no identification shall be issued until the ((director)) board has received the fee. The schedule of fees shall be established in accordance with the provisions of chapter 34.05 RCW.

*Sec. 41 was vetoed. See message at end of chapter.

**Sec. 42. RCW 16.57.407 and 1996 c 105 s 3 are each amended to read as follows:*

The ((department)) livestock identification board has the authority to conduct an investigation of an incident where scars or other marks indicate that a microchip has been removed from a horse.

*Sec. 42 was vetoed. See message at end of chapter.

**Sec. 43. RCW 16.57.410 and 1993 c 354 s 11 are each amended to read as follows:*

(1) No person may act as a registering agency without a permit issued by the ((department)) board. The ((director)) board may issue a permit to any person or organization to act as a registering agency for the purpose of issuing permanent identification symbols for horses in a manner prescribed by the ((director)) board. Application for such permit, or the renewal thereof by January 1 of each year, shall be on a form prescribed by the ((director)) board, and accompanied by the proof of registration to be issued, any other documents required by the ((director)) board, and a fee of one hundred dollars.

(2) Each registering agency shall maintain a permanent record for each individual identification symbol. The record shall include, but need not be limited to, the name, address, and phone number of the horse owner and a general description of the horse. A copy of each permanent record shall be forwarded to the ((director)) board, if requested by the ((director)) board.

(3) Individual identification symbols shall be inspected as required for brands under RCW 16.57.220 ((and 16.57.380)). Any horse presented for inspection and bearing such a symbol, but not accompanied by proof of registration and certificate of permit, shall be sold as provided under RCW 16.57.290 through 16.57.330.

(4) The ((director)) board shall adopt such rules as are necessary for the effective administration of this section pursuant to chapter 34.05 RCW.

*Sec. 43 was vetoed. See message at end of chapter.

**Sec. 44. RCW 16.57.420 and 1993 c 105 s 3 are each amended to read as follows:*

The ~~((department))~~ livestock identification board may, in consultation with representatives of the ratite industry, develop by rule a system that provides for the identification of individual ratites through the use of microchipping. The ~~((department))~~ board may establish fees for the issuance or reissuance of microchipping numbers sufficient to cover the expenses of the ~~((department))~~ board.

*Sec. 44 was vetoed. See message at end of chapter.

*Sec. 45. RCW 16.58.020 and 1971 ex.s. c 181 s 2 are each amended to read as follows:

For the purpose of this chapter:

(1) "Livestock identification board" or "board" means the livestock identification board defined under RCW 16.57.010.

(2) "Certified feed lot" means any place, establishment, or facility commonly known as a commercial feed lot, cattle feed lot, or the like, which complies with all of the requirements of this chapter, and any ~~((regulations))~~ rules adopted pursuant to the provisions of this chapter and which holds a valid license from the ~~((director))~~ board as hereinafter provided.

~~((2)) "Department" means the department of agriculture of the state of Washington.~~

~~—(3) "Director" means the director of the department or his duly authorized representative.~~

~~—(4)) (3) "Licensee" means any persons licensed under the provisions of this chapter.~~

~~((5)) (4) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.~~

*Sec. 45 was vetoed. See message at end of chapter.

*Sec. 46. RCW 16.58.030 and 1971 ex.s. c 181 s 3 are each amended to read as follows:

The ~~((director))~~ board may adopt such rules ~~((and regulations))~~ as are necessary to carry out the purpose of this chapter. The adoption of such rules shall be subject to the provisions of this chapter and rules ~~((and regulations))~~ adopted hereunder. No person shall interfere with the ~~((director when he))~~ board when it is performing or carrying out any duties imposed ~~((upon him))~~ by this chapter or rules ~~((and regulations))~~ adopted hereunder.

*Sec. 46 was vetoed. See message at end of chapter.

*Sec. 47. RCW 16.58.040 and 1971 ex.s. c 181 s 4 are each amended to read as follows:

On or after August 9, 1971, any person desiring to engage in the business of operating one or more certified feed lots shall obtain an annual license from the ~~((director))~~ board for such purpose. The application for a license shall be on a form prescribed by the ~~((director))~~ board and shall include the following:

(1) *The number of certified feed lots the applicant intends to operate and their exact location and mailing address;*

(2) *The legal description of the land on which the certified feed lot will be situated;*

(3) *A complete description of the facilities used for feeding and handling of cattle at each certified feed lot;*

(4) *The estimated number of cattle which can be handled for feeding purposes at each such certified feed lot; and*

(5) *Any other information necessary to carry out the purpose and provisions of this chapter and rules ((or regulations)) adopted hereunder.*

*Sec. 47 was vetoed. See message at end of chapter.

*Sec. 48. *RCW 16.58.050 and 1997 c 356 s 4 are each amended to read as follows:*

The application for an annual license to engage in the business of operating one or more certified feed lots shall be accompanied by a license fee of seven hundred fifty dollars. Upon approval of the application by the ((director)) livestock identification board and compliance with the provisions of this chapter and rules adopted hereunder, the applicant shall be issued a license or a renewal thereof. The board shall conduct an inspection of all cattle and their corresponding ownership documents prior to issuing an original license. The inspection fee shall be the higher of the current inspection fee per head of cattle or time and mileage as set forth in RCW 16.57.220.

*Sec. 48 was vetoed. See message at end of chapter.

*Sec. 49. *RCW 16.58.060 and 1991 c 109 s 10 are each amended to read as follows:*

The ((director)) board shall establish by rule an expiration date or dates for all certified feed lot licenses. License fees shall be prorated where necessary to accommodate staggering of expiration dates of a license or licenses. If an application for renewal of a certified feed lot license is not received by the ((department)) board per the date required by rule or should a person fail, refuse, or neglect to apply for renewal of a preexisting license on or before the date of expiration, that person shall be assessed an additional twenty-five dollars which shall be added to the regular license fee and shall be paid before the ((director)) board may issue a license to the applicant.

*Sec. 49 was vetoed. See message at end of chapter.

*Sec. 50. *RCW 16.58.070 and 1989 c 175 s 54 are each amended to read as follows:*

The ((director)) livestock identification board is authorized to deny, suspend, or revoke a license in accord with the provisions of chapter 34.05 RCW if ((he)) it finds that there has been a failure to comply with any requirement of this chapter or rules ((and regulations)) adopted hereunder. Hearings for the

revocation, suspension, or denial of a license shall be subject to the provisions of chapter 34.05 RCW concerning adjudicative proceedings.

*Sec. 50 was vetoed. See message at end of chapter.

**Sec. 51. RCW 16.58.080 and 1971 ex.s. c 181 s 8 are each amended to read as follows:*

Every certified feed lot shall be equipped with a facility or a livestock pen, approved by the ((director)) livestock identification board as to location and construction within the ((said)) feed lot so that necessary ((brand)) livestock inspection can be carried on in a proper, expeditious and safe manner. Each licensee shall furnish the ((director)) board with sufficient help necessary to carry out ((brand)) livestock inspection in the manner set forth above.

*Sec. 51 was vetoed. See message at end of chapter.

**Sec. 52. RCW 16.58.095 and 1991 c 109 s 11 are each amended to read as follows:*

All cattle entering or reentering a certified feed lot must be inspected for brands upon entry, unless they are accompanied by a ((brand)) livestock inspection certificate issued by the ((director)) livestock identification board, or any other agency authorized in any state or Canadian province by law to issue such a certificate. Licensees shall report a discrepancy between cattle entering or reentering a certified feed lot and the ((brand)) livestock inspection certificate accompanying the cattle to the nearest ((brand)) livestock inspector immediately. A discrepancy may require an inspection of all the cattle entering or reentering the lot, except as may otherwise be provided by rule.

*Sec. 52 was vetoed. See message at end of chapter.

**Sec. 53. RCW 16.58.100 and 1979 c 81 s 3 are each amended to read as follows:*

The ((director)) livestock identification board shall each year conduct audits of the cattle received, fed, handled, and shipped by the licensee at each certified feed lot. Such audits shall be for the purpose of determining if such cattle correlate with the ((brand)) livestock inspection certificates issued in their behalf and that the certificate of assurance furnished the ((director)) board by the licensee correlates with his or her assurance that ((brand)) livestock inspected cattle were not commingled with uninspected cattle.

*Sec. 53 was vetoed. See message at end of chapter.

**Sec. 54. RCW 16.58.110 and 1991 c 109 s 12 are each amended to read as follows:*

All certified feed lots shall furnish the ((director)) livestock identification board with records as requested by ((him)) it from time to time on all cattle entering or on feed in ((said)) certified feed lots and dispersed therefrom. All such records shall be subject to examination by the ((director)) board for the purpose of maintaining the integrity of the identity of all such cattle. The

((director)) board may make the examinations only during regular business hours except in an emergency to protect the interest of the owners of such cattle.

**Sec. 54 was vetoed. See message at end of chapter.*

**Sec. 55. RCW 16.58.120 and 1991 c 109 s 13 are each amended to read as follows:*

The licensee shall maintain sufficient records as required by the ((director)) livestock identification board at each certified feed lot, if ((said)) the licensee operates more than one certified feed lot.

**Sec. 55 was vetoed. See message at end of chapter.*

**Sec. 56. RCW 16.58.130 and 1997 c 356 s 7 are each amended to read as follows:*

(1) Each licensee shall pay to the ((director)) livestock identification board a fee of ((twelve)) fifteen cents for each head of cattle handled through the licensee's feed lot. Payment of such fee shall be made by the licensee on a monthly basis. Failure to pay as required shall be grounds for suspension or revocation of a certified feed lot license. Further, the ((director)) board shall not renew a certified feed lot license if a licensee has failed to make prompt and timely payments.

(2) This section is null and void unless subsections (1) through (5) of section 2 of this act and section 98 of this act become law.

**Sec. 56 was vetoed. See message at end of chapter.*

**Sec. 57. RCW 16.58.140 and 1979 c 81 s 5 are each amended to read as follows:*

All fees provided for in this chapter shall be retained by the ((director)) board for the purpose of enforcing and carrying out the purpose and provisions of this chapter or chapter 16.57 RCW.

**Sec. 57 was vetoed. See message at end of chapter.*

**Sec. 58. RCW 16.58.150 and 1971 ex.s. c 181 s 15 are each amended to read as follows:*

No ((brand)) livestock inspection shall be required when cattle are moved or transferred from one certified feed lot to another or the transfer of cattle from a certified feed lot to a point within this state, or out of state where this state maintains ((brand)) livestock inspection, for the purpose of immediate slaughter.

**Sec. 58 was vetoed. See message at end of chapter.*

**Sec. 59. RCW 16.58.160 and 1991 c 109 s 15 are each amended to read as follows:*

The ((director)) board may, when a certified feed lot's conditions become such that the integrity of reports or records of the cattle therein becomes doubtful, suspend such certified feed lot's license until such time as the ((director)) board can conduct an investigation to carry out the purpose of this chapter.

**Sec. 59 was vetoed. See message at end of chapter.*

**Sec. 60. RCW 16.65.010 and 1983 c 298 s 1 are each amended to read as follows:*

For the purposes of this chapter:

(1) The term "public livestock market" means any place, establishment or facility commonly known as a "public livestock market", "livestock auction market", "livestock sales ring", yards selling on commission, or the like, conducted or operated for compensation or profit as a public livestock market, consisting of pens or other enclosures, and their appurtenances in which livestock is received, held, sold, kept for sale or shipment. The term does not include the operation of a person licensed under this chapter to operate a special open consignment horse sale.

(2) (~~"Department"~~ means the department of agriculture of the state of Washington:

— (3) "~~Director"~~ means the director of the department or his duly authorized representative:

— (4)) "Licensee" means any person licensed under the provisions of this chapter.

((5)) (3) "Livestock" includes horses, mules, burros, cattle, sheep, swine, and goats.

((6)) (4) "Livestock identification board" or "board" means the board created in RCW 16.57.015.

(5) "Person" means a natural person, individual, firm, partnership, corporation, company, society, and association, and every officer, agent or employee thereof. This term shall import either the singular or the plural as the case may be.

((7)) (6) "Stockyard" means any place, establishment, or facility commonly known as a stockyard consisting of pens or other enclosures and their appurtenances in which livestock services such as feeding, watering, weighing, sorting, receiving and shipping are offered to the public: PROVIDED, That stockyard shall not include any facilities where livestock is offered for sale at public auction, feed lots, or quarantined registered feed lots.

((8)) (7) "Packer" means any person engaged in the business of slaughtering, manufacturing, preparing meat or meat products for sale, marketing meat, meat food products or livestock products.

((9)) (8) "Deputy state veterinarian" means a graduate veterinarian authorized to practice in the state of Washington and appointed or deputized by the director of agriculture as his or her duly authorized representative.

((10)) (9) "Special open consignment horse sale" means a sale conducted by a person other than the operator of a public livestock market which is limited to the consignment of horses and donkeys only for sale on an occasional and seasonal basis.

**Sec. 60 was vetoed. See message at end of chapter.*

**Sec. 61. RCW 16.65.015 and 1983 c 298 s 2 are each amended to read as follows:*

This chapter does not apply to:

(1) A farmer selling his or her own livestock on the farmer's own premises by auction or any other method.

(2) A farmers' cooperative association or an association of livestock breeders when any class of their own livestock is assembled and offered for sale at a special sale on an occasional and seasonal basis under the association's management and responsibility, and the special sale has been approved by the ((director)) board in writing. However, the special sale shall be subject to brand and health inspection requirements as provided in this chapter for sales at public livestock markets.

*Sec. 61 was vetoed. See message at end of chapter.

**Sec. 62. RCW 16.65.020 and 1983 c 298 s 5 are each amended to read as follows:*

Public livestock markets and special open consignment horse sales shall be under the direction and supervision of the ((director)) livestock identification board, and the ((director)) board, but not ((his)) its duly authorized representative, may adopt such rules ((and regulations)) as are necessary to carry out the purpose of this chapter. It shall be the duty of the ((director)) board to enforce and carry out the provisions of this chapter and rules ((and regulations)) adopted hereunder. No person shall interfere with the ((director)) board when ((he)) it is performing or carrying out any duties imposed upon ((him)) it by this chapter or rules ((and regulations)) adopted hereunder.

*Sec. 62 was vetoed. See message at end of chapter.

**Sec. 63. RCW 16.65.030 and 1995 c 374 s 54 are each amended to read as follows:*

(1) ~~((On and after June 10, 1959,))~~ No person shall operate a public livestock market without first having obtained a license from the ((director)) livestock identification board. Application for ((such)) a license shall be in writing on forms prescribed by the ((director)) board, and shall include the following:

(a) A nonrefundable original license application fee of fifteen hundred dollars.

(b) A legal description of the property upon which the public livestock market shall be located.

(c) A complete description and blueprints or plans of the public livestock market physical plant, yards, pens, and all facilities the applicant proposes to use in the operation of such public livestock market.

(d) ~~((A detailed statement showing all the assets and liabilities of the applicant which must reflect a sufficient net worth to construct or operate a public livestock market.))~~ A financial statement, compiled or audited by a certified or licensed public accountant, to determine whether or not the applicant meets the minimum net worth requirements, established by the director by rule, to construct and/or operate a public livestock market. If the applicant is a subsidiary of a larger company, corporation, society, or

cooperative association, both the parent company and the subsidiary company must submit a financial statement to determine whether or not the applicant meets the minimum net worth requirements. All financial statement information required by this subsection is confidential information and not subject to public disclosure.

(e) The schedule of rates and charges the applicant proposes to impose on the owners of livestock for services rendered in the operation of such livestock market.

(f) The weekly or monthly sales day or days on which the applicant proposes to operate his or her public livestock market sales and the class of livestock that may be sold on these days.

(g) Projected source and quantity of livestock((,by county,)) anticipated to be handled.

(h) Projected ((income and expense statements for)) gross dollar volume of business to be carried on, at, or through the public livestock market during the first year's operation.

(i) Facts upon which ((are)) is based the conclusion that the trade area and the livestock industry will benefit because of the proposed market.

(j) ((Such)) Other information as the ((director)) board may ((reasonably)) require by rule.

~~(2) ((The director shall, after public hearing as provided by chapter 34.05 RCW, grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to all of the requirements of this section and giving reasonable consideration at the same hearing to:~~

~~—(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application; and~~

~~—(b) The present market services elsewhere available to the trade area proposed to be served;~~

~~—(3) Applications for renewal under RCW 16.65.040 shall include all information under subsection (1) of this section, except subsection (1)(a) of this section:)) If the board determines that the applicant meets all the requirements of subsection (1) of this section, the board shall conduct a public hearing as provided by chapter 34.05 RCW, and shall grant or deny an application for original license for a public livestock market after considering evidence and testimony relating to the requirements of this section and giving reasonable consideration to:~~

~~(a) Benefits to the livestock industry to be derived from the establishment and operation of the public livestock market proposed in the application;~~

~~(b) The geographical area that will be affected;~~

~~(c) The conflict, if any, with sales days already allocated in the area;~~

~~(d) The amount and class of livestock available for marketing in the area;~~

~~(e) Buyers available to the proposed market; and~~

~~(f) Any other conditions affecting the orderly marketing of livestock.~~

(3) Before a license is issued to operate a public livestock market, the applicant must:

(a) Execute and deliver to the board a surety bond as required under RCW 16.65.200;

(b) Provide evidence of a custodial account, as required under RCW 16.65.140, for the consignor's proceeds;

(c) Pay the appropriate license fee; and

(d) Provide other information required under this chapter and rules adopted under this chapter.

*Sec. 63 was vetoed. See message at end of chapter.

*Sec. 64. RCW 16.65.037 and 1997 c 356 s 8 are each amended to read as follows:

(1) Upon the approval of the application by the ~~((director))~~ livestock identification board and compliance with the provisions of this chapter, the applicant shall be issued a license or renewal thereof. Any license issued under the provisions of this chapter shall only be valid at location and for the sales day or days for which the license was issued.

(2) The license fee shall be based on the average gross sales volume per official sales day of that market:

(a) Markets with an average gross sales volume up to and including ten thousand dollars, a one hundred fifty dollar fee;

(b) Markets with an average gross sales volume over ten thousand dollars and up to and including fifty thousand dollars, a three hundred fifty dollar fee; and

(c) Markets with an average gross sales volume over fifty thousand dollars, a four hundred fifty dollar fee.

The fees for public market licenses shall be set by the ~~((director))~~ board by rule subsequent to a hearing under chapter 34.05 RCW and in conformance with RCW 16.57.015.

(3) Any applicant operating more than one public livestock market shall make a separate application for a license to operate each such public livestock market, and each such application shall be accompanied by the appropriate application fee.

*Sec. 64 was vetoed. See message at end of chapter.

*Sec. 65. RCW 16.65.040 and 1983 c 298 s 6 are each amended to read as follows:

All public livestock market licenses provided for in this chapter shall expire on March 1st subsequent to the date of issue. Any person who fails, refuses, or neglects to apply for a renewal of a preexisting license on or before the date of expiration, shall pay a penalty of twenty-five dollars, which shall be added to the regular license fee, before such license may be renewed by the ~~the~~ ~~((director))~~ livestock identification board.

*Sec. 65 was vetoed. See message at end of chapter.

**Sec. 66. RCW 16.65.042 and 1983 c 298 s 3 are each amended to read as follows:*

(1) A person shall not operate a special open consignment horse sale without first obtaining a license from the ((director)) livestock identification board. The application for the license shall include:

(a) A detailed statement showing all of the assets and liabilities of the applicant;

(b) The schedule of rates and charges the applicant proposes to impose on the owners of horses for services rendered in the operation of the horse sale;

(c) The specific date and exact location of the proposed sale;

(d) Projected quantity and approximate value of horses to be handled; and

(e) Such other information as the ((director)) board may reasonably require.

(2) The application shall be accompanied by a license fee of one hundred dollars. Upon the approval of the application by the ((director)) board and compliance with this chapter, the applicant shall be issued a license. A special open consignment horse sale license is valid only for the specific date or dates and exact location for which the license was issued.

**Sec. 66 was vetoed. See message at end of chapter.*

**Sec. 67. RCW 16.65.050 and 1959 c 107 s 5 are each amended to read as follows:*

All fees ((provided-for)) collected or received by the board under this chapter shall be ((retained-by-the-director)) deposited by the board in the livestock identification account created in section 3 of this act. Moneys collected under this chapter may be expended by the board without appropriation for the purpose of enforcing this chapter.

**Sec. 67 was vetoed. See message at end of chapter.*

**Sec. 68. RCW 16.65.080 and 1985 c 415 s 9 are each amended to read as follows:*

(1) The ((director)) livestock identification board is authorized to deny, suspend, or revoke a license in the manner prescribed herein, when there are findings by the ((director)) board that any licensee (a) has been guilty of fraud or misrepresentation as to titles, charges, numbers, brands, weights, proceeds of sale, or ownership of livestock; (b) has attempted payment to a consignor by a check the licensee knows not to be backed by sufficient funds to cover such check; (c) has violated any of the provisions of this chapter or rules ((and regulations)) adopted hereunder; (d) has violated any laws of the state that require health or ((brand)) livestock inspection of livestock; (e) has violated any condition of the bond, as provided in this chapter. However, the ((director)) board may deny a license if the applicant refuses to accept the sales day or days allocated to ((him)) it under the provisions of this chapter.

(2) In all proceedings for revocation, suspension, or denial of a license the licensee or applicant shall be given an opportunity to be heard in regard to such revocation, suspension or denial of a license. The ((director)) board shall give

the licensee or applicant twenty days' notice in writing and such notice shall specify the charges or reasons for such revocation, suspension or denial. The notice shall also state the date, time and place where such hearing is to be held. Such hearings shall be held in the city where the licensee has his or her principal place of business, or where the applicant resides, unless some other place be agreed upon by the parties, and the defendant may be represented by counsel.

(3) The ((director)) board may issue subpoenas to compel the attendance of witnesses, and/or the production of books or documents anywhere in the state. The applicant or licensee shall have opportunity to be heard, and may have such subpoenas issued as he or she desires. Subpoenas shall be served in the same manner as in civil cases in the superior court. Witnesses shall testify under oath which may be administered by the ((director)) board. Testimony shall be recorded, and may be taken by deposition under such rules as the ((director)) board may prescribe.

(4) The ((director)) board shall hear and determine the charges, make findings and conclusions upon the evidence produced, and file them in ((his)) its office, together with a record of all of the evidence, and serve upon the accused a copy of such findings and conclusions.

*Sec. 68 was vetoed. See message at end of chapter.

**Sec. 69. RCW 16.65.090 and 1997 c 356 s 10 are each amended to read as follows:*

The ((director)) livestock identification board shall provide for ((brand)) livestock inspection. When such ((brand)) livestock inspection is required the licensee shall collect from the consignor and pay to the ((department)) board, as provided by law, a fee for ((brand)) livestock inspection for each animal consigned to the public livestock market or special open consignment horse sale. However, if in any one sale day the total fees collected for ((brand)) livestock inspection do not exceed ninety dollars, then such licensee shall pay ninety dollars for such ((brand)) livestock inspection or as much thereof as the ((director)) board may prescribe.

*Sec. 69 was vetoed. See message at end of chapter.

**Sec. 70. RCW 16.65.100 and 1983 c 298 s 9 are each amended to read as follows:*

The licensee of each public livestock market or special open consignment horse sale shall collect from any purchaser of livestock requesting ((brand)) livestock inspection a fee as provided by law for each animal inspected. Such fee shall be in addition to the fee charged to the consignor for ((brand)) livestock inspection and shall not apply to the minimum fee chargeable to the licensee.

*Sec. 70 was vetoed. See message at end of chapter.

**Sec. 71. RCW 16.65.140 and 1971 ex.s. c 192 s 4 are each amended to read as follows:*

Each licensee shall establish a custodial account for consignor's proceeds. All funds derived from the sale of livestock handled on a commission or agency basis shall be deposited in that account. Such account shall be drawn on only for the payment of net proceeds to the consignor, or such other person or persons of whom such licensee has knowledge is entitled to such proceeds, and to obtain from such proceeds only the sums due the licensee as compensation for his or her services as are set out in his or her tariffs, and for such sums as are necessary to pay all legal charges against the consignment of livestock which the licensee in his or her capacity as agent is required to pay for on behalf of the consignor or shipper. The licensee in each case shall keep such accounts and records that will at all times disclose the names of the consignors and the amount due and payable to each from the funds in the custodial account for consignor's proceeds. The licensee shall maintain the custodial account for consignor's proceeds in a manner that will expedite examination by the ((director)) livestock identification board and reflect compliance with the requirements of this section.

*Sec. 71 was vetoed. See message at end of chapter.

*Sec. 72. RCW 16.65.190 and 1983 c 298 s 12 arc each amended to read as follows:

No person shall hereafter operate a public livestock market or special open consignment horse sale unless such person has filed a schedule with the application for license to operate such public livestock market or special open consignment horse sale. Such schedule shall show all rates and charges for stockyard services to be furnished by such person at such public livestock market or special open consignment horse sale.

(1) Schedules shall be posted conspicuously at the public livestock market or special open consignment horse sale, and shall plainly state all such rates and charges in such detail as the ((director)) livestock identification board may require, and shall state any rules ((and regulations)) which in any manner change, affect, or determine any part of the aggregate of such rates or charges, or the value of the stockyard services furnished. The ((director)) board may determine and prescribe the form and manner in which such schedule shall be prepared, arranged and posted.

(2) No changes shall be made in rates or charges so filed and published except after thirty days' notice to the ((director)) board and to the public filed and posted as aforesaid, which shall plainly state the changes proposed to be made and the time such changes will go into effect.

(3) No licensee shall charge, demand or collect a greater or a lesser or a different compensation for such service than the rates and charges specified in the schedule filed with the ((director)) board and in effect at the time; nor shall a licensee refund or remit in any manner any portion of the rates or charges so specified (but this shall not prohibit a cooperative association of producers from properly returning to its members, on a patronage basis, its excess earnings on their livestock); nor shall a licensee extend to any person at such public

livestock market or special open consignment horse sale any stockyard services except such as are specified in such schedule.

*Sec. 72 was vetoed. See message at end of chapter.

**Sec. 73. RCW 16.65.200 and 1983 c 298 s 13 are each amended to read as follows:*

Before the license is issued to operate a public livestock market or special open consignment horse sale, the applicant shall execute and deliver to the ((director)) livestock identification board a surety bond in a sum as herein provided for, executed by the applicant as principal and by a surety company qualified and authorized to do business in this state as surety. ((Said)) The bond shall be a standard form and approved by the ((director)) board as to terms and conditions. ((Said)) The bond shall be conditioned that the principal will not commit any fraudulent act and will comply with the provisions of this chapter and the rules ((and/or regulations)) ndopted hereunder. ((Said)) The bond shall be to the state in favor of every consignor and/or vendor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale: PROVIDED, That if such applicant is bonded as a market agency under the provisions of the packers and stockyards act, (7 U.S.C. 181) as amended, on March 20, 1961, in a sum equal to or greater than the sum required under the provisions of this chapter, and such applicant furnishes the ((director)) board with a bond approved by the United States secretary of agriculture ((naming the department as trustee)), the ((director)) board may accept such bond and its method of termination in lieu of the bond provided for herein and issue a license if such applicant meets all the other requirements of this chapter.

The total and aggregate liability of the surety for all claims upon the bond shall be limited to the face of such bond. Every bond filed with and approved by the ((director)) board shall, without the necessity of periodic renewal, remain in force and effect until such time as the license of the licensee is revoked for cause or otherwise canceled. The surety on a bond, as provided herein, shall be released and discharged from all liability to the state accruing on such bond upon compliance with the provisions of RCW 19.72.110 concerning notice and proof of service, as enacted or hereafter amended, but this shall not operate to relieve, release or discharge the surety from any liability already accrued or which shall accrue (due and to become due hereunder) before the expiration period provided for in RCW 19.72.110 concerning notice and proof of service as enacted or hereafter amended, and unless the principal shall before the expiration of such period, file a new bond, the ((director)) board shall forthwith cancel the principal's license.

*Sec. 73 was vetoed. See message at end of chapter.

**Sec. 74. RCW 16.65.220 and 1971 ex.s. c 192 s 7 are each amended to read as follows:*

If the application for a license to operate a public livestock market is from a new public livestock market which has not operated in the past twelve-month

period, the ((director)) livestock identification board shall determine a bond, in a reasonable sum, that the applicant shall execute in favor of the state, which shall not be less than ten thousand dollars nor greater than twenty-five thousand dollars: PROVIDED, That the ((director)) board may at any time, upon written notice, review the licensee's operations and determine whether, because of increased or decreased sales, the amount of the bond should be altered.

*Sec. 74 was vetoed. See message at end of chapter.

**Sec. 75. RCW 16.65.235 and 1973 c 142 s 3 are each amended to read as follows:*

In lieu of the surety bond required under the provisions of this chapter, an applicant or licensee may file with the ((director)) livestock identification board a deposit consisting of cash or other security acceptable to the ((director)) board. The ((director)) board may adopt rules ((and regulations)) necessary for the administration of such security.

*Sec. 75 was vetoed. See message at end of chapter.

**Sec. 76. RCW 16.65.250 and 1959 c 107 s 25 are each amended to read as follows:*

The ((director)) livestock identification board or any vendor or consignor creditor may also bring action upon ((said)) the bond against both principal and surety in any court of competent jurisdiction to recover the damages caused by any failure to comply with the provisions of this chapter and the rules ((and regulations)) adopted hereunder.

*Sec. 76 was vetoed. See message at end of chapter.

**Sec. 77. RCW 16.65.260 and 1983 c 298 s 14 are each amended to read as follows:*

In case of failure by a licensee to pay amounts due a vendor or consignor creditor whose livestock was handled or sold through or at the licensee's public livestock market or special open consignment horse sale, as evidenced by a verified complaint filed with the ((director)) livestock identification board, the ((director)) board may proceed forthwith to ascertain the names and addresses of all vendor or consignor creditors of such licensee, together with the amounts due and owing to them and each of them by such licensee, and shall request all such vendor and consignor creditors to file a verified statement of their respective claims with the ((director)) board. Such request shall be addressed to each known vendor or consignor creditor at his or her last known address.

*Sec. 77 was vetoed. See message at end of chapter.

**Sec. 78. RCW 16.65.270 and 1959 c 107 s 27 are each amended to read as follows:*

If a vendor or consignor creditor so addressed fails, refuses or neglects to file in the office of the ((director-his)) livestock identification board a verified claim as requested by the ((director)) board within sixty days from the date of

such request, the ((director)) board shall thereupon be relieved of further duty or action hereunder on behalf of ((said)) the producer or consignor creditor.

*Sec. 78 was vetoed. See message at end of chapter.

*Sec. 79. RCW 16.65.280 and 1959 c 107 s 28 are each amended to read as follows:

Where by reason of the absence of records, or other circumstances making it impossible or unreasonable for the ((director)) livestock identification board to ascertain the names and addresses of all ((said)) the vendor and consignor creditors, the ((director)) board, after exerting due diligence and making reasonable inquiry to secure ((said)) the information from all reasonable and available sources, may make demand on ((said)) the bond on the basis of information then in ((his)) its possession, and thereafter shall not be liable or responsible for claims or the handling of claims which may subsequently appear or be discovered.

*Sec. 79 was vetoed. See message at end of chapter.

*Sec. 80. RCW 16.65.290 and 1959 c 107 s 29 are each amended to read as follows:

Upon ascertaining all claims and statements in the manner herein set forth, the ((director)) livestock identification board may then make demand upon the bond on behalf of those claimants whose statements have been filed, and shall have the power to settle or compromise ((said)) the claims with the surety company on the bond, and is empowered in such cases to execute and deliver a release and discharge of the bond involved.

*Sec. 80 was vetoed. See message at end of chapter.

*Sec. 81. RCW 16.65.300 and 1959 c 107 s 30 are each amended to read as follows:

Upon the refusal of the surety company to pay the demand, the ((director)) livestock identification board may thereupon bring an action on the bond in behalf of ((said)) the vendor and consignor creditors. Upon any action being commenced on ((said)) the bond, the ((director)) board may require the filing of a new bond. Immediately upon the recovery in any action on such bond such licensee shall file a new bond. Upon failure to file the same within ten days, in either case, such failure shall constitute grounds for the suspension or revocation of his or her license.

*Sec. 81 was vetoed. See message at end of chapter.

*Sec. 82. RCW 16.65.310 and 1959 c 107 s 31 are each amended to read as follows:

In any settlement or compromise by the ((director)) livestock identification board with a surety company as provided in RCW 16.65.290, where there are two or more consignor and/or vendor creditors that have filed claims, either fixed or contingent, against a licensee's bond, such creditors shall share pro rata in the proceeds of the bond to the extent of their actual damage: PROVIDED, That the claims of the state and the ((department)) board which

may accrue from the conduct of the licensee's public livestock market shall have priority over all other claims.

*Sec. 82 was vetoed. See message at end of chapter.

**Sec. 83. RCW 16.65.320 and 1985 c 415 s 10 are each amended to read as follows:*

For the purpose of enforcing the provisions of this chapter, the ~~((director))~~ livestock identification board on the ~~((director's))~~ board's own motion or upon the verified complaint of any vendor or consignor against any licensee, or agent, or any person assuming or attempting to act as such, shall have full authority to make any and all necessary investigations. The ~~((director))~~ board is empowered to administer oaths of verification of such complaints.

*Sec. 83 was vetoed. See message at end of chapter.

**Sec. 84. RCW 16.65.330 and 1959 c 107 s 33 are each amended to read as follows:*

For the purpose of making investigations as provided for in RCW 16.65.320, the ~~((director))~~ livestock identification board may enter a public livestock market and examine any records required under the provisions of this chapter. The ~~((director))~~ board shall have full authority to issue subpoenas requiring the attendance of witnesses before ~~((him))~~ it, together with all books, memorandums, papers, and other documents relative to the matters under investigation, and to administer oaths and take testimony thereunder.

*Sec. 84 was vetoed. See message at end of chapter.

**Sec. 85. RCW 16.65.340 and 1967 c 192 s 2 are each amended to read as follows:*

The ~~((director))~~ livestock identification board shall, when livestock is sold, traded, exchanged or handled at or through a public livestock market, require such testing, treating, identifying, examining and record keeping of such livestock by a ~~((deputy))~~ state licensed and accredited veterinarian employed by the market as in the ~~((director's))~~ board's judgment may be necessary to prevent the spread of brucellosis, tuberculosis, paratuberculosis, ~~((hog-cholera))~~ pseudorabies, or any other infectious, contagious or communicable disease among the livestock of this state. The state veterinarian or his or her authorized representative may conduct additional testing and examinations for the same purpose.

*Sec. 85 was vetoed. See message at end of chapter.

**Sec. 86. RCW 16.65.350 and 1959 c 107 s 35 are each amended to read as follows:*

~~((+))~~ The director of the department of agriculture shall ~~((perform all tests and make all examinations required under the provisions of this chapter and rules and regulations adopted hereunder: PROVIDED, That veterinary inspectors of the United States department of agriculture may be appointed by the director to make such examinations and tests as are provided for in this~~

~~chapter without bond or compensation, and shall have the same authority and power in this state as a deputy state veterinarian.~~

~~—(2) The director shall have the responsibility for the direction and control of) adopt rules regarding sanitary practices and health practices and standards and for the examination of animals at public livestock markets.~~ ~~((The deputy state veterinarian at any such public livestock market shall notify the licensee or his managing agent, in writing, of insanitary practices or conditions. Such deputy state veterinarian shall notify the director if the improper sanitary practices or conditions are not corrected within the time specified. The director shall investigate and upon finding such report correct shall take appropriate action to hold a hearing on the suspension or revocation of the licensee's license.))~~

*Sec. 86 was vetoed. See message at end of chapter.

*Sec. 87. RCW 16.65.360 and 1959 c 107 s 36 are each amended to read as follows:

Licensees shall provide facilities and sanitation for the prevention of livestock diseases at their public livestock markets, as follows:

(1) *The floors of all pens and alleys that are part of a public livestock market shall be constructed of concrete or similar impervious material and kept in good repair, with a slope of not less than one-fourth inch per foot to adequate drains leading to an approved sewage system: PROVIDED, That the ((director)) livestock identification board may designate certain pens within such public livestock markets as feeding and holding pens and the floors and alleys of such pens shall not be subject to the aforementioned surfacing requirements.*

(2) *Feeding and holding pens maintained in an area adjacent to a public livestock market shall be constructed and separated from such public livestock market, in a manner prescribed by the director of agriculture, in order to prevent the spread of communicable diseases to the livestock sold or held for sale in such public livestock market.*

(3) *All yards, chutes and pens used in handling livestock shall be constructed of such materials which will render them easily cleaned and disinfected, and such yards, pens and chutes shall be kept clean, sanitary and in good repair at all times, as required by the director of agriculture.*

(4) *Sufficient calf pens of adequate size to prevent overcrowding shall be provided, and such pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.*

(5) *All swine pens, when used, shall be cleaned and disinfected no later than the day subsequent to each sale.*

(6) *A water system carrying a pressure of forty pounds and supplying sufficient water to thoroughly wash all pens, floors, alleys and equipment shall be provided.*

(7) *Sufficient quarantine pens of adequate capacity shall be provided. Such pens shall be used to hold only cattle reacting to brucellosis and tuberculosis or*

to quarantine livestock with other contagious or communicable diseases and shall be:

- (a) hard surfaced with concrete or similar impervious material and shall be kept in good repair;
- (b) provided with separate watering facilities;
- (c) painted white with the word "quarantine" painted in red letters not less than four inches high on such quarantine pen's gate;
- (d) provided with a tight board fence not less than five and one-half feet high;
- (e) cleaned and disinfected not later than one day subsequent to the date of sale.

To prevent the spread of communicable diseases among livestock, the director of agriculture shall have the authority to cause the cleaning and disinfecting of any area or all areas of a public livestock market and equipment or vehicles with a complete coverage of disinfectants approved by the director.

*Sec. 87 was vetoed. See message at end of chapter.

*Sec. 88. RCW 16.65.420 and 1991 c 17 s 3 are each amended to read as follows:

(1) Any application for sales days or days for a new salesyard, and any application for a change of sales day or days or additional sales day or days for an existing yard shall be subject to approval by the ((director)) livestock identification board, subsequent to a hearing as provided for in this chapter and the ((director)) board is hereby authorized to allocate these dates and type and class of livestock which may be sold on these dates. In considering the allocation of such sales days, the ((director)) board shall give appropriate consideration, among other relevant factors, to the following:

- (a) The geographical area which will be affected;
- (b) The conflict, if any, with sales days already allocated in the area;
- (c) The amount and class of livestock available for marketing in the area;
- (d) Buyers available to such market;
- (e) Any other conditions affecting the orderly marketing of livestock.

(2) No special sales shall be conducted by the licensee unless the licensee has applied to the ((director)) board in writing fifteen days prior to such proposed sale and such sale date shall be approved at the discretion of the ((director)) board.

(3) In any case that a licensee fails to conduct sales on the sales days allocated to the licensee, the ((director)) board shall, subsequent to a hearing, be authorized to revoke an allocation for nonuse. The rate of usage required to maintain an allocation shall be established by rule.

*Sec. 88 was vetoed. See message at end of chapter.

*Sec. 89. RCW 16.65.422 and 1963 c 232 s 17 are each amended to read as follows:

A producer of purebred livestock may, upon obtaining a permit from the ((director)) livestock identification board, conduct a public sale of the purebred

livestock on an occasional or seasonal basis on premises other than his or her own farm. Application for such special sale shall be in writing to the ((director)) board for ((his)) its approval at least fifteen days before the proposed public sale is scheduled to be held by such producer.

*Sec. 89 was vetoed. See message at end of chapter.

**Sec. 90. RCW 16.65.423 and 1983 c 298 s 16 are each amended to read as follows:*

The ((director)) livestock identification board shall have the authority to issue a public livestock market license pursuant to the provisions of this chapter limited to the sale of horses and/or mules and to allocate a sales day or days to such licensee. The ((director)) board is hereby authorized and directed to adopt ((regulations)) rules for facilities and sanitation applicable to such a license. The facility requirements of RCW 16.65.360 shall not be applicable to such licensee's operation as provided for in this section.

*Sec. 90 was vetoed. See message at end of chapter.

**Sec. 91. RCW 16.65.424 and 1963 c 232 s 19 are each amended to read as follows:*

The ((director)) livestock identification board shall have the authority to grant a licensee an additional sales day or days limited to the sale of horses and/or mules and may if requested grant the licensee, by permit, the authority to have the sale at premises other than at his or her public livestock market if the facilities are approved by the ((director)) board as being adequate for the protection of the health and safety of such horses and/or mules. For the purpose of such limited sale the facility requirements of RCW 16.65.360 shall not be applicable.

*Sec. 91 was vetoed. See message at end of chapter.

**Sec. 92. RCW 16.65.445 and 1989 c 175 s 55 are each amended to read as follows:*

The ((director)) livestock identification board shall hold public hearings upon a proposal to promulgate any new or amended ((regulations)) rules and all hearings for the denial, revocation, or suspension of a license issued under this chapter or in any other adjudicative proceeding, and shall comply in all respects with chapter 34.05 RCW, the Administrative Procedure Act.

*Sec. 92 was vetoed. See message at end of chapter.

**Sec. 93. RCW 16.65.450 and 1991 c 17 s 4 are each amended to read as follows:*

Any licensee or applicant who feels aggrieved by an order of the ((director)) livestock identification board may appeal to the superior court of the county in the state of Washington of the residence of the licensee or applicant where the trial on such appeal shall be held de novo.

*Sec. 93 was vetoed. See message at end of chapter.

**Sec. 94. RCW 16.04.025 and 1989 c 286 s 21 are each amended to read as follows:*

If the owner or the person having in charge or possession such animals is unknown to the person sustaining the damage, the person retaining such animals shall, within twenty-four hours, notify the county sheriff or the nearest state brand inspector as to the number, description, and location of the animals. The county sheriff or brand inspector shall examine the animals by brand, tattoo, or other identifying characteristics and attempt to ascertain ownership. If the animal is marked with a brand or tattoo which is registered with the ((director of agriculture)) livestock identification board, the brand inspector or county sheriff shall furnish this information and other pertinent information to the person holding the animals who in turn shall send the notice required in RCW 16.04.020 to the animals' owner of record by certified mail.

If the county sheriff or the brand inspector determines that there is no apparent damage to the property of the person retaining the animals, or if the person sustaining the damage contacts the county sheriff or brand inspector to have the animals removed from his or her property, such animals shall be removed in accordance with chapter 16.24 RCW. Such removal shall not prejudice the property owner's ability to recover damages through civil suit.

**Sec. 94 was vetoed. See message at end of chapter.*

**Sec. 95. RCW 41.06.070 and 1996 c 319 s 3, 1996 c 288 s 33, and 1996 c 186 s 109 are each reenacted and amended to read as follows:*

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

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

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

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

(d) The officers of the Washington state patrol;

(e) Elective officers of the state;

(f) The chief executive officer of each agency;

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

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

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

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

or committee; and the confidential secretary of the chief executive officer of the board, commission, or committee;

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

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

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

(j) Assistant attorneys general;

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

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

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

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

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

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

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

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

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

(t) Officers and employees of the state wheat commission formed under chapter 15.63 RCW;

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

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

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

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

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

(z) *Up to a total of five senior staff positions of the western library network under chapter 27.26 RCW responsible for formulating policy or for directing program management of a major administrative unit. This subsection (1)(z) shall expire on June 30, 1997;*

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

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

(cc) *Officers and employees of the livestock identification board created under RCW 16.57.015.*

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

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

(b) *Student, part-time, or temporary employees, and part-time professional consultants, as defined by the Washington personnel resources board, employed by institutions of higher education and related boards;*

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

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

(3) In addition to the exemptions specifically provided by this chapter, the Washington personnel resources board may provide for further exemptions pursuant to the following procedures. The governor or other appropriate elected official may submit requests for exemption to the Washington personnel resources board stating the reasons for requesting such exemptions. The Washington personnel resources board shall hold a public hearing, after proper notice, on requests submitted pursuant to this subsection. If the board determines that the position for which exemption is requested is one involving substantial responsibility for the formulation of basic agency or executive policy or one involving directing and controlling program operations of an agency or a major administrative division thereof, the Washington personnel resources board shall grant the request and such determination shall be final as to any decision made before July 1, 1993. The total number of additional exemptions permitted under this subsection shall not exceed one percent of the number of employees in the classified service not including employees of institutions of higher education and related boards for those agencies not directly under the authority of any elected public official other than the governor, and shall not exceed a total of twenty-five for all agencies under the authority of elected public officials other than the governor. The Washington personnel resources board shall report to each regular session of the legislature during an odd-numbered year all exemptions granted under subsections (1)(w) and (x) and (2) of this section, together with the reasons for such exemptions.

The salary and fringe benefits of all positions presently or hereafter exempted except for the chief executive officer of each agency, full-time members of boards and commissions, administrative assistants and confidential secretaries in the immediate office of an elected state official, and the personnel listed in subsections (1)(j) through (v), (y), (z), and (2) of this section, shall be determined by the Washington personnel resources board. However, beginning with changes proposed for the 1997-99 fiscal biennium, changes to the classification plan affecting exempt salaries must meet the same provisions for classified salary increases resulting from adjustments to the classification plan as outlined in RCW 41.06.152.

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

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

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

**Sec. 95 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 96. A new section is added to chapter 42.17 RCW to read as follows:*

Financial statements provided under RCW 16.65.030(1)(d) are exempt from disclosure under this chapter.

**Sec. 96 was vetoed. See message at end of chapter.*

**Sec. 97. RCW 43.23.230 and 1988 c 254 s 1 are each amended to read as follows:*

The agricultural local fund is hereby established in the custody of the state treasurer. The fund shall consist of such money as is directed by law for deposit in the fund, and such other money not subject to appropriation that the department authorizes to be deposited in the fund. Any money deposited in the fund, the use of which has been restricted by law, may only be expended in accordance with those restrictions. Except as provided in section 3 of this act, the department may make disbursements from the fund. The fund is not subject to legislative appropriation.

**Sec. 97 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 98. (1) On the effective date of this section, all powers, duties, and functions of the department of agriculture under chapters 16.57, 16.58, and 16.65 RCW except those identified as remaining with the department in RCW 16.65.350 and 16.65.360 are transferred to the livestock identification board. The authority to adopt rules regarding those powers, duties, and functions is transferred to the livestock identification board and the administration of those powers, duties, and functions is transferred to the board.*

(2)(a) All funds, credits, or other assets, including but not limited to those in the agricultural local fund, held by the department of agriculture in connection with the powers, functions, and duties transferred shall be assigned to the board.

(b) At any time after June 30, 2004, and at the conclusion of a contract under which the department of agriculture conducts by contract activities for the livestock identification board, the board may request the transfer and the department shall, upon such a request, transfer to the custody of the board all reports, documents, surveys, books, records, files, papers, or written material in the possession of the department of agriculture pertaining to the functions performed by contract by the department for the board and all cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department to perform such duties on behalf of the board.

(e) Whenever any question arises as to the transfer of any funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and

functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules of the department of agriculture adopted under chapter 16.57 RCW in effect on the effective date of this section, all rules adopted by the department under chapter 16.58 RCW in effect on the effective date of this section, and all rules adopted by the department under chapter 16.65 RCW, except for those adopted under the authorities retained by the department under RCW 16.65.350 and 16.65.360, in effect on the effective date of this section are, on the effective date of this section, rules of the livestock identification board. All proposed rules and all pending business before the department of agriculture pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the board. All existing contracts and obligations shall remain in full force and shall be performed by the board. All registrations made with the department under chapter 16.57 RCW, all licenses issued by the department under chapter 16.58 RCW, and all licenses issued by the department under chapter 16.65 RCW before the effective date of this section shall be considered to be registrations with and licenses issued by the board.

(4) The transfer of the powers, duties, and functions of the department of agriculture shall not affect the validity of any act performed before the effective date of this section. The board shall take action to enforce against violations of chapters 16.57, 16.58, and 16.65 RCW and rules adopted thereunder regarding authorities transferred to the board by this act which occurred before the effective date of this section and for which enforcement is not taken by the department before the effective date of this section with the same force and effect as it may take actions to enforce chapters 16.57 and 16.58 RCW and rules adopted thereunder after the effective date of this section. Any enforcement action taken by the department of agriculture under chapter 16.57, 16.58, or 16.65 RCW regarding authorities transferred to the board by this act, or the rules adopted thereunder and not concluded before the effective date of this section, shall be continued in the name of the board.

(5) As used in this section "livestock identification board" and "board" means the board created under RCW 16.57.015.

**Sec. 98 was vetoed. See message at end of chapter.*

****NEW SECTION. Sec. 99. (1) The following acts or parts of acts are each repealed:***

- (a) 1997 c 356 s 3;*
- (b) 1997 c 356 s 5;*
- (c) 1997 c 356 s 9;*
- (d) 1997 c 356 s 11;*
- (e) RCW 16.57.380 and 1991 c 110 s 8, 1981 c 296 s 22, & 1974 ex.s. c 38 s 1; and*
- (f) RCW 16.65.110 and 1959 c 107 s 11.*

(2) This section is null and void unless subsections (1) through (5) of section 2 of this act and section 98 of this act become law.

*Sec. 99 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 100. This act takes effect July 1, 1998, except that appointments may be made by the governor and proposed contracts may be developed under RCW 16.57.015 prior to July 1, 1998, to provide for an orderly transition of authority under this act.*

*Sec. 100 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 101. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, sections 1 through 4 and 7 through 100 of this act are null and void.*

*Sec. 101 was vetoed. See message at end of chapter.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 2, 3, 4, and 7 through 101, Engrossed Substitute Senate Bill No. 6204 entitled:

"AN ACT Relating to livestock identification;"

ESSB 6204 would transfer program administration for livestock inspection to a seven-member board, all of whose voting members would be industry representatives. The board would administer a regulatory program with rule-making, fee-setting and enforcement powers. It would use its budget without legislative appropriation and be given a vast array of responsibilities, including entering into agreements with other states on behalf of Washington.

This approach is fraught with problems, conflicts of interest, and lacks any accountability to the public. But most seriously, the underlying problem — the inadequate fee system under the current law — is not remedied by this bill. Under this bill, the program fund balance would still be \$187,000 in the red at the end of the current biennium and \$193,000 in the red at the end of next biennium. It is unacceptable for the Legislature to continue avoiding the difficult issue of inadequate funds, and instead simply create a new entity to oversee livestock inspections.

I do support section 5 of this bill, which will allow families to register "heritage brands" that have been in their families for many years, and section 6, which will enable veterinarians to be certified to conduct livestock identification.

For these reasons, I have vetoed sections 1, 2, 3, 4, and 7 through 101 of Engrossed Substitute Senate Bill No. 6204.

With the exception of 1, 2, 3, 4, and 7 through 101, Engrossed Substitute Senate Bill No. 6204 is approved."

CHAPTER 264

[Engrossed Second Substitute Senate Bill 6235]

COMMUNITY OUTDOOR ATHLETIC FIELDS ADVISORY COUNCIL

AN ACT Relating to community athletic facilities; adding new sections to chapter 43.99 RCW; and providing a contingent expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that coordinated funding efforts are needed to maintain, develop, and improve the state's community outdoor athletic fields. Rapid population growth and increased urbanization have caused a decline in suitable outdoor fields for community athletic activities and has resulted in overcrowding and deterioration of existing surfaces. Lack of adequate community outdoor athletic fields directly affects the health and well-being of all citizens of the state, reduces the state's economic viability, and prevents Washington from maintaining and achieving the quality of life that it deserves. Therefore, it is the policy of the state and its agencies to maintain, develop, fund, and improve youth or community athletic facilities, including but not limited to community outdoor athletic fields.

(2) In carrying out this policy, the legislature intends to promote the building of new community outdoor athletic fields, the upgrading of existing community outdoor athletic fields, and the maintenance of existing community outdoor athletic fields across the state of Washington. The purpose of sections 1 through 4 of this act is to create an advisory council to provide information and advice to the interagency committee for outdoor recreation in the distribution of the funds in the youth athletic facility grant account established in RCW 43.99N.060(4).

NEW SECTION. Sec. 2. (1) A community outdoor athletic fields advisory council is established within the interagency committee for outdoor recreation. The advisory council shall consist of nine members, from the public at large, appointed as follows: (a) Four members appointed by the chairperson of the interagency committee for outdoor recreation; (b) two members appointed by the house of representatives, one each appointed by the speaker of the house of representatives and the minority leader of the house of representatives; (c) two members appointed by the senate, one each appointed by the majority leader of the senate and the minority leader of the senate; and (d) one member appointed by the governor, who shall serve as chairperson of the advisory council. The appointments must reflect an effort to achieve a balance among the appointed members based upon factors of geographic, racial, ethnic, and gender diversity, and with a sense and awareness of community outdoor athletic fields needs.

(2) The advisory council shall provide information to and make recommendations to the interagency committee for outdoor recreation on the award of funds from the youth athletic facility grant account created in RCW 43.99N.060(4), to cities, counties, and qualified nonprofit organizations for acquiring, developing, equipping, maintaining, and improving youth or community athletic facilities, including but not limited to community outdoor athletic fields.

(3) The members shall serve three-year terms. Of the initial members, two shall be appointed for a one-year term, three shall be appointed for a two-year term, and the remainder shall be appointed for three-year terms. Thereafter, members shall be appointed for three-year terms. The member appointed by the

governor shall serve as chairperson of the advisory council for the duration of the member's term.

(4) Members of the advisory council shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 3. Subject to available resources, the interagency committee for outdoor recreation, in consultation with the community outdoor athletic fields advisory council may:

(1) Prepare and update a strategic plan for the development, maintenance, and improvement of community outdoor athletic fields in the state. In the preparation of such plan, the interagency committee for outdoor recreation may use available data from federal, state, and local agencies having community outdoor athletic responsibilities, user groups, private sector interests, and the general public. The plan may include, but is not limited to:

(a) An inventory of current community outdoor athletic fields;

(b) A forecast of demand for these fields;

(c) An identification and analysis of actual and potential funding sources; and

(d) Other information the interagency committee for outdoor recreation deems appropriate to carry out the purposes of sections 1 through 4 of this act;

(2) Determine the eligibility requirements for cities, counties, and qualified nonprofit organizations to access funding from the youth athletic facility grant account created in RCW 43.99N.060(4);

(3) Encourage and provide opportunities for interagency and regional coordination and cooperative efforts between public agencies and between public entities and nonprofit organizations involved in the maintenance, development, and improvement of community outdoor athletic fields; and

(4) Create and maintain data, studies, research, and other information relating to community outdoor athletic fields in the state, and to encourage the exchange of this information.

NEW SECTION. Sec. 4. The interagency committee for outdoor recreation 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 sections 1 through 4 of this act 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.

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. Sections 1 through 4 of this act expire one year after RCW 82.14.0494 expires.

NEW SECTION. Sec. 7. Sections 1 through 6 of this act are each added to chapter 43.99 RCW under the subchapter heading "youth or community athletic facilities."

Passed the Senate March 7, 1998.
Passed the House March 4, 1998.
Approved by the Governor April 1, 1998.
Filed in Office of Secretary of State April 1, 1998.

CHAPTER 265

[Substitute Senate Bill 6253]

CREDIT AND DEBIT CARD SALES OF LIQUOR—REIMBURSEMENTS FOR STATE LIQUOR AND AGENCY LIQUOR VENDOR STORES

AN ACT Relating to credit and debit card purchases in state liquor stores; amending RCW 66.08.026 and 66.16.041; and creating a new section.

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

NEW SECTION. Sec. 1. It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs.

Sec. 2. RCW 66.08.026 and 1997 c 148 s 1 are each amended to read as follows:

All administrative expenses of the board incurred on and after April 1, 1963 shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and agency liquor vendor stores for the purchase of liquor by nonlicensees using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in the stores of agency liquor vendors pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pursuant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220.

Sec. 3. RCW 66.16.041 and 1997 c 148 s 2 are each amended to read as follows:

(1) The state liquor control board shall accept bank credit card and debit cards from nonlicensees for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize liquor vendors appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a liquor vendor operating an agency store chooses to use credit or debit cards for liquor purchases by nonlicensees, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to an agency liquor vendor store for this purpose may be used only for the purchase of liquor.

(3) If the revenues and expenditures associated with implementing the use of credit and debit cards for the purchase of alcohol by nonlicensees from state liquor stores and agency stores operated by liquor vendors results in a reduction of the liquor revolving fund balance for fiscal year 1999 and the 1999-01 biennium, the board shall consider increasing the price of alcohol products to offset the reduction.

(4) The board shall provide a report evaluating the implementation of this section, including revenue and expenditures, to the appropriate committees of the legislature by ((January)) December 1, 1998.

Passed the Senate March 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 266

[Substitute Senate Bill 6297]

LOCAL PUBLIC HEALTH FINANCING—REVISIONS FOR CERTAIN COUNTIES

AN ACT Relating to local public health financing; amending RCW 70.05.125; and providing an effective date.

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

Sec. 1. RCW 70.05.125 and 1997 c 333 s 1 are each amended to read as follows:

(1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the Washington state association of counties. The account shall include funds distributed under RCW 82.44.110 and 82.14.200(8) and such funds as are appropriated to the account from the health services account under RCW 43.72.900, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health

jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any annexation of an area with fifty thousand residents or more to any city as a result of a petition during calendar year 1996 or 1997, or for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdiction due to the annexation or incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes.

NEW SECTION. Sec. 2. This act takes effect July 1, 1998.

Passed the Senate February 17, 1998.

Passed the House March 3, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 267

[Substitute Senate Bill 6341]

ALTERNATE OPERATOR LICENSES FOR CHARTER BOATS

AN ACT Relating to alternate operator licenses; amending RCW 75.28.030, 75.28.046, 75.28.047, and 75.28.048; and declaring an emergency.

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

Sec. 1. RCW 75.28.030 and 1993 sp.s. c 17 s 44 are each amended to read as follows:

(1) Except as otherwise provided in this title, the director shall issue commercial licenses and permits to a qualified person upon receiving a completed application accompanied by the required fee.

(2) An application submitted to the department under this chapter shall contain the name and address of the applicant and any other information required by the department or this title. An applicant for a commercial fishery license(;) or delivery license(~~, or charter license~~) may designate a vessel to be used with the license (~~and~~). An applicant for a commercial fishery license or delivery license may also designate up to two alternate operators.

(3) An application submitted to the department under this chapter shall contain the applicant's declaration under penalty of perjury that the information on the application is true and correct.

(4) Upon issuing a commercial license under this chapter, the director shall assign the license a unique number that the license shall retain upon renewal. The department shall use the number to record any commercial catch under the license. This does not preclude the department from using other, additional, catch record methods.

(5) The fee to replace a license that has been lost or destroyed is twenty dollars.

Sec. 2. RCW 75.28.046 and 1994 c 260 s 12 are each amended to read as follows:

This section applies to all commercial fishery licenses(~~(;)~~) and delivery licenses(~~(; and charter licenses)~~), except for whiting—Puget Sound fishery licenses and emergency salmon delivery licenses.

(1) The license holder may engage in the activity authorized by a license subject to this section. With the exception of Dungeness crab—coastal fishery class B licensees licensed under RCW 75.30.350(~~((3))~~) (4), the holder of a license subject to this section may also designate up to two alternate operators for the license. Dungeness crab—coastal fishery class B licensees may not designate alternate operators. A person designated as an alternate operator must possess an alternate operator license issued under (~~(section 23 of this act and)~~) RCW 75.28.048.

(2) The fee to change the alternate operator designation is twenty-two dollars.

Sec. 3. RCW 75.28.047 and 1993 c 340 s 10 are each amended to read as follows:

(1) Only the license holder and any alternate operators designated on the license may sell or deliver food fish or shellfish under a commercial fishery license or delivery license. A commercial fishery license or delivery license authorizes no taking or delivery of food fish or shellfish unless the license holder or an alternate operator designated on the license is present or aboard the vessel.

(2) (~~(Only the license holder and any alternate operators designated on the license may)~~) Notwithstanding RCW 75.28.010(1)(c), an alternate operator license is not required for an individual to operate a vessel as a charter boat.

Sec. 4. RCW 75.28.048 and 1997 c 233 s 2 are each amended to read as follows:

(1) A person who holds a commercial fishery license(~~(;)~~) or a delivery license(~~(; or charter license)~~) may operate the vessel designated on the license. A person who is not the license holder may operate the vessel designated on the license only if:

(a) The person holds an alternate operator license issued by the director; and

(b) The person is designated as an alternate operator on the underlying commercial fishery license(~~(;)~~) or delivery license(~~(; or charter license)~~) under RCW 75.28.046.

(2) Only an individual at least sixteen years of age may hold an alternate operator license.

(3) No individual may hold more than one alternate operator license. An individual who holds an alternate operator license may be designated as an alternate operator on an unlimited number of commercial fishery licenses(~~(;)~~) or delivery licenses(~~(; and charter licenses)~~) under RCW 75.28.046.

(4) An individual who holds two Dungeness crab—Puget Sound fishery licenses may operate the licenses on one vessel if the vessel owner or alternate operator is on the vessel. The department shall allow a license holder to operate up to one hundred crab pots for each license.

(5) As used in this section, to "operate" means to control the deployment or removal of fishing gear from state waters while aboard a vessel(~~(; to operate a vessel as a charter boat;)~~) or to operate a vessel delivering food fish or shellfish taken in offshore waters to a port within the state.

NEW SECTION. **Sec. 5.** 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 the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 268

[Senate Bill 6429]

CHILDREN'S TRUST FUND—RECEIPT OF INTEREST

AN ACT Relating to the treasurer's trust fund; and reenacting and amending RCW 43.79A.040.

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

Sec. 1. RCW 43.79A.040 and 1997 c 368 s 8, 1997 c 289 s 13, 1997 c 220 s 221 (Referendum Bill No. 48), 1997 c 140 s 6, and 1997 c 94 s 3 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state

treasurer or affected state agencies. The investment 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)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington advanced college tuition payment program account, the agricultural local fund, the American Indian scholarship endowment fund, the Washington international exchange scholarship endowment fund, the energy account, the fair fund, the game farm alternative account, the grain inspection revolving fund, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility grant account, the self-insurance revolving fund, ~~((and))~~ the sulfur dioxide abatement account, and the children's trust fund. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right of way revolving fund, the advanced environmental mitigation revolving account, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

Passed the Senate February 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 269

[Engrossed Second Substitute Senate Bill 6445]

PLACEMENT OF CHILDREN UNDER THE JURISDICTION OF THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—REVISIONS

AN ACT Relating to the placement of children under the jurisdiction of the department of social and health services; amending RCW 72.05.020, 74.15.020, and 28A.600.475; reenacting and amending RCW 13.50.010; adding new sections to chapter 72.05 RCW; adding a new section to chapter 74.15 RCW; adding a new section to chapter 13.40 RCW; creating new sections; and providing an effective date.

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

NEW SECTION. **See. 1.** It is the intent of the legislature to:

(1) Enhance public safety and maximize the rehabilitative potential of juvenile offenders through modifications to licensed community residential placements for juveniles;

(2) Ensure community support for community facilities by enabling community participation in decisions involving these facilities and assuring the safety of communities in which community facilities for juvenile offenders are located; and

(3) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the juvenile offenders placed in the community, and by establishing minimum standards for operation of licensed residential community facilities. The legislature finds that community support and participation is vital to the success of community programming.

Sec. 2. RCW 72.05.020 and 1979 c 141 s 178 are each amended to read as follows:

As used in this chapter, unless the context requires otherwise:

(1) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.

(2) "Department" means the department of social and health services.

(3) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(4) "Service provider" means the entity that operates a community facility.

Sec. 3. RCW 74.15.020 and 1997 c 245 s 7 are each amended to read as follows:

For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Department" means the state department of social and health services;

(2) "Secretary" means the secretary of social and health services;

(3) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(d) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(e) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(f) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(g) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(h) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(i) "Service provider" means the entity that operates a community facility.

(4) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability 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;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (4)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) 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; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) Nursery schools or kindergartens which 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;

(g) Schools, including boarding schools, which 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;

(h) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(i) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(j) Licensed physicians or lawyers;

(k) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(l) Facilities approved and certified under chapter 71A.22 RCW;

(m) Any agency having been in operation in this state ten years prior to 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;

(n) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(o) 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;

(p) 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.

(5) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(6) "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.

(7) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

Sec. 4. RCW 13.50.010 and 1997 c 386 s 21 and 1997 c 338 s 39 are each reenacted and amended to read as follows:

(1) For purposes of this chapter:

(a) "Juvenile justice or care agency" means any of the following: Police, diversion units, court, prosecuting attorney, defense attorney, detention center, attorney general, the legislative children's oversight committee, the office of family and children's ombudsman, the department of social and health services and its contracting agencies, schools; ~~((and, in addition,))~~ persons or public or private agencies having children committed to their custody; and any placement oversight committee created under section 9 of this act;

(b) "Official juvenile court file" means the legal file of the juvenile court containing the petition or information, motions, memorandums, briefs, findings of the court, and court orders;

(c) "Social file" means the juvenile court file containing the records and reports of the probation counselor;

(d) "Records" means the official juvenile court file, the social file, and records of any other juvenile justice or care agency in the case.

(2) Each petition or information filed with the court may include only one juvenile and each petition or information shall be filed under a separate docket number. The social file shall be filed separately from the official juvenile court file.

(3) It is the duty of any juvenile justice or care agency to maintain accurate records. To this end:

(a) The agency may never knowingly record inaccurate information. Any information in records maintained by the department of social and health services relating to a petition filed pursuant to chapter 13.34 RCW that is found by the court ~~((, upon proof presented,))~~ to be false or inaccurate shall be corrected or expunged from such records by the agency;

(b) An agency shall take reasonable steps to assure the security of its records and prevent tampering with them; and

(c) An agency shall make reasonable efforts to insure the completeness of its records, including action taken by other agencies with respect to matters in its files.

(4) Each juvenile justice or care agency shall implement procedures consistent with the provisions of this chapter to facilitate inquiries concerning records.

(5) Any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency and who

has been denied access to those records by the agency may make a motion to the court for an order authorizing that person to inspect the juvenile justice or care agency record concerning that person. The court shall grant the motion to examine records unless it finds that in the interests of justice or in the best interests of the juvenile the records or parts of them should remain confidential.

(6) A juvenile, or his or her parents, or any person who has reasonable cause to believe information concerning that person is included in the records of a juvenile justice or care agency may make a motion to the court challenging the accuracy of any information concerning the moving party in the record or challenging the continued possession of the record by the agency. If the court grants the motion, it shall order the record or information to be corrected or destroyed.

(7) The person making a motion under subsection (5) or (6) of this section shall give reasonable notice of the motion to all parties to the original action and to any agency whose records will be affected by the motion.

(8) The court may permit inspection of records by, or release of information to, any clinic, hospital, or agency which has the subject person under care or treatment. The court may also permit inspection by or release to individuals or agencies, including juvenile justice advisory committees of county law and justice councils, engaged in legitimate research for educational, scientific, or public purposes. The court may also permit inspection of, or release of information from, records which have been sealed pursuant to RCW 13.50.050(11). The court shall release to the sentencing guidelines commission records needed for its research and data-gathering functions under RCW 9.94A.040 and other statutes. Access to records or information for research purposes shall be permitted only if the anonymity of all persons mentioned in the records or information will be preserved. Each person granted permission to inspect juvenile justice or care agency records for research purposes shall present a notarized statement to the court stating that the names of juveniles and parents will remain confidential.

(9) Juvenile detention facilities shall release records to the sentencing guidelines commission under RCW 9.94A.040 upon request. The commission shall not disclose the names of any juveniles or parents mentioned in the records without the named individual's written permission.

(10) Requirements in this chapter relating to the court's authority to compel disclosure shall not apply to the legislative children's oversight committee or the office of the family and children's ombudsman.

NEW SECTION. Sec. 5. A new section is added to chapter 72.05 RCW to read as follows:

(1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the community facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating community facilities. The process shall

include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a community facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a community facility may be sited.

(b) When the secretary or service provider has determined the community facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the community facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the community facility would be sited or whose boundary is within two miles of a proposed community facility, any library district in which the community facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed community facility. Before initiating this process, the department shall contact local government planning agencies in the communities containing the proposed community facility. The department shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) The secretary shall not issue a license to any service provider until the service provider submits proof that the requirements of this section have been met.

(4) This section shall apply only to community facilities sited after the effective date of this act.

NEW SECTION. Sec. 6. A new section is added to chapter 72.05 RCW to read as follows:

The department shall adopt an infraction policy for juveniles placed in community facilities. The policy shall require written documentation by the department and service providers of all infractions and violations by juveniles of conditions set by the department. Any juvenile who commits a serious infraction or a serious violation of conditions set by the department shall be returned to an institution. The secretary shall not return a juvenile to a community facility until a new risk assessment has been completed and the secretary reasonably believes

that the juvenile can adhere to the conditions set by the department. The department shall define the terms "serious infraction" and "serious violation" in rule and shall include but not necessarily limited to the commission of any criminal offense, any unlawful use or possession of a controlled substance, and any use or possession of an alcoholic beverage.

NEW SECTION. Sec. 7. A new section is added to chapter 74.15 RCW to read as follows:

(1) Whenever the secretary contracts with a service provider to operate a community facility, the contract shall include a requirement that each service provider must report to the department any known infraction or violation of conditions committed by any juvenile under its supervision. The report must be made immediately upon learning of serious infractions or violations and within twenty-four hours for other infractions or violations.

(2) The secretary shall adopt rules to implement and enforce the provisions of this section. The rules shall contain a schedule of monetary penalties not to exceed the total compensation set forth in the contract, and include provisions that allow the secretary to terminate all contracts with a service provider that has violations of this section and the rules adopted under this section.

(3) The secretary shall document in writing all violations of this section and the rules adopted under this section, penalties, actions by the department to remove juveniles from a community facility, and contract terminations. The department shall give great weight to a service provider's record of violations, penalties, actions by the department to remove juveniles from a community facility, and contract terminations in determining to execute, renew, or renegotiate a contract with a service provider.

NEW SECTION. Sec. 8. A new section is added to chapter 72.05 RCW to read as follows:

(1) The department shall publish and operate a staffed, toll-free twenty-four-hour hotline for the purpose of receiving reports of violation of conditions set for juveniles who are placed in community facilities.

(2) The department shall include the phone number on all documents distributed to the juvenile and the juvenile's employer, school, parents, and treatment providers.

(3) The department shall include the phone number in every contract it executes with any service provider after the effective date of this act.

NEW SECTION. Sec. 9. A new section is added to chapter 72.05 RCW to read as follows:

(1) Promptly following the report due under section 17 of this act, the secretary shall develop a process with local governments that allows each community to establish a community placement oversight committee. The department may conduct community awareness activities. The community placement oversight committees developed pursuant to this section shall be implemented no later than September 1, 1999.

(2) The community placement oversight committees may review and make recommendations regarding the placement of any juvenile who the secretary proposes to place in the community facility.

(3) The community placement oversight committees, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its decision in regard to a proposed placement of a juvenile unless the committee acts with gross negligence or bad faith in making a placement decision.

(4) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) Except as provided in RCW 13.40.215, at least seventy-two hours prior to placing a juvenile in a community facility the secretary shall provide to the chief law enforcement officer of the jurisdiction in which the community facility is sited: (a) The name of the juvenile; (b) the juvenile's criminal history; and (c) such other relevant and disclosable information as the law enforcement officer may require.

NEW SECTION. Sec. 10. A new section is added to chapter 72.05 RCW to read as follows:

(1) The department shall not initially place an offender in a community facility unless:

(a) The department has conducted a risk assessment, including a determination of drug and alcohol abuse, and the results indicate the juvenile will pose not more than a minimum risk to public safety; and

(b) The offender has spent at least ten percent of his or her sentence, but in no event less than thirty days, in a secure institution operated by, or under contract with, the department.

The risk assessment must include consideration of all prior convictions and all available nonconviction data released upon request under RCW 10.97.050, and any serious infractions or serious violations while under the jurisdiction of the secretary or the courts.

(2) No juvenile offender may be placed in a community facility until the juvenile's student records and information have been received and the department has reviewed them in conjunction with all other information used for risk assessment, security classification, and placement of the juvenile.

(3) A juvenile offender shall not be placed in a community facility until the department's risk assessment and security classification is complete and local law enforcement has been properly notified.

Sec. 11. RCW 28A.600.475 and 1992 c 205 s 120 are each amended to read as follows:

School districts may participate in the exchange of information with law enforcement and juvenile court officials to the extent permitted by the family educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g. When directed by court order or pursuant to any lawfully issued subpoena, a school district shall

make student records and information available to law enforcement officials, probation officers, court personnel, and others legally entitled to the information. Except as provided in section 12 of this act, parents and students shall be notified by the school district of all such orders or subpoenas in advance of compliance with them.

NEW SECTION. Sec. 12. A new section is added to chapter 13.40 RCW to read as follows:

(1) Pursuant to RCW 28A.600.475, and to the extent permitted by the family educational and privacy rights act of 1974, 20 U.S.C. Sec. 1232g(b), and in order to serve the juvenile while in detention and to prepare any postconviction services, schools shall make all student records and information necessary for risk assessment, security classification, and placement available to court personnel and the department within three working days of a request under this section.

(2)(a) When a juvenile has one or more prior convictions, a request for records shall be made by the county prosecuting attorney, or probation department if available, to the school not more than ten days following the juvenile's arrest or detention, whichever occurs later, and prior to trial. The request may be made by subpoena.

(b) Where a juvenile has no prior conviction, a request to release records shall be made by subpoena upon the juvenile's conviction. When the request for a juvenile's student records and information is made by subpoena following conviction, the court or other issuing agency shall order the school on which the subpoena is served not to disclose to any person the existence or contents of the subpoena or any information furnished in response to the subpoena. When the court or issuing agency so orders, the school shall not provide notice to the juvenile or his or her parents.

NEW SECTION. Sec. 13. A new section is added to chapter 72.05 RCW to read as follows:

(1) The department shall establish by rule, in consultation with the office of the superintendent of public instruction, those student records and information necessary to conduct a risk assessment, make a security classification, and ensure proper placement. Those records shall include at least:

- (a) Any history of placement in special education programs;
- (b) Any past, current, or pending disciplinary action;
- (c) Any history of violent, aggressive, or disruptive behavior, or gang membership, or behavior listed in RCW 13.04.155;
- (d) Any use of weapons that is illegal or in violation of school policy;
- (e) Any history of truancy;
- (f) Any drug or alcohol abuse;
- (g) Any health conditions affecting the juvenile's placement needs; and
- (h) Any other relevant information.

(2) For purposes of this section "gang" has the meaning defined in RCW 28A.225.225.

NEW SECTION. Sec. 14. A new section is added to chapter 72.05 RCW to read as follows:

(1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the placement and supervision of juveniles must be accomplished in accordance with this section.

(2) The secretary shall require that any juvenile placed in a community facility and who is employed or assigned as a volunteer be subject to monitoring for compliance with requirements for attendance at his or her job or assignment. The monitoring requirements shall be included in a written agreement between the employer or supervisor, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

(a) Acknowledgment of the juvenile's offender status;

(b) The name, address, and telephone number of the community facility at which the juvenile resides;

(c) The twenty-four-hour telephone number required under section 8 of this act;

(d) The name and work telephone number of all persons responsible for the supervision of the juvenile;

(e) A prohibition on the juvenile's departure from the work or volunteer site without prior approval of the person in charge of the community facility;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A prohibition on receiving compensation in any form other than a negotiable instrument;

(h) A requirement that rest breaks during work hours be taken only in those areas at the location which are designated for such breaks;

(i) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

(j) A requirement that any unexcused absence, tardiness, or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(k) A requirement that any notice from the juvenile that he or she will not report to the work or volunteer site be verified as legitimate by contacting the person in charge of the community facility; and

(l) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(3) The secretary shall require that any juvenile placed in a community facility and who is enrolled in a public or private school be subject to monitoring for compliance with requirements for attendance at his or her school. The monitoring requirements shall be included in a written agreement between the school district or appropriate administrative officer, the secretary or chief

operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

- (a) Acknowledgment of the juvenile's offender status;
- (b) The name, address, and telephone number of the community facility at which the juvenile resides;
- (c) The twenty-four-hour telephone number required under section 8 of this act;
- (d) The name and work telephone number of at least two persons at the school to contact if issues arise concerning the juvenile's compliance with the terms of his or her attendance at school;
- (e) A prohibition on the juvenile's departure from the school without prior approval of the appropriate person at the school;
- (f) A prohibition on personal telephone calls except to the community facility;
- (g) A requirement that the juvenile remain on school grounds except for authorized and supervised school activities;
- (h) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;
- (i) A requirement that any unexcused absence or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;
- (j) A requirement that any notice from the juvenile that he or she will not attend school be verified as legitimate by contacting the person in charge of the community facility; and
- (k) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(4) The secretary shall require that when any juvenile placed in a community facility is employed, assigned as a volunteer, or enrolled in a public or private school:

- (a) Program staff members shall make and document periodic and random accountability checks while the juvenile is at the school or work facility;
- (b) A program counselor assigned to the juvenile shall contact the juvenile's employer, teacher, or school counselor regularly to discuss school or job performance-related issues.

(5) The department shall maintain a copy of all agreements executed under this section. The department shall also provide each affected juvenile with a copy of every agreement to which he or she is a party. The service provider shall maintain a copy of every agreement it executes under this section.

NEW SECTION. Sec. 15. A new section is added to chapter 72.05 RCW to read as follows:

(1) The department shall establish by rule a policy for the common use of residential group homes for juvenile offenders under the jurisdiction of the juvenile rehabilitation administration and the children's administration.

(2) A juvenile confined under the jurisdiction of the juvenile rehabilitation administration who is convicted of a class A felony is not eligible for placement in a community facility operated by children's administration that houses juveniles who are not under the jurisdiction of juvenile rehabilitation administration unless:

(a) The juvenile is housed in a separate living unit solely for juvenile offenders;

(b) The community facility is a specialized treatment program and the youth is not assessed as sexually aggressive under RCW 13.40.470; or

(c) The community facility is a specialized treatment program that houses one or more sexually aggressive youth and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470.

NEW SECTION. Sec. 16. A new section is added to chapter 72.05 RCW to read as follows:

(1) A person shall not be eligible for an employed or volunteer position within the juvenile rehabilitation administration or any agency with which it contracts in which the person may have regular access to juveniles under the jurisdiction of the department of social and health services or the department of corrections if the person has been convicted of one or more of the following:

(a) Any felony sex offense;

(b) Any violent offense, as defined in RCW 9.94A.030.

(2) Subsection (1) of this section applies only to persons hired by the department or any of its contracting agencies after the effective date of this act.

(3) Any person employed by the juvenile rehabilitation administration, or by any contracting agency, who may have regular access to juveniles under the jurisdiction of the department or the department of corrections and who is convicted of an offense set forth in this section after the effective date of this act, shall report the conviction to his or her supervisor. The report must be made within seven days of conviction. Failure to report within seven days of conviction constitutes misconduct under Title 50 RCW.

(4) For purposes of this section "may have regular access to juveniles" means access for more than a nominal amount of time.

(5) The department shall adopt rules to implement this section.

NEW SECTION. Sec. 17. (1) The Washington state institute for public policy shall conduct a special study of the contracts, operations, and monitoring of community residential facilities that house juvenile offenders who are under the jurisdiction of the department's juvenile rehabilitation administration.

(2) The institute must consult with nearby residents, local sheriffs and police chiefs, courts, probation departments, schools, and employers in the community in which the community residential facility is located.

(3) The institute shall investigate and report on at least the following issues:

(a) Community residential security, staffing, and operation:

(i) Are the facilities physically secured with door locks, alarms, video monitors, and other security features so that staff are immediately aware of any unauthorized exits or unauthorized visitors? Which homes are not?

(ii) What legal barriers exist, if any, that prevent equipping community residential facilities with locks, alarms, video monitors, and other equipment that would make the facilities more physically secure?

(iii) How much would it cost to equip community residential facilities with security equipment?

(iv) For each facility describe:

(A) The staffing level by shift;

(B) The times, if any, in which offenders are either locked inside secure rooms or locked inside the facility;

(C) What constitutes an escape;

(D) How much time must elapse before an unauthorized absence becomes an escape;

(E) The escape reporting procedure;

(F) Who may visit the offender and at what hours;

(G) What is the screening process used to authorize visitors;

(H) What controls exist to monitor and regulate persons who visit the facilities; and

(I) Whether offenders share bedrooms.

(v) Describe the monitoring level by the juvenile rehabilitation administration and specifically address the following:

(A) How often does the juvenile rehabilitation staff visit the community residential facilities?

(B) How many of these visits are random, unannounced, or conducted at night and on weekends and holidays?

(C) What does the juvenile rehabilitation staff person investigate when conducting these visits?

(D) How often does the juvenile rehabilitation staff contact neighbors, schools, employers, and law enforcement to determine whether juvenile offenders in the community residential facilities are disruptive or that staff is responsive to community concerns?

(b) Offender intake and assessment procedures:

(i) Identify procedural and financial barriers to sharing information about juvenile offenders in community residential facilities between the juvenile rehabilitation administration, schools, courts, law enforcement, other department of social and health services' programs including the division of children and family services and the division of alcohol and substance abuse, and the public.

(ii) What authority does the state have to remove the barriers?

(iii) Identify what entity is responsible for collecting risk assessment data. Describe the process and if it varies in different counties.

(iv) What types and sources of data are being collected inconsistently?

(v) What types and sources of data are being used inconsistently in performing risk assessments?

(vi) What safeguards exist to ensure that assessments are being made with complete information?

(c) Violations or infractions committed by juvenile offenders in community residential facilities:

(i) How many violations, by type and seriousness level, have occurred or have been reported about juvenile offenders residing in community residential facilities during fiscal year 1997?

(ii) What appeals process, if any, exists that governs an offender's appeal from a finding that the offender committed an infraction?

(d) Community notification and participation in the facility siting and offender placement process:

(i) What process, if any, does the juvenile rehabilitation administration use to notify local law enforcement, residents, schools, and businesses that a community residential facility that will house juvenile offenders will be located in a particular place?

(ii) What process, if any, does the juvenile rehabilitation administration or the community residential facilities use to notify the individuals and entities identified in (d)(i) of this subsection regarding the placement of specific offenders into a community residential facility?

(iii) To what extent, if any, does the juvenile rehabilitation administration or the community residential facility seek public comment on or participation in siting community residential facilities or placing particular offenders in those facilities?

(iv) Compare the department of corrections' practices in obtaining community comment and participation in siting facilities and placement of offenders;

(v) Identify models in other jurisdictions that provide for greater community comment and participation in siting facilities and placement of offenders;

(vi) Identify any legal, procedural, practical barriers to increasing community comment and participation in siting facilities and placement of offenders.

(e) Juvenile detention standards:

(i) What standards are in place and proposed for all existing and planned detention facilities in this state?

(ii) What is the current compliance of detention standards with recommended American correctional association standards and those delineated in RCW 13.06.050?

(iii) What concerns, problems, or issues regarding current standards have a direct impact on the safety and health of offenders, staff, and the community?

(iv) Identify and make recommendations with regard to the improvements needed including a timeline for the implementation of such improvements;

(v) Recommend a schedule for periodic review of juvenile detention standards;

(vi) Analyze the costs to implement the recommendations in accordance with the recommended timeline.

(f) Recidivism rates of juveniles receiving parole services who are not sex offenders or receiving services under RCW 13.40.212, compared with juveniles who do not receive parole services.

(4) The institute shall recommend changes to existing laws, procedures, and practices governing community residential facilities to increase public safety, community residential facility security, protection of juvenile offenders housed in community residential facilities, and community comment and participation in siting facilities and placement of offenders. The institute shall also identify costs associated with implementing recommended changes.

(5) An initial status report of the progress of the study shall be presented to the senate human services and corrections committee and the house criminal justice and corrections committee no later than September 1, 1998. The institute shall present a final report to those committees no later than December 1, 1998.

NEW SECTION. Sec. 18. The code reviser shall alphabetize the definitions in RCW 13.50.010 and 74.15.020 and correct any references.

NEW SECTION. Sec. 19. This act takes effect September 1, 1998.

NEW SECTION. Sec. 20. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the Senate March 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 270

[Engrossed Substitute Senate Bill 6492]

SUPERIOR COURT JUDGES—INCREASES AND REALLOCATIONS

AN ACT Relating to superior court judges; amending RCW 2.08.062 and 2.08.063; amending 1996 c 208 s 2 (uncodified); creating a new section; and declaring an emergency.

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

"Sec. 1. RCW 2.08.062 and 1996 c 208 s 1 are each amended to read as follows:

There shall be in the ~~((counties))~~ county of Chelan ~~((and))~~ four judges of the superior court; in the county of Douglas ((jointly, five judges)) one judge of the superior court; in the county of Clark ~~((seven))~~ eight judges of the superior court; in the county of Grays Harbor three judges of the superior court; in the county of Kitsap seven judges of the superior court; in the county of Kittitas one judge of the superior court; in the county of Lewis ~~((two))~~ three judges of the superior court.

Sec. 2. RCW 2.08.063 and 1992 c 189 s 3 are each amended to read as follows:

There shall be in the county of Lincoln one judge of the superior court; in the county of Skagit, three judges of the superior court; in the county of Walla Walla, two judges of the superior court; in the county of Whitman, one judge of the superior court; in the county of Yakima ~~((six*))~~ eight judges of the superior court; in the county of Adams, one judge of the superior court; in the county of Whatcom, three judges of the superior court.

Sec. 3. 1996 c 208 s 2 (uncodified) is amended to read as follows:

(1) The three judicial positions serving Chelan and Douglas counties jointly are allocated to Chelan county, effective upon appointment of a judge to the Douglas county superior court. The additional judicial positions created by section 1 ((of this act are)), chapter 208, Laws of 1996, are allocated one to Chelan county and one to Douglas county and each position becomes effective only if ((Chelan and Douglas counties jointly)) each county, through ((their)) its duly constituted legislative ((authorities)) authority, documents ((their)) its approval of the additional position((s)) and ((their)) its agreement that ((they)) it will pay out of county funds, without reimbursement from the state, the expenses of the additional judicial position((s)) as provided by state law or the state Constitution.

(2) The judicial positions created by section 1 ((of this act)), chapter 208, Laws of 1996, shall be effective January 1, 1997.

NEW SECTION. **Sec. 4.** (1) The additional judicial position created by section 1 of this act for the county of Clark takes effect on the effective date of this act, but the actual starting date for this position may be established by the Clark county commissioners upon the request of the superior court.

(2) The additional judicial position created by section 1 of this act for the county of Lewis takes effect on the effective date of this act, but the actual starting date for this position may be established by the Lewis county commissioners upon the request of the superior court.

(3) The additional judicial positions created by section 2 of this act for the county of Yakima take effect on the effective date of this act, but the actual starting dates for these positions may be established by the Yakima county commissioners upon the request of the superior court.

NEW SECTION. **Sec. 5.** 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 the Senate February 11, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 271

[Engrossed Second Substitute Senate Bill 6509]
TRAINING IN READING INSTRUCTION

AN ACT Relating to training in reading instruction; adding a new section to chapter 28A.415 RCW; creating new sections; providing an expiration date; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature finds that the ability to read fluently, accurately, and with comprehension is critical to success in school and in life. Research has found that reading instruction in the early grades must consist of a comprehensive program that builds upon the firm foundational skills of phonemic awareness, decoding, and reading comprehension, to provide students with the skills necessary to engage in rich literature activities, and further develop thinking and application skills. Schools and school districts should review their reading programs to verify they are using a comprehensive approach to teaching reading.

The role of professional development in supporting and sustaining a high-quality teaching force is critical. The legislature finds that many primary grade teachers would benefit from additional professional development instruction in beginning reading skills and access to current information regarding research-based, scientifically proven instructional strategies to assist students in meeting the benchmarks established for the essential academic learning requirements.

The legislature also recognizes that when students are experiencing difficulties in advancing their reading skills, the use of volunteers to provide individualized tutoring and mentoring to those students will improve students' ability to overcome those difficulties and increase their reading achievement.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.415 RCW to read as follows:

Schools interested in providing assistance to improve student learning in reading may apply for the following opportunities to provide professional development in beginning reading instructional strategies and related instructional materials and to implement volunteer tutoring programs for students throughout their school.

(1) To the extent funds are appropriated in accordance with this section, elementary schools interested in providing professional development and the purchase of related instructional materials in accordance with (a) of this subsection for certificated instructional staff that provide direct instructional services to students in kindergarten, first, and second grade may apply for and receive funding from the superintendent of public instruction. The application for funding shall be limited to:

(a) Verification that the intended professional development and related instructional materials include primary emphasis on the following beginning reading skills:

(i) Phonemic awareness instruction;

- (ii) Explicit and systematic decoding instruction and diagnosis of a student's ability to decode;
 - (iii) Explicit spelling instruction;
 - (iv) Explicit instruction in reading comprehension strategies; and
 - (v) Research findings on the skills needed by beginning and proficient readers, and how beginning reading skills are acquired;
- (b) Verification that grant funds expended in accordance with this section will not be used for intervention or remediation programs; and
- (c) Verification that the professional development will be provided by a public or private contractor that provides training in the methods required in this section.

(2) To the extent funds are appropriated in accordance with this section, elementary schools interested in providing programs that use volunteer tutors and mentors to assist struggling readers in kindergarten through sixth grade may apply for grants from the superintendent of public instruction for programs that are research-based and have proven effectiveness in improving student performance. The programs must include the following elements:

- (a) Teacher training in research-based effective reading strategies and effective use of classroom volunteers with struggling readers;
- (b) Training for tutor and mentor volunteers in research-based effective reading strategies before the volunteers participate in the program;
- (c) An established goal for a minimum number of volunteer contact hours for students to receive individual instruction from teachers, and tutor or mentor volunteers during the summer, other intercessions for schools with year-round schedules or other vacation periods, or during normal school hours; and
- (d) A plan to assess student reading performance before entering the program and upon exit or at the end of the year as appropriate. The results must be compiled and reported to the superintendent of public instruction. The superintendent of public instruction shall provide an initial report to the legislature by March 1, 1999, and a final report to the legislature by December 1999 on the effectiveness of the various programs.

(3) For applications submitted before June 1, 1998, priority for funds in accordance with this section shall be given to those schools in which less than one-quarter of all students tested on the fourth grade assessment in reading met the state-wide standard, or in schools where average performance on the reading component of the state-wide standardized test required in RCW 28A.230.190 were in the bottom quartile for the previous three years. Priority shall then be given to those schools in which less than one-third of all students tested on the fourth grade assessment in reading met the state-wide standard, or in schools where average performance on the reading component of the state-wide standardized test required in RCW 28A.230.190 were in the bottom third for the previous three years. Priority shall then be given to schools in which one-half of all students tested on the fourth grade assessment in reading met the state-wide standard, or in schools where average performance on the reading component of

the state-wide standardized test required in RCW 28A.230.190 were in the bottom half for the previous three years. Beginning June 1, 1998, the superintendent of public instruction shall open the application process to all schools without regard to performance on reading tests. For applications received after June 1, 1998, the superintendent shall provide funds to qualified applicants on a first-come, first-served basis, based on the date of application.

(4) Funds provided in accordance with this section may be used to provide additional professional development materials for interested school principals and classroom volunteers providing assistance in kindergarten, first, and second grades, interested in attending the professional development opportunity identified in subsection (1) of this section.

(5) Teachers participating in professional development opportunities in accordance with subsection (1) of this section or in volunteer programs in accordance with subsection (2) of this section will receive a stipend from the funds.

(6) An elementary school receiving funds in accordance with subsection (1) of this section shall certify and provide documentation to the superintendent of public instruction that funds received were expended for professional development and related materials in accordance with this section.

(7) Schools that received funds under RCW 28A.300.330 are not eligible to apply for funding in accordance with subsection (1) of this section.

(8) Until final allocation of funds for purposes of section 2(1) of this act by the superintendent of public instruction, or at the end of the 1998-99 school year, whichever occurs first, the following definitions apply throughout this section unless the context clearly requires otherwise.

(a) "Phonemic awareness instruction" means teaching awareness of letter sounds, and segmenting and blending phonemes, syllables, and words in a sequential progression.

(b) "Explicit systematic decoding instruction" means direct, sequential teaching of how to read words fluently and automatically by providing instruction in letter-sound correspondences, letter combinations, multisyllabic words, blending, and structural elements, and initially incorporates the use of decodable text.

(c) "Decodable text" means connected text containing a high percentage of words that provide practice on the letter-sound correspondences and letter combinations previously taught.

(d) "Diagnosis of a student's ability to decode" means regularly assessing the student's mastery of word recognition, fluency and automaticity, and word analysis in order to plan future instructional activities.

(e) "Explicit and systematic instruction in spelling" means teaching a logical scope and sequence of word knowledge, spelling patterns, syllabication, and frequently used words connected to the sequence used in reading and writing instruction.

(f) "Instruction in reading comprehension skills" means explicit, systematic teaching of vocabulary development, text structure, context, syntax, and syntactic patterns, including but not limited to, strategies for higher order thinking skills such as interpretation, summarization, prediction, clarification, and question generation.

(9) By April 15, 1998, the superintendent of public instruction shall notify all school districts that the funds under this section are available. By June 1, 1998, the superintendent shall make initial awards to applicants meeting the requirements of subsections (1) and (3) of this section based on budget estimates submitted with the applications. The superintendent shall allocate any remaining funding for applications received after June 1, 1998, without regard to the requirements in subsection (3) of this section. Elementary schools may apply and become eligible for both funding opportunities in accordance with this section. Funds provided under this section may be used for school expenditures from June 1, 1998, through the end of the 1998-99 school year.

(10) This section expires January 1, 2000.

***NEW SECTION.** *Sec. 3. This act may be known and cited as the successful readers act.*

*Sec. 3 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 4. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.*

*Sec. 4 was vetoed. See message at end of chapter.

NEW SECTION. *Sec. 5. 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 the Senate March 10, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3 and 4, Engrossed Second Substitute Senate Bill No. 6509 entitled:

"AN ACT Relating to training in reading instruction;"

E2SSB 6509 creates two separate reading improvement grant programs for the remainder of this biennium. First, the Washington Reading Corps will receive grants for volunteer tutoring and mentoring programs in elementary school reading; and second, grants will provide optional training and materials in reading strategies for kindergarten through second grade teachers.

I am very pleased that the Legislature chose to enact the Washington Reading Corps, which I proposed prior to the 1998 legislative session. I would have preferred a more expansive program, but this is a good start. Each legislator sought to improve our students' reading abilities and I am thankful that the mandates for certain reading strategies are no longer included in this measure. I am, however, disappointed that the Reading Resource

Centers championed by Superintendent of Public Instruction Terry Bergeson are not a part of this legislation.

This act is temporary in nature, and section 3 would give it a title. Names should not be given to acts that are designed to last only a single biennium. Section 4 contains a "null and void clause" which is moot.

For these reasons, I have vetoed sections 3 and 4 of Engrossed Second Substitute Senate Bill No. 6509.

With the exception of sections 3 and 4, Engrossed Second Substitute Senate Bill No. 6509 is approved."

CHAPTER 272

[Second Substitute Senate Bill 6544]

ADULT FAMILY HOMES, BOARDING HOMES, AND LONG-TERM CARE—REVISIONS

AN ACT Relating to improving long-term care; amending RCW 70.128.070, 70.129.030, 18.88A.210, 18.88A.230, 18.20.020, 18.20.190, 18.20.160, and 70.128.060; amending 1995 1st sp.s. c 18 s 54 (unmodified); adding new sections to chapter 18.20 RCW; adding new sections to chapter 70.128 RCW; adding new sections to chapter 18.48 RCW; creating new sections; making an appropriation; providing an effective date; providing an expiration date; providing a contingent expiration date; and declaring an emergency.

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

NEW SECTION. **Sec. 1.** The legislature finds that many residents of long-term care facilities and recipients of in-home personal care services are exceptionally vulnerable and their health and well-being are heavily dependent on their caregivers. The legislature further finds that the quality of staff in long-term care facilities is often the key to good care. The need for well-trained staff and well-managed facilities is growing as the state's population ages and the acuity of the health care problems of residents increases. In order to better protect and care for residents, the legislature directs that the minimum training standards be reviewed for management and caregiving staff, including those serving residents with special needs, such as mental illness, dementia, or a developmental disability, that management and caregiving staff receive appropriate training, and that the training delivery system be improved.

NEW SECTION. **Sec. 2.** A new section is added to chapter 18.20 RCW to read as follows:

(1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, and long-term care consumers and advocates, training standards for administrators and resident caregiving staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to boarding homes and staff, and shall be developed with the input of boarding home and resident representatives, health care professionals, and other vested

interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the boarding home and recipients of long-term in-home personal care services and shall be sufficient to ensure that administrators and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements; competency testing; practical and clinical course work; methods of delivery of training; standards for management and caregiving staff training; and necessary enhancements for special needs populations and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates.

NEW SECTION. Sec. 3. A new section is added to chapter 70.128 RCW to read as follows:

(1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, and long-term care consumers and advocates, training standards for providers, resident managers, and resident caregiving staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to adult family homes and staff, and shall be developed with the input of adult family home and resident representatives, health care professionals, and other vested interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the adult family home and recipients of long-term in-home personal care services and shall be sufficient to ensure that providers, resident managers, and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements;

competency testing; practical and clinical course work; methods of delivery of training; standards for management; uniform caregiving staff training; necessary enhancements for special needs populations; and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability. Development of training recommendations for developmental disabilities services shall be coordinated with the study requirements in section 6 of this act.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates.

Sec. 4. RCW 70.128.070 and 1995 1st sp.s. c 18 s 22 are each amended to read as follows:

- ~~(1) (A license shall be valid for one year.~~
- ~~—(2) At least sixty days prior to expiration of the license, the provider shall submit an application for renewal of a license. The department shall send the provider an application for renewal prior to this time. The department shall have the authority to investigate any information included in the application for renewal of a license.~~
- ~~—(3)) Δ license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.~~

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

~~((4)) (3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. ((If the department finds that the home is in compliance with this chapter and the rules adopted under this chapter, the department shall renew the license of the home.))~~

Sec. 5. RCW 70.129.030 and 1997 c 386 s 31 are each amended to read as follows:

(1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before ~~(, or at the time of)~~ admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

~~((+))~~ (5) The facility must furnish a written description of residents rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

~~((5))~~ (6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(h) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them.

NEW SECTION. Sec. 6. The division of developmental disabilities in the department of social and health services, in coordination with advocacy, self-advocacy, and provider organizations, shall review administrator and resident caregiver staff training standards for agency contracted supported living services, including intensive tenant support, tenant support, supportive living, and in-home personal care services for children. The division and the advocates shall coordinate specialty training recommendations with the larger study group referenced in sections 2(1) and 3(1) of this act and submit specific recommendations on training standards, including necessary statutory changes and funding requirements to the appropriate committees of the house of representatives and the senate by December 1, 1998.

NEW SECTION. Sec. 7. A new section is added to chapter 18.48 RCW to read as follows:

Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. The establishment of an advisory committee to the department of health and the department of social and health services under section 8 of this act

formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest regard for the well-being of these residents within a benign and functional regulatory environment.

NEW SECTION. Sec. 8. A new section is added to chapter 18.48 RCW to read as follows:

(1) The secretary, in consultation with the secretary of social and health services, shall appoint an advisory committee on matters relating to the regulation, administrative rules, enforcement process, staffing, and training requirements of adult family homes. The advisory committee shall be composed of six members, of which two members shall be resident advocates, three members shall represent adult family home providers, and one member shall represent the public and serve as chair. The members shall generally represent the interests of aging residents, residents with dementia, residents with mental illness, and residents with developmental disabilities respectively. Members representing adult family home providers must have at least two years' experience as licensees. The membership must generally reflect urban and rural areas and western and eastern parts of the state. A member may not serve more than two consecutive terms.

(2) The secretary may remove a member of the advisory committee for cause as specified by rule adopted by the department. If there is a vacancy, the secretary shall appoint a member to serve for the remainder of the unexpired term.

(3) The advisory committee shall meet at the times and places designated by the secretary and shall hold meetings during the year as necessary to provide advice to the secretary on matters relating to the regulation of adult family homes. A majority of the members may request a meeting of the committee for any express purpose directly related to the regulation of adult family homes. A majority of members currently serving shall constitute a quorum.

(4) Establishment of the advisory committee shall not prohibit the department of health from utilizing other advisory activities that the department of health deems necessary for program development.

(5) Each member of the advisory committee shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.060.

(6) The secretary, members of the advisory committee, or individuals acting on their behalf are immune from civil liability for official acts performed in the course of their duties.

NEW SECTION. Sec. 9. A new section is added to chapter 70.128 RCW to read as follows:

Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The

growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. The establishment of an advisory committee to the department of health and the department of social and health services under section 8 of this act formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest regard for the well-being of these residents within a benign and functional regulatory environment. The secretary shall be advised by an advisory committee on adult family homes established under section 8 of this act.

Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.

Sec. 10. RCW 18.88A.210 and 1995 1st sp.s. c 18 s 46 are each amended to read as follows:

(1) A nurse may delegate specific care tasks to nursing assistants meeting the requirements of this section and who provide care to individuals in community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW, to individuals residing in adult family homes licensed under chapter 70.128 RCW, and to individuals residing in boarding homes licensed under chapter 18.20 RCW contracting with the department of social and health services to provide assisted living services pursuant to RCW 74.39A.010.

(2) For the purposes of this section, "nursing assistant" means a nursing assistant-registered or a nursing assistant-certified. Nothing in this section may be construed to affect the authority of nurses to delegate nursing tasks to other persons, including licensed practical nurses, as authorized by law.

(3) Before commencing any specific nursing care tasks authorized under this chapter, the nursing assistant must (a) provide to the delegating nurse a certificate of completion issued by the department of social and health services indicating the completion of basic core training as provided in this section, (b) be regulated by the department of health pursuant to this chapter, subject to the uniform disciplinary act under chapter 18.130 RCW, and (c) meet any additional training requirements identified by the nursing care quality assurance commission and authorized by this section.

(4) A nurse may delegate the following care tasks:

- (a) Oral and topical medications and ointments;
- (b) Nose, ear, eye drops, and ointments;

(c) Dressing changes and catheterization using clean techniques as defined by the nursing care quality assurance commission;

(d) Suppositories, enemas, ostomy care;

(e) Blood glucose monitoring;

(f) Gastrostomy feedings in established and healed condition.

(5) On or before September 1, 1995, the nursing care quality assurance commission, in conjunction with the professional nursing organizations, shall develop rules for nurse delegation protocols and by December 5, 1995, identify training beyond the core training that is deemed necessary for the delegation of complex tasks and patient care.

(6) Nursing task delegation protocols are not intended to regulate the settings in which delegation may occur but are intended to ensure that nursing care services have a consistent standard of practice upon which the public and profession may rely and to safeguard the authority of the nurse to make independent professional decisions regarding the delegation of a task. Protocols shall include at least the following:

(a) Ensure that determination of the appropriateness of delegation of a nursing task is at the discretion of the nurse;

(b) Allow delegation of a nursing care task only for patients who have a stable and predictable condition. "Stable and predictable condition" means a situation, as defined by rule by the nursing care quality assurance commission, in which the patient's clinical and behavioral status is known and does not require frequent presence and evaluation of a registered nurse;

(c) ~~Assure that the ((delegations of nursing tasks pursuant to this chapter have the written informed consent of the patient consistent with the provisions for informed consent under chapter 7.70 RCW, as well as with the consent of the delegating nurse and nursing assistant. The delegating nurse shall inform patients of the level of training of all care providers in the setting))~~ initial delegating nurse obtains written consent to the nurse delegation process from the patient or a person authorized under RCW 7.70.065. Written consent is only necessary at the initial use of the nurse delegation process for each patient and is not necessary for task additions or changes or if a different nurse or nursing assistant will be participating in the process. The written consent must include at a minimum the following:

(i) A list of the tasks that could potentially be delegated per RCW 18.88A.210; and

(ii) A statement that a nursing assistant through the nurse delegation process will be performing a task that would previously have been performed by a registered or licensed practical nurse;

(d) Verify that the nursing assistant has completed the core training;

(e) Require assessment by the nurse of the ability and willingness of the nursing assistant to perform the delegated nursing task in the absence of direct nurse supervision and to refrain from delegation if the nursing assistant is not able or willing to perform the task;

(f) Require the nurse to analyze the complexity of the nursing task that is considered for delegation and determine the appropriate level of training and any need of additional training for the nursing assistant;

(g) Require the teaching of the nursing care task to the nursing assistant ~~((including))~~ utilizing one or more of the following: (i) Verification of competency via return demonstration ((under observation while performing the task)); (ii) other methods for verification of competency to perform the nursing task; or (iii) assurance that the nursing assistant is competent to perform the nursing task as a result of systems in place in the community residential program for the developmentally disabled, adult family home, or boarding home providing assisted living services;

(h) Require a plan of nursing supervision and reevaluation of the delegated nursing task. "Nursing supervision" means that the registered nurse monitors by direct observation or by whatever means is deemed appropriate by the registered nurse the skill and ability of the nursing assistant to perform delegated nursing tasks. Frequency of supervision is at the discretion of the registered nurse but shall occur at least every sixty days;

(i) Require instruction to the nursing assistant that the delegated nursing task is specific to a patient and is not transferable;

(j) Require documentation and written instruction related to the delegated nursing task be provided to the nursing assistant and a copy maintained in the patient record;

(k) Ensure that the nursing assistant is prepared to effectively deal with the predictable outcomes of performing the nursing task;

(l) Include in the delegation of tasks an awareness of the nature of the condition requiring treatment, risks of the treatment, side effects, and interaction of prescribed medications;

(m) Require documentation in the patient's record of the rationale for delegating or not delegating nursing tasks.

(7) A basic core training curriculum on providing care for individuals in community residential programs for the developmentally disabled certified by the department of social and health services under chapter 71A.12 RCW shall be in addition to the training requirements specified in subsection (5) of this section. Basic core training shall be developed and adopted by rule by the secretary of the department of social and health services. The department of social and health services shall appoint an advisory panel to assist in the development of core training comprised of representatives of the following:

(a) The division of developmental disabilities;

(b) The nursing care quality assurance commission;

(c) Professional nursing organizations;

(d) A state-wide organization of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW.

(8) A basic core training curriculum on providing care to residents in residential settings licensed under chapter 70.128 RCW, or in assisted living pursuant to RCW 74.39A.010 shall be mandatory for nursing assistants prior to assessment by a nurse regarding the ability and willingness to perform a delegated nursing task. Core training shall be developed and adopted by rule by the secretary of the department of social and health services, in conjunction with an advisory panel. The advisory panel shall be comprised of representatives from, at a minimum, the following:

- (a) The nursing care quality assurance commission;
- (b) Professional nurse organizations;
- (c) A state-wide association of community residential service providers whose members are programs certified by the department under chapter 71A.12 RCW;
- (d) Aging consumer groups;
- (e) Associations representing homes licensed under chapters 70.128 and 18.20 RCW; and
- (f) Associations representing home health, hospice, and home care agencies licensed under chapter 70.127 RCW.

Sec. 11. RCW 18.88A.230 and 1997 c 275 s 6 are each amended to read as follows:

(1) The nurse and nursing assistant shall be accountable for their own individual actions in the delegation process. Nurses acting within the protocols of their delegation authority shall be immune from liability for any action performed in the course of their delegation duties. Nursing assistants following written delegation instructions from registered nurses performed in the course of their accurately written, delegated duties shall be immune from liability.

(2) No person may coerce a nurse into compromising patient safety by requiring the nurse to delegate if the nurse determines it is inappropriate to do so. Nurses shall not be subject to any employer reprisal or disciplinary action by the Washington nursing care quality assurance commission for refusing to delegate tasks or refusing to provide the required training for delegation if the nurse determines delegation may compromise patient safety. Nursing assistants shall not be subject to any employer reprisal or disciplinary action by the nursing care quality assurance commission for refusing to accept delegation of a nursing task based on patient safety issues. No community residential program, adult family home, or boarding home contracting to provide assisted-living services may discriminate or retaliate in any manner against a person because the person made a complaint or cooperated in the investigation of a complaint.

(3) The department of social and health services (~~shall~~) may impose a civil fine of not less than two hundred fifty dollars nor more than one thousand dollars on a community residential program, adult family home, or boarding home under chapter 18, Laws of 1995 1st sp. sess. that knowingly permits an employee to perform a nursing task except as delegated by a nurse pursuant to chapter 18, Laws of 1995 1st sp. sess.

Sec. 12. 1995 1st sp.s. c 18 s 54 (uncodified) is amended to read as follows:

A special legislative task force is established to monitor implementation of sections 45 through 53 of this act. The task force shall consist of four members from the house of representatives, no more than two of whom shall be members of the same caucus, who shall be appointed by the speaker of the house of representatives, and four members from the senate, no more than two of whom shall be members of the same caucus, who shall be appointed by the president of the senate. The task force shall:

(1) Review the proposed nurse delegation protocols developed by the nursing care quality assurance commission;

(2) Review the proposed core and specialized training curricula developed by the department of social and health services and by the nursing care quality assurance commission;

(3) Review the program and reimbursement policies, and the identified barriers to nurse delegation, developed by the department of health and department of social and health services;

(4) Submit an interim report of its findings and recommendations on the above actions to the legislature by January 1, 1996;

(5) During 1996, conduct hearings to assess the effectiveness with which the delegation protocols, the core training, and nurse oversight are being implemented, and their impact on patient care and quality of life;

(6) Review and approve the proposed study designs;

(7) By February 1, 1997, recommend to the legislature a mechanism and time frame for extending nurse delegation provisions similar to those described in this act to persons residing in their own homes;

(8) During (~~1997~~) 1998, receive interim reports on the findings of the studies conducted in accordance with this act, and conduct additional fact-finding hearings on the implementation and impact of the nurse delegation provisions of sections 45 through 53 of this act.

The office of program research and senate committee services shall provide staff support to the task force. The department of health, the department of social and health services, and the nursing care quality assurance commission shall provide technical support as needed. The task force shall cease to exist on January 1, (~~1998~~) 1999, unless extended by act of the legislature.

NEW SECTION. **Sec. 13.** A new section is added to chapter 18.20 RCW to read as follows:

(1) Powers and duties regarding boarding homes, previously assigned under this chapter to the department of health and to the secretary of health, are by this section transferred to the department of social and health services and to the secretary of social and health services, respectively. This section further provides that, regarding boarding homes, all references within the Revised Code of Washington to the department of health and to the secretary of health mean the

department of social and health services and the secretary of social and health services, respectively.

(2)(a) The department of health shall deliver to the department of social and health services all reports, documents, surveys, books, records, data, files, papers, and written material pertaining to boarding homes and the powers, functions, and duties transferred by this section. The department of health shall make available to the department of social and health services all cabinets, furniture, office equipment, motor vehicles, and other tangible property employed by the department of health in carrying out the powers, functions, and duties transferred by this section. The department of health shall assign to the department of social and health services all funds, credits, and other assets that the department of health possesses in connection with the power, functions, and duties transferred by this section.

(b) On the effective date of this section, the department of health shall transfer to the department of social and health services any appropriations and license fees made to or possessed by the department of health for carrying out the powers, functions, and duties transferred by this section.

(c) When a question arises regarding the transfer of personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers, functions, and duties transferred by this section, the director of financial management shall determine the proper allocation and shall certify that determination to the state agencies concerned.

(3) The department of social and health services shall continue and shall act upon all rules and pending business before the department of health pertaining to the powers, functions, and duties transferred by this section.

(4) The transfer of powers, functions, duties, and personnel from the department of health to the department of social and health services, as mandated by this section, will not affect the validity of any act performed by the department of health regarding boarding homes before the effective date of this section.

(5) If apportionments of budgeted funds are required because of the transfers mandated by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the necessary transfers and adjustments in funds, appropriation accounts, and equipment records in accordance with the certification.

(6) Nothing contained in this section alters any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement expires or until the bargaining unit is modified by action of the personnel board as provided by law.

Sec. 14. RCW 18.20.020 and 1991 c 3 s 34 are each amended to read as follows:

As used in this chapter:

(1) "Aged person" means a person of the age sixty-five years or more, or a person of less than sixty-five years who by reason of infirmity requires domiciliary care.

(2) "Boarding home" means any home or other institution, however named, which is advertised, announced or maintained for the express or implied purpose of providing board and domiciliary care to three or more aged persons not related by blood or marriage to the operator. It shall not include facilities certified as group training homes pursuant to RCW 71A.22.040, nor any home, institution or section thereof which is otherwise licensed and regulated under the provisions of state law providing specifically for the licensing and regulation of such home, institution or section thereof. Nor shall it include any independent senior housing, independent living units in continuing care retirement communities, or other similar living situations including those subsidized by the department of housing and urban development.

(3) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

(4) "Secretary" means the secretary of social and health services.

(5) "Department" means the state department of social and health services.

(6) "Authorized department" means any city, county, city-county health department or health district authorized by the secretary (~~(of health)~~) to carry out the provisions of this chapter.

Sec. 15. RCW 18.20.190 and 1995 1st sp.s. c 18 s 18 are each amended to read as follows:

(1) The department of social and health services is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a boarding home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated a boarding home without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the boarding home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any new resident until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain adequate care and service.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue pending any hearing.

NEW SECTION. Sec. 16. A new section is added to chapter 18.20 RCW to read as follows:

The secretary may adopt rules and policies as necessary to entitle the state to participate in federal funding programs and opportunities and to facilitate state and federal cooperation in programs under the department's jurisdiction. The secretary shall ensure that any internal reorganization carried out under the terms of this chapter complies with prerequisites for the receipt of federal funding for the various programs under the department's control. When interpreting any department-related section or provision of law susceptible to more than one interpretation, the secretary shall construe that section or provision in the manner most likely to comply with federal laws and rules entitling the state to receive federal funds for the various programs of the department. If any law or rule dealing with the department is ruled to be in conflict with federal prerequisites to the allocation of federal funding to the state, the department, or its agencies, the secretary shall declare that law or rule inoperative solely to the extent of the conflict.

NEW SECTION. Sec. 17. (1) The governor shall establish a joint legislative and executive task force on long-term care, safety, quality, and oversight. The joint task force shall consist of seven members. The governor shall appoint three members that include: (a) The secretary of the department of social and health services or his or her designee; (b) the secretary of the department of health or his or her designee; and (c) the state long-term care ombudsman. Four legislative members shall serve on the joint task force as ex officio members and include: Two members of the senate appointed by the president of the senate, one of whom shall be a member of the majority caucus and one whom shall be a member of the minority caucus; and two members of the house of representatives appointed by the speaker of the house of representatives, one of whom shall be a member of the majority caucus and one whom shall be a member of the minority caucus. Primary staff assistance to the joint task force shall be provided by the office of financial management with assistance, as directed by legislative members, by the health care committee of the house of representatives office of program research and the senate health and long-term care committee of senate committee services.

(2) The joint task force shall elect a chair and vice-chair. The chair shall serve a one-year term as the chair of the joint task force. The following year, the previously elected vice-chair shall serve as the chair of the joint task force and a new vice-chair shall be elected by the members of the joint task force.

(3) The joint task force shall have the ability to create advisory committees and appoint individuals from a variety of disciplines and perspectives including but not limited to patient and resident advocates and representatives of provider organizations, to assist the joint task force with specific issues related to chapter . . . , Laws of 1998 (this act).

(4) The joint task force may hold meetings, including hearings, to receive public testimony, which shall be open to the public in accordance with law. Records of the joint task force shall be subject to public disclosure in accordance with law. Members shall not receive compensation, but may be reimbursed for travel expenses as authorized under RCW 43.03.050 and 43.03.060. Advisory committee members, if appointed, shall not receive compensation or reimbursement for travel or expenses.

(5) The joint task force shall:

(a) Review all long-term care quality and safety standards for all long-term care facilities and services developed, revised, and enforced by the department of social and health services;

(b) In cooperation with aging and adult services, the division of developmental disabilities, and the division of mental health and the department of health, develop recommendations to simplify, strengthen, reduce, or eliminate rules, procedures, and burdensome paperwork that prove to be barriers to providing the highest standard of client safety, effective quality of care, effective client protections, and effective coordination of direct services;

(c) Review the need for reorganization and reform of long-term care administration and service delivery, including administration and services provided for the aged, for those with mental health needs, and for the developmentally disabled, and recommend the establishment of a single long-term care department or a division of long-term care within the department of social and health services;

(d) Suggest cost-effective methods for reallocating funds to unmet needs in direct services;

(e) List all nonmeans tested programs and activities funded by the federal older Americans act and state-funded senior citizens act or other such state-funded programs, and recommend methods for integrating such services into existing long-term care programs for the functionally disabled;

(f) Suggest methods to establish a single point of entry for service eligibility and delivery for all functionally disabled persons;

(g) Evaluate the need for long-term care training and review all long-term care training and education programs conducted by the department of social and health services, and suggest modifications to enhance client safety, to create greater access to training through the use of innovative technology, to reduce

training costs, to improve coordination of training between the appropriate divisions and departments and, to enhance the overall uniformity of the long-term care training system;

(h) Evaluate the current system used by the department of social and health services for placement of functionally disabled clients, including aging, mentally ill, and developmentally disabled persons, into long-term care settings and services and assess the capacity of each long-term care service or setting to appropriately meet the health and safety needs of functionally disabled clients or residents referred to each service or setting;

(i) Evaluate the need for uniform client assessments for determining functional long-term care needs of all persons who receive state-funded, long-term care services;

(j) Evaluate the success of the transfer of boarding home responsibilities outlined in chapter . . . , Laws of 1998 (this act) and recommend if any further administrative changes should be made; and

(k) Evaluate the need to establish a dementia and Alzheimer's certification requirement for long-term care facilities who choose to provide care to persons who have been diagnosed with Alzheimer's or a related dementia. The evaluation shall also identify the level of disability a resident or client must have before the resident or client is considered for care in a certified long-term care Alzheimer's facility; and

(l) Evaluate the effect of requiring regular visits to bedbound patients of boarding homes and adult family homes by licensed practitioners.

(6) The joint task force shall report its initial findings and recommendations to the governor and appropriate committees of the legislature by January 1, 1999. The joint task force shall report its final findings and recommendations to the governor and appropriate committees of the legislature by December 12, 1999.

**See. 18. RCW 18.20.160 and 1985 c 297 s 2 are each amended to read as follows:*

(1) No person operating a boarding home licensed under this chapter shall admit to or retain in the boarding home any aged person requiring nursing or medical care of a type provided by institutions licensed under chapters 18.51, 70.41 or 71.12 RCW, except that when registered nurses are available, and upon a doctor's order that a supervised medication service is needed, it may be provided. Supervised medication services, as defined by the department, may include an approved program of self-medication or self-directed medication. Such medication service shall be provided only to boarders who otherwise meet all requirements for residency in a boarding home.

(2)(a) Notwithstanding any provision contained in this section, in no case shall a resident be bedbound, as a result of illness or disease, for any continuous period of time exceeding ten days, unless a licensed practitioner has seen the resident and assessed the resident's medical condition, prescribed a plan of care, and determined that a continued stay in the boarding home is appropriate.

(b) Residents who continue to be bedbound for more than ten consecutive days shall be seen by a licensed practitioner at least every thirty days, counting from the date of the initial bedbound-related licensed practitioner visit, for as long as the resident continues to be bedbound.

(c) The licensed practitioner and the boarding home shall document each visit and the licensed practitioner shall, at each visit, prescribe a plan of care and redetermine the appropriateness of the resident's continued stay in the boarding home.

(3) For the purposes of this section, an illness or disease does not include any illness or disease for which the resident has elected to receive hospice care and chooses to remain in the boarding home. When the resident elects to receive hospice care, an outside licensed agency is responsible for performing timely and appropriate visits and for developing a plan of care.

*Sec. 18 was vetoed. See message at end of chapter.

*NEW SECTION. Sec. 19. A new section is added to chapter 18.20 RCW to read as follows:

For the purposes of RCW 18.20.160, "licensed practitioner" includes a physician licensed under chapter 18.71 RCW, a registered nurse licensed under chapter 18.79 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, an advanced registered nurse practitioner licensed under chapter 18.79 RCW, or a physician assistant licensed under chapter 18.71A RCW.

*Sec. 19 was vetoed. See message at end of chapter.

*Sec. 20. RCW 70.128.060 and 1995 c 260 s 4 are each amended to read as follows:

(1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) The department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation or nonrenewal of a license; or (b) the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) *The department shall not issue a license to a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more if the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.*

(6)(a) *The department shall license an adult family home for the maximum level of care that the adult family home may provide. However, in no case shall the adult family home admit or retain residents who are bedbound, as a result of illness or disease, for any continuous period of time exceeding ten days, unless a licensed practitioner has seen the resident to assess their medical condition, prescribed a plan of care, and determined that a continued stay in the adult family home is appropriate.*

(b) Residents who continue to be bedbound for more than ten consecutive days shall be seen by a licensed practitioner at least every thirty days, counting from the date of the initial bedbound-related licensed practitioner visit, for as long as the resident continues to be bedbound.

(c) The licensed practitioner and adult family home shall document each visit and the licensed practitioner shall, at each visit, prescribe a plan of care and redetermine the continued appropriateness of the resident remaining in the adult family home.

(d) The department shall further define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(e) For the purposes of this section, an illness or disease does not include any illness or disease for which the resident has elected to receive hospice care and chooses to remain in the adult family home. When the resident elects to receive hospice care, an outside licensed agency is responsible for performing timely and appropriate visits and for developing a plan of care.

(7) *The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.*

(8) *The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.*

(9) *The license fee shall be set at fifty dollars per year for each home. The licensing fee is due each year within thirty days of the anniversary date of the license. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.*

*Sec. 20 was vetoed. See message at end of chapter.

***NEW SECTION.** *Sec. 21. A new section is added to chapter 70.128 RCW to read as follows:*

For the purposes of RCW 70.128.060, "licensed practitioner" includes a physician licensed under chapter 18.71 RCW, a registered nurse licensed under chapter 18.79 RCW, an osteopathic physician and surgeon licensed under chapter 18.57 RCW, an advanced registered nurse practitioner licensed under

chapter 18.79 RCW, or a physician assistant licensed under chapter 18.71A RCW.

*Sec. 21 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 22. The sum of fifty thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 1999, from the general fund to the office of financial management solely for the purposes of implementing section 17 of this act.

NEW SECTION. Sec. 23. Section 5 of this act takes effect July 1, 1998.

NEW SECTION. Sec. 24. (1) Sections 13 through 16 of this act expire July 1, 2000, unless reauthorized by the legislature.

(2) Section 17 of this act expires December 12, 1999.

NEW SECTION. Sec. 25. 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. 26. Except for section 5 of this act, 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 the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 1, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 18, 19, 20 and 21, Second Substitute Senate Bill No. 6544 entitled:

"AN ACT Relating to improving long-term care;"

2SSB 6544 takes care of many issues dealing with adult family homes, boarding homes and long-term care, and, most importantly, transfers the oversight of boarding homes from the Department of Health to the Department of Social and Health Services. This is well-conceived and ambitious legislation, and will go far toward ensuring the safety and quality of care for residents of our adult family and boarding homes.

Sections 18, 19, 20, and 21 would specify when residents of boarding and adult family homes who become bedbound as the result of illness must be seen by a licensed practitioner, and define those practitioners and their duties. While I agree with the intentions of those sections, they would conflict with current patients' rights to refuse treatment and to maintain their preferred residences. Also, those sections are unclear as to provider and resident responsibilities when disagreements arise from such conflicts. Additionally, the impact on people's abilities to pay for additional service has not been analyzed. Before implementing changes in care requirements, additional comment needs to be sought from residents, families and all interested parties, as well as the joint task force created by this bill.

For these reasons, I have vetoed sections 18, 19, 20 and 21 of Second Substitute Senate Bill No. 6544.

With the exception of sections 18, 19, 20 and 21, Second Substitute Senate Bill No. 6544 is approved."

CHAPTER 273

[Senate Bill 6758]

WORK ETHIC CAMP PROGRAM—EXTENSION

AN ACT Relating to the work ethic camp program; and repealing RCW 72.09.420.

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

NEW SECTION. **Sec. 1.** RCW 72.09.420 and 1993 c 338 s 6 are each repealed.

Passed the Senate March 3, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 1, 1998.

Filed in Office of Secretary of State April 1, 1998.

CHAPTER 274

[Engrossed Substitute House Bill 1074]

PERSONALITY RIGHTS

AN ACT Relating to the protection of personality rights; adding a new chapter to Title 63 RCW; and prescribing penalties.

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

NEW SECTION. **Sec. 1.** Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, as the case may be. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime.

NEW SECTION. **Sec. 2.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

(2) "Definable group" means an assemblage of individuals existing or brought together with or without interrelation, orderly form, or arrangement, including but not limited to: A crowd at any sporting event; a crowd in any street or public

building; the audience at any theatrical, musical, or stage production; or a performing group or sports team.

(3) "Fund raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

(4) "Individual" means a natural person, living or dead.

(5) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(6) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(7) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

(8) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

(9) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(10) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others.

NEW SECTION. Sec. 3. (1) Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:

(a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile; or

(b) If the individual or personality, as the case may be, transferred or assigned any interest in the personality rights during his or her life, then the transferred or assigned interest shall pass as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed earlier in this section, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile.

(2) A property right exists whether or not such rights were commercially exploited by the individual or the personality during the individual's or the personality's, as the case may be, lifetime.

NEW SECTION. Sec. 4. (1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under section 3 of this act for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under section 3 of this act may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under section 3 of this act for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under section 3 of this act may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney in fact, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative", "attorney in fact", and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW.

NEW SECTION. Sec. 5. Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or oral, express or implied consent of the owner of the right, has infringed

such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit.

NEW SECTION. Sec. 6. (1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(5) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(6) The remedies provided for in this section are cumulative and are in addition to any others provided for by law.

NEW SECTION. Sec. 7. (1) For purposes of section 5 of this act, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsection (1) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) Section 5 of this act does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, on-line service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use.

NEW SECTION. Sec. 8. Nothing contained in this chapter is intended to invalidate any community property rights.

NEW SECTION. Sec. 9. Sections 1 through 8 of this act constitute a new chapter in Title 63 RCW.

Passed the House March 10, 1998.
Passed the Senate March 6, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 275

[Substitute House Bill 1184]

COIN-OPERATED LAUNDRY FACILITIES—TAX REVISIONS

AN ACT Relating to coin-operated laundry facilities; amending RCW 82.04.050; and providing an effective date.

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

Sec. 1. RCW 82.04.050 and 1997 c 127 s 1 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding charges made for the use of coin-operated laundry facilities when such facilities are situated in an apartment house, rooming house, or mobile home park for the exclusive use of the tenants thereof, and also excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection

when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve

program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

NEW SECTION. Sec. 2. This act takes effect July 1, 1998.

Passed the House February 27, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 276

[Engrossed Substitute House Bill 1223]

PROHIBITION OF GANG-RELATED ACTIVITY BY TENANTS

AN ACT Relating to landlord-tenant relations; amending RCW 59.18.030, 59.18.130, 59.18.180, and 59.12.030; and adding new sections to chapter 59.18 RCW.

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

Sec. 1. RCW 59.18.030 and 1973 1st ex.s. c 207 s 3 are each amended to read as follows:

As used in this chapter:

(1) "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.

(2) "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.

(3) "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.

(4) "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.

(5) "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.

(6) "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.

(7) 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.

(8) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

(9) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

(10) "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.

(11) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

Sec. 2. RCW 59.18.130 and 1992 c 38 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(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 9A.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; ~~(and)~~

(9) Not engage in any gang-related activity at the premises, as defined in RCW 9A.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. 3. RCW 59.18.180 and 1992 c 38 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 substantially affect the health and safety of the tenant or other tenants, or substantially increase the hazards of fire or accident that can 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 attorney's fees.

(2) 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) If activity on the premises that creates an imminent hazard to the physical safety of other persons on the premises as defined 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) 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) 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 ~~((or))~~, 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.

NEW SECTION. Sec. 4. A new section is added to chapter 59.18 RCW to read as follows:

The legislature finds and declares that the ability to feel safe and secure in one's own home and in one's own community is of primary importance. The legislature recognizes that certain gang-related activity can affect the safety of a considerable number of people in the rental premises and dwelling units. Therefore, such activity, although it may be occurring within an individual's home or the surrounding areas of an individual's home, becomes the community's concern.

The legislature intends that the remedy provided in section 5 of this act be used solely to protect the health and safety of the community. The remedy is not a means for private citizens to bring malicious or unfounded actions against fellow tenants or residential neighbors for personal reasons. In determining whether the tenant's activity is the type prohibited under RCW 59.18.130(9), the court should consider the totality of the circumstances, including factors such as whether there have been numerous complaints to the landlord, damage to property, police or incident reports, reports of disturbance, and arrests. An absence of any or all of these factors does not necessarily mean gang activity is not occurring. In determining whether the tenant is engaging in gang-related activity, the court should consider the purpose and intent of section 5 of this act. The legislature intends to give people in the community a tool that will help them restore the health and vibrance of their community.

NEW SECTION. Sec. 5. A new section is added to chapter 59.18 RCW to read as follows:

(1)(a) Any person whose life, safety, health, or use of property is being injured or endangered by a tenant's gang-related activity, who has legal standing and resides, works in, or owns property in the same multifamily building, apartment complex, or within a one-block radius may serve the landlord with a ten-day notice and demand that the landlord commence an unlawful detainer action against the tenant. The notice and demand must set forth, in reasonable detail, facts and circumstances that lead the person to believe gang-related activity is occurring. The notice and demand shall be served by delivering a copy personally to the landlord or the landlord's agent. If the person is unable to personally serve the landlord after exercising due diligence, the person may deposit the notice and demand in the mail, postage prepaid, to the landlord's or the landlord's agent's last known address.

(b) A copy of the notice and demand must also be served upon the tenant engaging in the gang-related activity by delivering a copy personally to the tenant. However, if the person is prevented from personally serving the tenant due to threats or violence, or if personal service is not reasonable under the circumstances, the person may deposit the notice and demand in the mail, postage prepaid, to the tenant's address, or leave a copy of the notice and demand in a conspicuous location at the tenant's residence.

(2)(a) Within ten days from the time the notice and demand is served, the landlord has a duty to take reasonable steps to investigate the tenant's alleged noncompliance with RCW 59.18.130(9). The landlord must notify the person who brought the notice and demand that an investigation is occurring. The landlord has ten days from the time he or she notifies the person in which to conduct a reasonable investigation.

(b) If, after reasonable investigation, the landlord finds that the tenant is not in compliance with RCW 59.18.130(9), the landlord may proceed directly to an unlawful detainer action or take reasonable steps to ensure the tenant discontinues the prohibited activity and complies with RCW 59.18.130(9). The landlord shall notify the person who served the notice and demand of whatever action the landlord takes.

(c) If, after reasonable investigation, the landlord finds that the tenant is in compliance with RCW 59.18.130(9), the landlord shall notify the person who served the notice and demand of the landlord's findings.

(3) The person who served the notice and demand may petition the appropriate court to have the tenancy terminated and the tenant removed from the premises if: (a) Within ten days of service of the notice and demand, the tenant fails to discontinue the gang-related activity and the landlord fails to conduct a reasonable investigation; or (b) the landlord notifies the person that the landlord conducted a reasonable investigation and found that the tenant was not engaged in gang-related activity as prohibited under RCW 59.18.130(9); or (c) the landlord took reasonable steps to have the tenant comply with RCW 59.18.130(9), but the tenant has failed to comply within a reasonable time.

(4) If the court finds that the tenant was not in compliance with RCW 59.18.130(9), the court shall enter an order terminating the tenancy and requiring the tenant to vacate the premises. The court shall not issue the order terminating the tenancy unless it has found that the allegations of gang-related activity are corroborated by a source other than the person who has petitioned the court.

(5) The prevailing party shall recover reasonable attorneys' fees and costs. The court may impose sanctions, in addition to attorneys' fees, on a person who has brought an action under this chapter against the same tenant on more than one occasion, if the court finds the petition was brought with the intent to harass. However, the court must order the landlord to pay costs and reasonable attorneys' fees to the person petitioning for termination of the tenancy if the court finds that the landlord failed to comply with the duty to investigate, regardless of which party prevails.

Sec. 6. RCW 59.12.030 and 1983 c 264 s 1 are each amended to read as follows:

A tenant of real property for a term less than life is guilty of unlawful detainer either:

(1) When he or she holds over or continues in possession, in person or by subtenant, of the property or any part thereof after the expiration of the term for which it is let to him or her. When real property is leased for a specified term or period by express or implied contract, whether written or oral, the tenancy shall be terminated without notice at the expiration of the specified term or period;

(2) When he or she, having leased property for an indefinite time with monthly or other periodic rent reserved, continues in possession thereof, in person or by subtenant, after the end of any such month or period, when the landlord, more than twenty days prior to the end of such month or period, has served notice (in manner in RCW 59.12.040 provided) requiring him or her to quit the premises at the expiration of such month or period;

(3) When he or she continues in possession in person or by subtenant after a default in the payment of rent, and after notice in writing requiring in the alternative the payment of the rent or the surrender of the detained premises, served (in manner in RCW 59.12.040 provided) in behalf of the person entitled to the rent upon the person owing it, has remained uncomplied with for the period of three days after service thereof. The notice may be served at any time after the rent becomes due;

(4) When he or she continues in possession in person or by subtenant after a neglect or failure to keep or perform any other condition or covenant of the lease or agreement under which the property is held, including any covenant not to assign or sublet, than one for the payment of rent, and after notice in writing requiring in the alternative the performance of such condition or covenant or the surrender of the property, served (in manner in RCW 59.12.040 provided) upon him or her, and if there is a subtenant in actual possession of the premises, also upon such subtenant, shall remain uncomplied with for ten days after service thereof. Within ten days after the service of such notice the tenant, or any

subtenant in actual occupation of the premises, or any mortgagee of the term, or other person interested in its continuance, may perform such condition or covenant and thereby save the lease from such forfeiture;

(5) When he or she commits or permits waste upon the demised premises, or when he or she sets up or carries on thereon any unlawful business, or when he or she erects, suffers, permits, or maintains on or about the premises any nuisance, and remains in possession after the service (in manner in RCW 59.12.040 provided) upon him or her of three days' notice to quit; ((or))

(6) A person who, without the permission of the owner and without having color of title thereto, enters upon land of another and who fails or refuses to remove therefrom after three days' notice, in writing and served upon him or her in the manner provided in RCW 59.12.040. Such person may also be subject to the criminal provisions of chapter 9A.52 RCW; or

(7) When he or she commits or permits any gang-related activity at the premises as prohibited by RCW 59.18.130.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 277

[House Bill 1252]

PERIODIC REPORTS BY LIMITED PARTNERSHIPS

AN ACT Relating to limited partnerships; amending RCW 25.10.453 and 25.10.553; adding new sections to chapter 25.10 RCW; 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 25.10 RCW to read as follows:

The legislature finds that the maintenance of records regarding outdated limited partnerships, which no longer actively transact business, imposes an unnecessary financial burden on the state. The legislature also finds that the maintenance of outdated records regarding limited partnerships prevents the names of these partnerships from being available for use by new business entities. Based upon those findings, the purposes of chapter . . . , Laws of 1998 (this act) are:

(1) To authorize the secretary of state to identify limited partnerships formed under legislation that predated the current Washington uniform limited partnership act that are no longer transacting business, and to dissolve them and make their names available for new business entities actively transacting business in this state; and

(2) To provide for a system under which the secretary of state's records of limited partnerships formed under current law are kept current and the records of limited partnerships no longer conducting business can be purged.

NEW SECTION. **Sec. 2.** A new section is added to chapter 25.10 RCW to read as follows:

(1) This section applies to all existing limited partnerships formed after June 6, 1945, and before January 1, 1982, under the authority of statutes effective before January 1, 1982.

(2) A limited partnership under this section shall notify the secretary of state, before January 1, 1999, that it continues to actively conduct business. The notice must be in writing, and must include its principle business address, the name of its registered agent, and the address of its registered office. If the limited partnership has not previously appointed a registered agent or designated a registered office, it must do so.

(3) The secretary of state shall notify all limited partnerships under this section of the requirements of subsection (2) of this section within ninety days of the effective date of this act. The notice must be in writing, deposited into the mail postage prepaid, and addressed to the registered office of the limited partnership. If the secretary does not have a record of a registered office, the notice must be addressed to the principle business address or other address contained in the secretary's records.

(4) If the notice is returned as undeliverable, or if the limited partnership does not comply with subsection (2) of this section, then the secretary of state shall commence proceedings to administratively dissolve the limited partnership under RCW 25.10.455.

(5) Limited partnerships dissolved under subsection (4) of this section may be reinstated under RCW 25.10.457, except that if the notice was returned as undeliverable the limited partnership may be reinstated at any time within five years of dissolution.

Sec. 3. RCW 25.10.453 and 1991 c 269 s 31 are each amended to read as follows:

The secretary of state may commence a proceeding under RCW 25.10.455 to administratively dissolve a limited partnership if:

(1) An amendment to the certificate of limited partnership required by RCW 25.10.090(2)(c) is not filed when specified by that provision;

(2) The limited partnership is without a registered agent or registered office in this state for sixty days or more; (~~or~~)

(3) The limited partnership does not notify the secretary of state within sixty days that its registered agent or registered office has been changed, that its registered agent has resigned, or that its registered office has been discontinued; or

(4) The limited partnership does not deliver its completed periodic report to the secretary of state when it is due.

Sec. 4. RCW 25.10.553 and 1991 c 269 s 43 are each amended to read as follows:

The secretary of state may commence a proceeding under ~~((section 45 of this act))~~ RCW 25.10.555 to revoke registration of a foreign limited partnership authorized to transact business in this state if:

(1) The foreign limited partnership is without a registered agent or registered office in this state for sixty days or more;

(2) The foreign limited partnership does not inform the secretary of state under RCW 25.10.520 that its registered agent or registered office has changed, that its registered agent has resigned, or that its registered office has been discontinued within sixty days of the change, resignation, or discontinuance;

(3) A general partner or other agent of the foreign limited partnership signed a document knowing it was false in any material respect with intent that the document be delivered to the secretary of state for filing; ~~((or))~~

(4) The secretary of state receives a duly authenticated certificate from the secretary of state or other official having custody of partnership records in the jurisdiction under which the foreign limited partnership was organized stating that the foreign limited partnership has been dissolved or its limited partnership certificate canceled; or

(5) The foreign limited partnership does not deliver its completed periodic report to the secretary of state when it is due.

NEW SECTION. Sec. 5. A new section is added to chapter 25.10 RCW to read as follows:

(1) A limited partnership formed or registered under this chapter shall deliver to the secretary of state for filing periodic reports that set forth:

(a) The name of the limited partnership;

(b) The street address of its registered office and the name of its registered agent in this state;

(c) In the case of a foreign limited partnership, the address of its principle office in the state or country under the laws of which it is formed; and

(d) The address of the principle place of business of the limited partnership in this state.

(2) Periodic reports are due every five years on the anniversary date of the formation or registration of the limited partnership. The secretary of state may provide by rule for a longer period of time between reports. Periodic reports must be accompanied by a fee equal to the corporation license fee under Title 23B RCW.

(3) As to limited partnerships formed or registered before the effective date of this act, the secretary of state shall provide by administrative rule for a schedule under which the first reports under this section shall be due. The reports may not be due earlier than one year after the effective date of this act.

NEW SECTION. Sec. 6. Sections 1 and 2 of this act expire January 1, 2006.

Passed the House March 9, 1998.
Passed the Senate March 3, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 278

[Substitute House Bill 2077]

PUBLIC WORKS CONTRACTS—COMPETITIVE BIDDING REVISIONS

AN ACT Relating to competitive bidding; amending RCW 35.22.620, 35.23.352, 36.32.270, 52.14.110, 53.08.120, 54.04.070, 57.08.050, 70.44.140, and 39.04.155; reenacting and amending RCW 39.04.150; adding a new section to chapter 39.04 RCW; and adding a new section to chapter 36.34 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 39.04 RCW to read as follows:

This section provides uniform exemptions to competitive bidding requirements utilized by municipalities when awarding contracts for public works and contracts for purchases. The statutes governing a specific type of municipality may also include other exemptions from competitive bidding requirements. The purpose of this section is to supplement and not to limit the current powers of any municipality to provide exemptions from competitive bidding requirements.

(1) Competitive bidding requirements may be waived by the governing body of the municipality for:

(a) Purchases that are clearly and legitimately limited to a single source of supply;

(b) Purchases involving special facilities or market conditions;

(c) Purchases in the event of an emergency;

(d) Purchases of insurance or bonds; and

(e) Public works in the event of an emergency.

(2)(a) The waiver of competitive bidding requirements under subsection (1) of this section may be by resolution or by the terms of written policies adopted by the municipality, at the option of the governing body of the municipality. If the governing body elects to waive competitive bidding requirements by the terms of written policies adopted by the municipality, immediately after the award of any contract, the contract and the factual basis for the exception must be recorded and open to public inspection.

If a resolution is adopted by a governing body to waive competitive bidding requirements under (b) of this subsection, the resolution must recite the factual basis for the exception. This subsection (2)(a) does not apply in the event of an emergency.

(b) If an emergency exists, the person or persons designated by the governing body of the municipality to act in the event of an emergency may declare an emergency situation exists, waive competitive bidding requirements, and award all necessary contracts on behalf of the municipality to address the emergency

situation. If a contract is awarded without competitive bidding due to an emergency, a written finding of the existence of an emergency must be made by the governing body or its designee and duly entered of record no later than two weeks following the award of the contract.

(3) For purposes of this section "emergency" means unforeseen circumstances beyond the control of the municipality that either: (a) Present a real, immediate threat to the proper performance of essential functions; or (b) will likely result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

Sec. 2. RCW 35.22.620 and 1993 c 198 s 9 are each amended to read as follows:

(1) As used in this section, the term "public works" means as defined in RCW 39.04.010.

(2) A first class city may have public works performed by contract pursuant to public notice and call for competitive bids. As limited by subsection (3) of this section, a first class city may have public works performed by city employees in any annual or biennial budget period equal to a dollar value not exceeding ten percent of the public works construction budget, including any amount in a supplemental public works construction budget, over the budget period. The amount of public works that a first class city has a county perform for it under RCW 35.77.020 shall be included within this ten percent limitation.

If a first class city has public works performed by public employees in any budget period that are in excess of this ten percent limitation, the amount in excess of the permitted amount shall be reduced from the otherwise permitted amount of public works that may be performed by public employees for that city in its next budget period. Twenty percent of the motor vehicle fuel tax distributions to that city shall be withheld if two years after the year in which the excess amount of work occurred, the city has failed to so reduce the amount of public works that it has performed by public employees. The amount so withheld shall be distributed to the city when it has demonstrated in its reports to the state auditor that the amount of public works it has performed by public employees has been so reduced.

Whenever a first class city has had public works performed in any budget period up to the maximum permitted amount for that budget period, all remaining public works within that budget period shall be done by contract pursuant to public notice and call for competitive bids.

The state auditor shall report to the state treasurer any first class city that exceeds this amount and the extent to which the city has or has not reduced the amount of public works it has performed by public employees in subsequent years.

(3) In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population in excess of one hundred fifty thousand shall not have public employees perform a public works project in excess of fifty thousand dollars if more than a single craft or trade is involved with the public

works project, or a public works project in excess of twenty-five thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. In addition to the percentage limitation provided in subsection (2) of this section, a first class city with a population of one hundred fifty thousand or less shall not have public employees perform a public works project in excess of thirty-five thousand dollars if more than one craft or trade is involved with the public works project, or a public works project in excess of twenty thousand dollars if only a single craft or trade is involved with the public works project or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

(4) In addition to the accounting and record-keeping requirements contained in RCW 39.04.070, every first class city annually shall prepare a report for the state auditor indicating the total public works construction budget and supplemental public works construction budget for that year, the total construction costs of public works performed by public employees for that year, and the amount of public works that is performed by public employees above or below ten percent of the total construction budget. However, if a city budgets on a biennial basis, this annual report shall indicate the amount of public works that is performed by public employees within the current biennial period that is above or below ten percent of the total biennial construction budget.

After September 1, 1987, each first class city with a population of one hundred fifty thousand or less shall use the form required by RCW 43.09.205 to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of materials, supplies, equipment, and labor on the construction of that project. The value of the public works budget shall be the value of all the separate public works projects within the budget.

(6) ~~((When any emergency shall require the immediate execution of such public work, upon the finding of the existence of such emergency by the authority having power to direct such public work to be done and duly entered of record, publication of description and estimate may be made within seven days after the commencement of the work. Within two weeks of the finding that such an emergency existed, the city council shall adopt a resolution certifying the existence of this emergency situation.))~~ The competitive bidding requirements of this section may be waived by the city legislative authority pursuant to section 1 of this act if an exemption contained within that section applies to the work or contract.

(7) In lieu of the procedures of subsections (2) and (6) of this section, a first class city may use ~~((a))~~ the small works roster process ~~((and))~~ in RCW 39.04.155

to award contracts for public works projects with an estimated value of one hundred thousand dollars or less (~~as provided in RCW 39.04.155~~).

Whenever possible, the city shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(8) The allocation of public works projects to be performed by city employees shall not be subject to a collective bargaining agreement.

(9) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(10) Nothing in this section shall prohibit any first class city from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Sec. 3. RCW 35.23.352 and 1996 c 18 s 2 are each amended to read as follows:

(1) Any second class city or any town may construct any public works, as defined in RCW 39.04.010, by contract or day labor without calling for bids therefor whenever the estimated cost of the work or improvement, including cost of materials, supplies and equipment will not exceed the sum of thirty thousand dollars if more than one craft or trade is involved with the public works, or twenty thousand dollars if a single craft or trade is involved with the public works or the public works project is street signalization or street lighting. A public works project means a complete project. The restrictions in this subsection do not permit the division of the project into units of work or classes of work to avoid the restriction on work that may be performed by day labor on a single project.

Whenever the cost of the public work or improvement, including materials, supplies and equipment, will exceed these figures, the same shall be done by contract. All such contracts shall be let at public bidding upon publication of notice calling for sealed bids upon the work. The notice shall be published in the official newspaper, or a newspaper of general circulation most likely to bring responsive bids, at least thirteen days prior to the last date upon which bids will be received. The notice shall generally state the nature of the work to be done that plans and specifications therefor shall then be on file in the city or town hall for public inspections, and require that bids be sealed and filed with the council or commission within the time specified therein. Each bid shall be accompanied by a bid proposal deposit in the form of a cashier's check, postal money order, or surety bond to the council or commission for a sum of not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal deposit. The council or commission of the city or town shall let the contract to the lowest responsible bidder or shall have power by resolution to reject any or all bids and to make further calls for bids in the same manner as the original call.

When the contract is let then all bid proposal deposits shall be returned to the bidders except that of the successful bidder which shall be retained until a contract is entered into and a bond to perform the work furnished, with surety satisfactory to the council or commission, in accordance with RCW 39.08.030.

If the bidder fails to enter into the contract in accordance with his or her bid and furnish a bond within ten days from the date at which he or she is notified that he or she is the successful bidder, the check or postal money order and the amount thereof shall be forfeited to the council or commission or the council or commission shall recover the amount of the surety bond. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

If no bid is received on the first call the council or commission may readvertise and make a second call, or may enter into a contract without any further call or may purchase the supplies, material or equipment and perform the work or improvement by day labor.

(2) The allocation of public works projects to be performed by city or town employees shall not be subject to a collective bargaining agreement.

(3) In lieu of the procedures of subsection (1) of this section, a second class city or a town may use the small works roster process provided in RCW 39.04.155 to award public works contracts with an estimated value of one hundred thousand dollars or less.

Whenever possible, the city or town shall invite at least one proposal from a minority or woman contractor who shall otherwise qualify under this section.

(4) The form required by RCW 43.09.205 shall be to account and record costs of public works in excess of five thousand dollars that are not let by contract.

(5) The cost of a separate public works project shall be the costs of the materials, equipment, supplies, and labor on that construction project.

(6) Any purchase of supplies, material, or equipment, except for public work or improvement, where the cost thereof exceeds seven thousand five hundred dollars shall be made upon call for bids.

(7) Bids shall be called annually and at a time and in the manner prescribed by ordinance for the publication in a newspaper of general circulation in the city or town of all notices or newspaper publications required by law. The contract shall be awarded to the lowest responsible bidder.

(8) For advertisement and formal sealed bidding to be dispensed with as to purchases ~~((between seven thousand five hundred and))~~ with an estimated value of fifteen thousand dollars or less, the council or commission must authorize by resolution, use of the uniform procedure provided in RCW 39.04.190.

(9) ~~((These requirements for purchasing may be waived by resolution of the city or town council or commission which declared that the purchase is clearly and legitimately limited to a single source or supply within the near vicinity, or the materials, supplies, equipment, or services are subject to special market conditions, and recites why this situation exists. Such actions are subject to RCW 39.30.020.))~~ The city or town legislative authority may waive the competitive bidding requirements of this section pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

(10) This section does not apply to performance-based contracts, as defined in RCW 39.35A.020(3), that are negotiated under chapter 39.35A RCW.

(11) Nothing in this section shall prohibit any second class city or any town from allowing for preferential purchase of products made from recycled materials or products that may be recycled or reused.

Sec. 4. RCW 36.32.270 and 1963 c 4 s 36.32.270 are each amended to read as follows:

~~((In the event of an emergency when the public interest or property of the county would suffer material injury or damage by delay, upon resolution of the board of county commissioners declaring the existence of such emergency and reciting the facts constituting the same, the board))~~ The county legislative authority may waive the competitive bidding requirements of this chapter ((with reference to any)) pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or ((contract)) public work.

Sec. 5. RCW 52.14.110 and 1993 c 198 s 11 are each amended to read as follows:

Insofar as practicable, purchases and any public works by the district shall be based on competitive bids. A formal sealed bid procedure shall be used as standard procedure for purchases and contracts for purchases executed by the board of commissioners. Formal sealed bidding shall not be required for:

(1) ~~((Emergency purchases if the sealed bidding procedure would prevent or hinder the emergency from being addressed appropriately. The term emergency means an occurrence that creates an immediate threat to life or property;~~

~~—(2))~~ The purchase of any materials, supplies, or equipment if the cost will not exceed the sum of four thousand five hundred dollars. However, whenever the estimated cost ~~((is from four thousand five hundred dollars up to))~~ does not exceed ten thousand dollars, the commissioners may by resolution use the process provided in RCW 39.04.190 to award contracts;

~~((3))~~ (2) Contracting for work to be done involving the construction or improvement of a fire station or other buildings where the estimated cost will not exceed the sum of two thousand five hundred dollars, which includes the costs of labor, material, and equipment. However, whenever the estimated cost ~~((is from two thousand five hundred dollars up to))~~ does not exceed ten thousand dollars, the commissioner may by resolution use the small works roster process provided in RCW 39.04.155; and

~~((4) Purchases which are clearly and legitimately limited to a single source of supply, or services, in which instances the purchase price may be best established by direct negotiation. PROVIDED, That this subsection shall not apply to purchases or contracts relating to public works as defined in chapter 39.04 RCW; and~~

~~—(5) Purchases of insurance and bonds:))~~ (3) Any contract for purchases or public work pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

Sec. 6. RCW 53.08.120 and 1993 c 198 s 13 are each amended to read as follows:

All material required by a port district may be procured in the open market or by contract and all work ordered may be done by contract or day labor. All such contracts for work, the estimated cost of which exceeds one hundred thousand dollars, shall be let at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for sealed bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

Each port district shall maintain a small works roster, as provided in RCW 39.04.155, and may use the small works roster process to award contracts in lieu of calling for sealed bids whenever work is done by contract, the estimated cost of which is one hundred thousand dollars or less. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

Sec. 7. RCW 54.04.070 and 1993 c 198 s 14 are each amended to read as follows:

Any item, or items of the same kind of materials, equipment, or supplies purchased, the estimated cost of which is in excess of five thousand dollars, exclusive of sales tax shall be by contract: **PROVIDED**, That a district may make purchases of the same kind of items of materials, equipment and supplies not exceeding five thousand dollars in any calendar month without a contract, purchasing any excess thereof over five thousand dollars by contract. Any work ordered by a district commission, the estimated cost of which is in excess of ten thousand dollars exclusive of sales tax, shall be by contract, except that a district commission may have its own regularly employed personnel perform work which is an accepted industry practice under prudent utility management without a contract. Prudent utility management means performing work with regularly employed personnel utilizing material of a worth not exceeding fifty thousand dollars in value without a contract: **PROVIDED**, That such limit on the value of material being utilized in work being performed by regularly employed personnel shall not include the value of individual items of equipment purchased or acquired and used as one unit of a project. Before awarding such a contract, the

commission shall publish a notice once or more in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for the work or materials; plans and specifications of which shall at the time of the publication be on file at the office of the district subject to public inspection. Any published notice ordering work to be performed for the district shall be mailed at the time of publication to any established trade association which files a written request with the district to receive such notices. The commission may at the same time and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by the bidders.

Notwithstanding any other provisions herein, all contract projects, the estimated cost of which is less than one hundred thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155. All contract projects equal to or in excess of one hundred thousand dollars shall be let by competitive bidding.

Whenever equipment or materials required by a district are held by a governmental agency and are available for sale but such agency is unwilling to submit a proposal, the commission may ascertain the price of such items and file a statement of such price supported by the sworn affidavit of one member of the commission and may consider such price as a bid without a deposit or bond. ~~((In the event of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the commission, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board, or the official acting for the board, may waive the requirements of this chapter with reference to any purchase or contract, after having taken precautions to secure the lowest price practicable under the circumstances:~~

~~—After determination by the commission during a public meeting that a particular purchase is available clearly and legitimately only from a single source of supply, the bidding requirements of this section may be waived by the commission:))~~

The commission may waive the competitive bidding requirements of this section pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

Sec. 8. RCW 57.08.050 and 1997 c 245 s 4 are each amended to read as follows:

(1) All work ordered, the estimated cost of which is in excess of five thousand dollars shall be let by contract. All contract projects, the estimated cost of which is less than fifty thousand dollars, may be awarded to a contractor using the small works roster process provided in RCW 39.04.155. The board of commissioners may set up uniform procedures to prequalify contractors for inclusion on the small works roster. All contract projects equal to or in excess of fifty thousand dollars shall be let by competitive bidding. Before awarding any

such contract the board of commissioners shall publish a notice in a newspaper of general circulation where the district is located at least once thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work, plans and specifications which must at the time of publication of such notice be on file in the office of the board of commissioners subject to the public inspection. The notice shall state generally the work to be done and shall call for proposals for doing the same to be sealed and filed with the board of commissioners on or before the day and hour named therein.

Each bid shall be accompanied by a certified or cashier's check or postal money order payable to the order of the county treasurer for a sum not less than five percent of the amount of the bid, or accompanied by a bid bond in an amount not less than five percent of the bid with a corporate surety licensed to do business in the state, conditioned that the bidder will pay the district as liquidated damages the amount specified in the bond, unless the bidder enters into a contract in accordance with the bidder's bid, and no bid shall be considered unless accompanied by such check, cash or bid bond. At the time and place named such bids shall be publicly opened and read and the board of commissioners shall proceed to canvass the bids and may let such contract to the lowest responsible bidder upon plans and specifications on file or to the best bidder submitting the bidder's own plans and specifications. ~~((However, no contract shall be let in excess of the cost of the materials or work.))~~ The board of commissioners may reject all bids for good cause and readvertise and in such case all checks, cash or bid bonds shall be returned to the bidders. If the contract is let, then all checks, cash, or bid bonds shall be returned to the bidders, except that of the successful bidder, which shall be retained until a contract shall be entered into for doing the work, and a bond to perform such work furnished with sureties satisfactory to the board of commissioners in the full amount of the contract price between the bidder and the commission in accordance with the bid. If the bidder fails to enter into the contract in accordance with the bid and furnish the bond within ten days from the date at which the bidder is notified that the bidder is the successful bidder, the check, cash, or bid bonds and the amount thereof shall be forfeited to the district. If the bidder fails to enter into a contract in accordance with the bidder's bid, and the board of commissioners deems it necessary to take legal action to collect on any bid bond required by this section, then the district shall be entitled to collect from the bidder any legal expenses, including reasonable attorneys' fees occasioned thereby. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) Any purchase of materials, supplies, or equipment, with an estimated cost in excess of ten thousand dollars, shall be by contract. Any purchase of materials, supplies, or equipment, with an estimated cost of ~~((from five thousand dollars to))~~ less than fifty thousand dollars shall be made using the process provided in RCW ~~((39.04.155 or by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section))~~ 39.04.190. Any

purchase of materials, supplies, or equipment with an estimated cost of fifty thousand dollars or more shall be made by competitive bidding following the procedure for letting contracts for projects under subsection (1) of this section.

(3) ~~((In the event of an emergency when the public interest or property of the district would suffer material injury or damage by delay, upon resolution of the board of commissioners, or proclamation of an official designated by the board to act for the board during such emergencies, declaring the existence of such emergency and reciting the facts constituting the same, the board or official acting for the board may waive the requirements of this chapter with reference to any purchase or contract. In addition, these requirements may be waived for purchases which are clearly and legitimately limited to a single source of supply and purchases involving special facilities, services, or market conditions, in which instances the purchase price may be best established by direct negotiation.))~~ The board may waive the competitive bidding requirements of this section pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

Sec. 9. RCW 70.44.140 and 1996 c 18 s 15 are each amended to read as follows:

(1) All materials purchased and work ordered, the estimated cost of which is in excess of five thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: PROVIDED, HOWEVER, That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: PROVIDED, HOWEVER, That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders ~~((; but if such))~~. If the contract ((be)) is let, then ((and in such case)) all bid proposal security shall be returned to the bidders, except that of the successful bidder, which ((shall be)) is retained until a contract shall be entered into for the purchase of such materials

for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) In lieu of the procedures of subsection (1) of this section, a public hospital district may use ~~((a))~~ the small works roster process provided in RCW 39.04.155 and award public works contracts for projects ~~((in excess of five thousand dollars up to))~~ with an estimated value in excess of fifty thousand dollars ~~((as provided in RCW 39.04.155))~~.

(3) ~~((For advertisement and formal sealed bidding to be dispensed with as to))~~ Any purchases ~~((between five thousand and))~~ with an estimated cost of up to fifteen thousand dollars ~~((, the commission must authorize by resolution a procedure as))~~ may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to section 1 of this act if an exemption contained within that section applies to the purchase or public work.

NEW SECTION. Sec. 10. A new section is added to chapter 36.34 RCW to read as follows:

In accordance with RCW 35.42.010 through 35.42.220, a county with a population of one million or more may lease space and provide for the leasing of such space through leases with an option to purchase and the acquisition of buildings erected upon land owned by the county upon the expiration of lease of such land. For the purposes of this section, "building," as defined in RCW 35.42.020 shall be construed to include any building or buildings used as part of, or in connection with, the operation of the county. The authority conferred by this section is in addition to and not in lieu of any other provision authorizing counties to lease property.

Sec. 11. RCW 39.04.150 and 1994 c 264 s 12 and 1994 c 243 s 2 are each reenacted and amended to read as follows:

(1) As used in this section, "agency" means the department of general administration, the department of fish and wildlife, the department of natural resources, the department of transportation, and the state parks and recreation commission.

(2) In addition to any other power or authority that an agency may have, each agency, alone or in concert, may establish a small works roster consisting of all qualified contractors who have requested to be included on the roster.

(3) The small works roster may make distinctions between contractors based on the geographic areas served and the nature of the work the contractor is qualified to perform. At least once every year, the agency shall advertise in a newspaper of general circulation the existence of the small works roster and shall add to the roster those contractors who request to be included on the roster.

(4) Construction, repair, or alteration projects estimated to cost less than one hundred thousand dollars are exempt from the requirement that the contracts be awarded after advertisement and competitive bid as defined by RCW 39.04.010. In lieu of advertisement and competitive bid, ~~((the agency shall solicit at least five quotations, confirmed in writing, from contractors chosen from the small works roster for the category of job type involved and shall award the work to the party with the lowest quotation or reject all quotations. If the agency does not receive at least two responsive quotations for a particular project, then the project shall be advertised and competitively bid. The agency shall solicit quotations from contractors selected randomly from the small works roster in a manner which will equitably distribute the opportunity for these contracts among contractors on the roster. The agency shall invite at least one proposal each from a certified minority and a certified women-owned contractor who shall otherwise qualify to perform such work. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone request. If the work is executed by competitive bid, the agency shall invite at least one proposal each from a certified minority and a certified women-owned contractor who shall otherwise qualify to perform such work))~~ each agency alone or in concert shall establish a procedure for securing telephone, electronic, or written quotations from the contractors on the small works roster to assure establishment of a competitive price and for awarding contracts to the lowest responsive and responsible bidder. This procedure shall require either that the agency make a good faith effort to request quotations from all contractors on the small works roster who have indicated the capability of performing the kind of public works being contracted or that the agency solicit quotations from at least five contractors in a manner that will equitably distribute the opportunity among contractors willing to perform in the geographic area of the work. The agency shall invite at least one proposal from a certified minority or women-owned contractor, if available, who is otherwise qualified to perform such work. Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(5) The breaking down of any public work or improvement into units or accomplishing any public work or improvement by phases for the purpose of avoiding the minimum dollar amount for bidding is contrary to public policy and is prohibited.

(6) The director of general administration shall adopt by rule a procedure to ~~((prequalify))~~ qualify contractors for inclusion on the small works roster. Each agency shall follow the procedure adopted by the director of general administration. No agency shall be required to make available for public

inspection or copying under chapter 42.17 RCW financial information required to be provided by the ((prequalification)) qualification procedure.

(7) An agency may adopt by rule procedures to implement this section which shall not be inconsistent with the procedures adopted by the director of the department of general administration pursuant to subsection (6) of this section.

Sec. 12. RCW 39.04.155 and 1993 c 198 s 1 are each amended to read as follows:

(1) This section provides a uniform process to award contracts for public works projects by those municipalities that are authorized to use a small works roster in lieu of the requirements for formal sealed bidding. The state statutes governing a specific type of municipality shall establish the maximum dollar thresholds of the contracts that can be awarded under this process, and may include other matters concerning the small works roster process, for the municipality.

(2) Such municipalities may create a single general small works roster, or may create a small works roster for different categories of anticipated work. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. At least twice a year, the municipality shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters.

The governing body of the municipality shall establish a procedure for securing telephone or written quotations from the contractors on the general small works roster, or a specific small works roster for the appropriate category of work, to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 43.19.1911. Such invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This section does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Whenever possible at least five contractors shall be invited to submit bids. Once a contractor has been afforded an opportunity to submit a proposal, that contractor shall not be offered another opportunity until all other appropriate contractors on the small works roster have been afforded an opportunity to submit a proposal on a contract. Proposals may be invited from all appropriate contractors on the small works roster.

A contract awarded from a small works roster under this section need not be advertised.

Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

Passed the House March 11, 1998.
Passed the Senate March 11, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 279

[Substitute House Bill 2312]

**WORKERS' COMPENSATION OBLIGATIONS OF EMPLOYERS
NOT DOMICILED IN WASHINGTON**

AN ACT Relating to workers' compensation obligations of employers not domiciled in Washington; amending RCW 51.12.120, 18.27.030, and 19.28.120; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature finds that a competitive disadvantage exists in the construction industry because of a disparity in workers' compensation coverage requirements among the states. The intent of this act is (1) to provide an equal footing for all contractors bidding on or engaging in construction work in this state, (2) to ensure that all workers injured while in the course of employment in this state receive the benefits to which they are entitled, and (3) to not create disincentives for employers to hire workers in this state.

Sec. 2. RCW 51.12.120 and 1995 c 199 s 1 are each amended to read as follows:

(1) If a worker, while working outside the territorial limits of this state, suffers an injury on account of which he or she, or his or her beneficiaries, would have been entitled to compensation under this title had ~~((such))~~ the injury occurred within this state, ~~((such))~~ the worker, or his or her beneficiaries, shall be entitled to compensation under this title ~~((--PROVIDED, That))~~ if at the time of ~~((such))~~ the injury:

(a) His or her employment is principally localized in this state; or

(b) He or she is working under a contract of hire made in this state for employment not principally localized in any state; or

(c) He or she is working under a contract of hire made in this state for employment principally localized in another state whose workers' compensation law is not applicable to his or her employer; or

(d) He or she is working under a contract of hire made in this state for employment outside the United States and Canada.

(2) The payment or award of compensation or other recoveries, including settlement proceeds, under the workers' compensation law of another state, territory, province, or foreign nation to a worker or his or her beneficiaries otherwise entitled on account of such injury to compensation under this title shall not be a bar to a claim for compensation under this title ~~((--PROVIDED,))~~ if that claim under this title is timely filed. If compensation is paid or awarded under this title, the total amount of compensation or other recoveries, including settlement proceeds, paid or awarded the worker or beneficiary under such other

workers' compensation law shall be credited against the compensation due the worker or beneficiary under this title.

(3)(a) An employer not domiciled in this state who is employing workers in this state in work for which the employer must be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, must secure the payment of compensation under this title by:

(i) Insuring the employer's workers' compensation obligation under this title with the department;

(ii) Being qualified as a self-insurer under this title; or

(iii) For employers domiciled in a state or province of Canada subject to an agreement entered into under subsection (7) of this section, as permitted by the agreement, filing with the department a certificate of coverage issued by the agency that administers the workers' compensation law in the employer's state or province of domicile certifying that the employer has secured the payment of compensation under the other state's or province's workers' compensation law.

(b) The department shall adopt rules to implement this subsection.

(4) If a worker or beneficiary is entitled to compensation under this title by reason of an injury sustained in this state while in the employ of an employer who is domiciled in another state or province of Canada and the employer:

(a) Is not subject to subsection (3) of this section and ((who)) has neither opened an account with the department nor qualified as a self-insurer under this title, ((such an)) the employer or his or her insurance carrier shall file with the director a certificate issued by the agency ((which)) that administers the workers' compensation law in the state of the employer's domicile, certifying that ((such)) the employer has secured the payment of compensation under the workers' compensation law of ((such)) the other state and that with respect to ((said)) the injury ((such)) the worker or beneficiary is entitled to the benefits provided under ((such)) the other state's law. ((In such event:

—(a)) (h) Has filed a certificate under subsection (3)(a)(iii) of this section or (a) of this subsection (4):

(i) The filing of ((such)) the certificate ((shall)) constitutes appointment by the employer or his or her insurance carrier of the director as its agent for acceptance of the service of process in any proceeding brought by any claimant to enforce rights under this title;

((b)) (ii) The director shall send to such employer or his or her insurance carrier, by registered or certified mail to the address shown on such certificate, a true copy of any notice of claim or other process served on the director by the claimant in any proceeding brought to enforce rights under this title;

((c)) (iii) If ((such)) the employer is a self-insurer under the workers' compensation law of ((such)) the other state or province of Canada, ((such)) the employer shall, upon submission of evidence or security, satisfactory to the director, of his or her ability to meet his or her liability to ((such)) the claimant under this title, be deemed to be a qualified self-insurer under this title; and

~~((#))~~ (iv) If ~~((such))~~ the employer's liability under the workers' compensation law of ~~((such))~~ the other state or province of Canada is insured~~((such))~~;

(A) ~~The~~ employer's carrier, as to such claimant only, shall be deemed to be subject to this title~~((PROVIDED, That))~~. However, unless ~~((its))~~ the insurer's contract with ~~((said))~~ the employer requires ~~((it))~~ the insurer to pay an amount equivalent to the compensation benefits provided by this title, the insurer's liability for compensation shall not exceed ~~((its))~~ the insurer's liability under the workers' compensation law of ~~((such))~~ the other state or province; and

~~((#))~~ (B) If the total amount for which ~~((such))~~ the employer's insurer is liable under ~~((e)(ii) above)~~ (b)(iv)(A) of this subsection is less than the total of the compensation to which ~~((such))~~ the claimant is entitled under this title, the director may require the employer to file security satisfactory to the director to secure the payment of compensation under this title~~((:))~~.

~~((e))~~ (c) If ~~((such employer))~~ subject to subsection (3) of this section, has not complied with subsection (3) of this section or, if not subject to subsection (3) of this section, has neither qualified as a self-insurer nor secured insurance coverage under the workers' compensation law of another state or province of Canada, ~~((such))~~ the claimant shall be paid compensation by the department~~((:))~~ and

~~((# Any such))~~ the employer shall have the same rights and obligations, and is subject to the same penalties, as other employers subject to this title ~~((and where he or she has not provided coverage or sufficient coverage to secure the compensation provided by this title to such claimant, the director may impose a penalty payable to the department of a sum not to exceed fifty percent of the cost to the department of any deficiency between the compensation provided by this title and that afforded such claimant by such employer or his or her insurance carrier if any))~~.

~~((#))~~ (5) As used in this section:

(a) A person's employment is principally localized in this or another state when: (i) His or her employer has a place of business in this or ~~((such))~~ the other state and he or she regularly works at or from ~~((such))~~ the place of business~~((:))~~; or (ii) if ~~((clause (i) foregoing))~~ (a)(i) of this subsection is not applicable, he or she is domiciled in and spends a substantial part of his or her working time in the service of his or her employer in this or ~~((such))~~ the other state;

(b) "Workers' compensation law" includes "occupational disease law" for the purposes of this section.

~~((#))~~ (6) A worker whose duties require him or her to travel regularly in the service of his or her employer in this and one or more other states may agree in writing with his or her employer that his or her employment is principally localized in this or another state, and, unless ~~((such))~~ the other state refuses jurisdiction, ~~((such))~~ the agreement shall govern as to any injury occurring after the effective date of the agreement.

~~((#))~~ (7) The director ~~((shall be))~~ is authorized to enter into agreements with the appropriate agencies of other states and provinces of Canada ~~((which))~~ that

administer their workers' compensation law with respect to conflicts of jurisdiction and the assumption of jurisdiction in cases where the contract of employment arises in one state or province and the injury occurs in another(~~;~~ and)). If the other state's or province's law requires Washington employers to secure the payment of compensation under the other state's or province's workers' compensation laws for work that in Washington requires the employer to be registered under chapter 18.27 RCW or licensed under chapter 19.28 RCW, or prequalified under RCW 47.28.070, then employers domiciled in that state or province must purchase compensation covering their workers engaged in that work in this state under this state's industrial insurance law. When ((any such)) an agreement under this subsection has been executed and ((promulgated)) adopted as a ((regulation)) rule of the department under chapter 34.05 RCW, it ((shall)) binds all employers and workers subject to this title and the jurisdiction of this title ((shall be)) is governed by this ((regulation)) rule.

Sec. 3. RCW 18.27.030 and 1997 c 314 s 4 are each amended to read as follows:

(1) An applicant for registration as a contractor shall submit an application under oath upon a form to be prescribed by the director and which shall include the following information pertaining to the applicant:

(a) Employer social security number.

(b) ~~((As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Washington))~~ Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law.

(c) Employment security department number.

(d) State excise tax registration number.

(e) Unified business identifier (UBI) account number may be substituted for the information required by (b)(~~;~~) of this subsection if the applicant will not employ employees in Washington, and by (c)(~~;~~) and (d) of this subsection.

(f) Type of contracting activity, whether a general or a specialty contractor and if the latter, the type of specialty.

(g) The name and address of each partner if the applicant ((be)) is a firm or partnership, or the name and address of the owner if the applicant ((be)) is an

individual proprietorship, or the name and address of the corporate officers and statutory agent, if any, if the applicant ((be)) is a corporation. The information contained in such application ((shall be)) is a matter of public record and open to public inspection.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(b) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The department shall deny an application for registration if the applicant has been previously registered as a sole proprietor, partnership, or corporation and the applicant has an unsatisfied final judgment against him or her in an action based on this chapter that was incurred during a previous registration under this chapter.

Sec. 4. RCW 19.28.120 and 1992 c 217 s 2 are each amended to read as follows:

(1) It is unlawful for any person, firm, partnership, corporation, or other entity to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to convey electric current, or installing or maintaining equipment to be operated by electric current as it pertains to the electrical industry, without having an unrevoked, unsuspended, and unexpired electrical contractor license, issued by the department in accordance with this chapter. All electrical contractor licenses expire twenty-four calendar months following the day of their issue. The department may issue an electrical contractors license for a period of less than twenty-four months only for the purpose of equalizing the number of electrical contractor licenses ((which)) that expire each month. Application for an electrical contractor license shall be made in writing to the department, accompanied by the required fee. The application shall state:

(a) The name and address of the applicant; in case of firms or partnerships, the names of the individuals composing the firm or partnership; in case of corporations, the names of the managing officials thereof;

(b) The location of the place of business of the applicant and the name under which the business is conducted;

(c) Employer social security number;

(d) ~~((As applicable: (i) The industrial insurance account number covering employees domiciled in Washington; and (ii) evidence of workers' compensation coverage in the applicant's state of domicile for the applicant's employees working in Washington who are not domiciled in Wash'ngton))~~ Evidence of workers' compensation coverage for the applicant's employees working in Washington, as follows:

(i) The applicant's industrial insurance account number issued by the department;

(ii) The applicant's self-insurer number issued by the department; or

(iii) For applicants domiciled in a state or province of Canada subject to an agreement entered into under RCW 51.12.120(7), as permitted by the agreement, filing a certificate of coverage issued by the agency that administers the workers' compensation law in the applicant's state or province of domicile certifying that the applicant has secured the payment of compensation under the other state's or province's workers' compensation law;

(e) Employment security department number;

(f) State excise tax registration number;

(g) Unified business identifier (UBI) account number may be substituted for the information required by (d)((-)) of this subsection if the applicant will not employ employees in Washington, and by (e)((-)) and (f) of this subsection; and

(h) Whether a general or specialty electrical contractor license is sought and, if the latter, the type of specialty. Electrical contractor specialties include, but are not limited to: Residential, domestic appliances, pump and irrigation, limited energy system, signs, nonresidential maintenance, and a combination specialty. A general electrical contractor license shall grant to the holder the right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electric current, and installing or maintaining equipment, or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current, in the state of Washington. A specialty electrical contractor license shall grant to the holder a limited right to engage in, conduct, or carry on the business of installing or maintaining wires or equipment to carry electrical current, and installing or maintaining equipment; or installing or maintaining material to fasten or insulate such wires or equipment to be operated by electric current in the state of Washington as expressly allowed by the license.

(2) The department may verify the workers' compensation coverage information provided by the applicant under subsection (1)(d) of this section, including but not limited to information regarding the coverage of an individual employee of the applicant. If coverage is provided under the laws of another state, the department may notify the other state that the applicant is employing employees in Washington.

(3) The application for a contractor license shall be accompanied by a bond in the sum of four thousand dollars with the state of Washington named as obligee in the bond, with good and sufficient surety, to be approved by the department. The bond shall at all times be kept in full force and effect, and any cancellation or revocation thereof, or withdrawal of the surety therefrom, suspends the license issued to the principal until a new bond has been filed and approved as provided in this section. Upon approval of a bond, the department shall on the next business day deposit the fee accompanying the application in the electrical license fund and shall file the bond in the office. The department shall upon request furnish to any person, firm, partnership, corporation, or other entity a certified copy of the bond upon the payment of a fee that the department shall set by rule. The fee shall cover but not exceed the cost of furnishing the certified copy. The

bond shall be conditioned that in any installation or maintenance of wires or equipment to convey electrical current, and equipment to be operated by electrical current, the principal will comply with the provisions of this chapter and with any electrical ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(~~((2))~~) (3) that is in effect at the time of entering into a contract. The bond shall be conditioned further that the principal will pay for all labor, including employee benefits, and material furnished or used upon the work, taxes and contributions to the state of Washington, and all damages that may be sustained by any person, firm, partnership, corporation, or other entity due to a failure of the principal to make the installation or maintenance in accordance with this chapter or any applicable ordinance, building code, or regulation of a city or town adopted pursuant to RCW 19.28.010(~~((2))~~) (3). In lieu of the surety bond required by this section the license applicant may file with the department a cash deposit or other negotiable security acceptable to the department. If the license applicant has filed a cash deposit, the department shall deposit the funds in a special trust savings account in a commercial bank, mutual savings bank, or savings and loan association and shall pay annually to the depositor the interest derived from the account.

(4) The department shall issue general or specialty electrical contractor licenses to applicants meeting all of the requirements of this chapter. The provisions of this chapter relating to the licensing of any person, firm, partnership, corporation, or other entity including the requirement of a bond with the state of Washington named as obligee therein and the collection of a fee therefor, are exclusive, and no political subdivision of the state of Washington may require or issue any licenses or bonds or charge any fee for the same or a similar purpose. No person, firm, partnership, corporation, or other entity holding more than one specialty contractor license under this chapter may be required to pay an annual fee for more than one such license or to post more than one four thousand dollar bond, equivalent cash deposit, or other negotiable security.

(5) To obtain a general or specialty electrical contractor license the applicant must designate an individual who currently possesses an administrator's certificate as a general electrical contractor administrator or as a specialty electrical contractor administrator in the specialty for which application has been made. Administrator certificate specialties include but are not limited to: Residential, domestic, appliance, pump and irrigation, limited energy system, signs, nonresidential maintenance, and combination specialty. To obtain an administrator's certificate an individual must pass an examination as set forth in RCW 19.28.123 unless the applicant was a licensed electrical contractor at any time during 1974. Applicants who were electrical contractors licensed by the state of Washington at any time during 1974 are entitled to receive a general electrical contractor administrator's certificate without examination if the applicants apply prior to January 1, 1984. The board of electrical examiners shall certify to the department the names of all persons who are entitled to either a general or specialty electrical contractor administrator's certificate.

NEW SECTION. Sec. 5. The workers' compensation advisory committee established under RCW 51.04.110 shall appoint a subcommittee to review section 2 of this act and related issues, as determined by the committee, and report its findings and recommendations to the committee. The committee shall make a final report to the department of labor and industries by December 15, 1998. The department shall report on the study to the appropriate committees of the legislature by January 15, 1999.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 280

[Engrossed Second Substitute House Bill 2345]

ADMINISTRATIVE LAW—RULE-MAKING NOTICES—JOINT ADMINISTRATIVE RULES COMMITTEE LEADERSHIP APPOINTMENT

AN ACT Relating to administrative law; amending RCW 34.05.230, 34.05.328, 34.05.330, 34.05.354, 34.05.370, 34.05.610, 34.12.040, and 48.04.010; adding new sections to chapter 34.05 RCW; adding a new section to chapter 43.132 RCW; creating a new section; and providing an expiration date.

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

***Sec. 1.** *RCW 34.05.230 and 1997 c 409 s 202 are each amended to read as follows:*

(1) ((An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

—(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

—(b) The proposed rules adopt or incorporate 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 state-wide 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;

—(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

—(d) The content of the proposed rules is explicitly and specifically dictated by statute;

—(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

—(f) The proposed rule is being amended after a review under RCW 34.05.328 or section 210 of this act.

~~—(2) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small-business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(5)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited adoption of rules. The notice for the expedited adoption of rules must contain a statement in at least ten-point type, that is substantially in the following form:~~

~~NOTICE~~

~~THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).~~

~~—(3) The agency shall send a copy of the notice of the proposed expedited rule making to any person who has requested notification of proposals for the expedited adoption of rules or of agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (2) of this section. The notice must also include an explanation of the reasons the agency believes the expedited adoption of the rule is appropriate.~~

~~—(4) The code reviser shall publish the text of all rules proposed for expedited adoption along with the notice required in this section in a separate section of the Washington State Register. Once the text of the proposed rules has been published in the Washington State Register, the only changes that an agency may make in the text of these proposed rules before their final adoption are to correct typographical errors.~~

~~—(5) Any person may file a written objection to the expedited adoption of a rule. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited adoption of a rule may withdraw the objection.~~

~~—(6) If no written objections to the expedited adoption of a rule are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.~~

~~—(7) If a written notice of objection to the expedited adoption of the rule is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule adoption proceedings in accordance with this chapter.~~

~~—(8) Subsections (1) through (8) of this section expire on December 31, 2000.~~

~~—an [An] agency is encouraged to advise the public of its current opinions, approaches, and likely courses of action by means of interpretive or policy statements. Current)) Interpretive and policy statements or their equivalents, regardless of title, are advisory only. To better inform and involve the public, ((æ)) each agency is encouraged to convert long-standing interpretive and policy statements into rules.~~

(2) A person may petition an agency requesting the conversion of interpretive and policy statements into rules. Upon submission, the agency shall notify the joint administrative rules review committee of the petition. Within sixty days after submission of a petition, the agency shall either deny the petition in writing, stating its reasons for the denial, or initiate rule-making proceedings in accordance with this chapter.

~~((H))~~ (3) Each agency shall maintain a roster of interested persons, consisting of persons who have requested in writing to be notified of all interpretive and policy statements issued by that agency. Each agency shall update the roster once each year and eliminate persons who do not indicate a desire to continue on the roster. Whenever an agency issues an interpretive or policy statement, it shall send a copy of the statement to each person listed on the roster. The agency may charge a nominal fee to the interested person for this service.

~~((H2))~~ (4) Whenever an agency issues an interpretive or policy statement, it shall submit to the code reviser for publication in the Washington State Register a statement describing the subject matter of the interpretive or policy statement, and listing the person at the agency from whom a copy of the interpretive or policy statement may be obtained.

(5) When a person requests a copy of a rule from an agency, the agency shall identify any associated interpretive or policy statements, guidelines, documents of general applicability, or their equivalents, and provide copies of the statements upon request.

(6) Within two hundred days after an agency issues a policy or interpretative statement, guideline, document of general applicability, or its equivalent

involving an issue, the violation of which can result in a citation, civil penalty, assessment, or other sanction to a business, the agency shall make a good faith effort to notify businesses affected by the statement, guideline, or document and how to obtain technical assistance to comply. For purposes of this section, "good faith" means: (a) The agency at least notifies businesses in the standard industrial classifications or their successor affected by the statement, guideline, or document that are registered with the department of revenue; or (b) for a statement, guideline, or document that applies only to persons or firms that are licensed, registered, or operate under a permit, the agency notifies those persons or firms holding the license, registration, or permit. Inadvertent failure to notify a specific business under this section does not invalidate a rule.

*Sec. 1 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 34.05 RCW to read as follows:

(1) An agency may file notice for the expedited adoption of rules in accordance with the procedures set forth in this section for rules meeting any one of the following criteria:

(a) The proposed rules relate only to internal governmental operations that are not subject to violation by a person;

(b) The proposed rules adopt or incorporate 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 state-wide 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;

(c) The proposed rules only correct typographical errors, make address or name changes, or clarify language of a rule without changing its effect;

(d) The content of the proposed rules is explicitly and specifically dictated by statute;

(e) The proposed rules have been the subject of negotiated rule making, pilot rule making, or some other process that involved substantial participation by interested parties before the development of the proposed rule; or

(f) The proposed rule is being amended after a review under RCW 34.05.328.

(2) The expedited rule-making process must follow the requirements for rule making set forth in RCW 34.05.320, except that the agency is not required to prepare a small business economic impact statement under RCW 19.85.025, a statement indicating whether the rule constitutes a significant legislative rule under RCW 34.05.328(6)(c)(iii), or a significant legislative rule analysis under RCW 34.05.328. An agency is not required to prepare statements of inquiry under RCW 34.05.310 or conduct a hearing for the expedited adoption of rules. The notice for the expedited adoption of rules must contain a statement in at least ten-point type, that is substantially in the following form:

NOTICE

THIS RULE IS BEING PROPOSED TO BE ADOPTED USING AN EXPEDITED RULE-MAKING PROCESS THAT WILL ELIMINATE THE NEED FOR THE AGENCY TO HOLD PUBLIC HEARINGS, PREPARE A SMALL BUSINESS ECONOMIC IMPACT STATEMENT, OR PROVIDE RESPONSES TO THE CRITERIA FOR A SIGNIFICANT LEGISLATIVE RULE. IF YOU OBJECT TO THIS RULE BEING ADOPTED USING THE EXPEDITED RULE-MAKING PROCESS, YOU MUST EXPRESS YOUR OBJECTIONS IN WRITING AND THEY MUST BE SENT TO (INSERT NAME AND ADDRESS) AND RECEIVED BY (INSERT DATE).

(3) The agency shall send a copy of the notice of the proposed expedited rule making to any person who has requested notification of proposals for the expedited adoption of rules or of agency rule making, as well as the joint administrative rules review committee, within three days after its publication in the Washington State Register. An agency may charge for the actual cost of providing a requesting party mailed copies of these notices. The notice of the proposed expedited rule making must be preceded by a statement substantially in the form provided in subsection (2) of this section. The notice must also include an explanation of the reasons the agency believes the expedited adoption of the rule is appropriate.

(4) The code reviser shall publish the text of all rules proposed for expedited adoption along with the notice required in this section in a separate section of the Washington State Register. Once the text of the proposed rules has been published in the Washington State Register, the only changes that an agency may make in the text of these proposed rules before their final adoption are to correct typographical errors.

(5) Any person may file a written objection to the expedited adoption of a rule. The objection must be filed with the agency rules coordinator within forty-five days after the notice of the proposed expedited rule making has been published in the Washington State Register. A person who has filed a written objection to the expedited adoption of a rule may withdraw the objection.

(6) If no written objections to the expedited adoption of a rule are filed with the agency within forty-five days after the notice of proposed expedited rule making is published, or if all objections that have been filed are withdrawn by the persons filing the objections, the agency may enter an order adopting the rule without further notice or a public hearing. The order must be published in the manner required by this chapter for any other agency order adopting, amending, or repealing a rule.

(7) If a written notice of objection to the expedited adoption of the rule is timely filed with the agency and is not withdrawn, the notice of proposed expedited rule making published under this section is considered a statement of

inquiry for the purposes of RCW 34.05.310, and the agency may initiate further rule adoption proceedings in accordance with this chapter.

(8) This section expires December 31, 2000.

**Sec. 3. RCW 34.05.328 and 1997 c 430 s 1 are each amended to read as follows:*

(1) Before adopting a rule described in subsection ~~((5))~~ (6) 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) 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;

(d) Determine, after considering alternative versions of the rule and the analysis required under (b) and (c) 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;

(e) 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;

(f) 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;

(g) 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

(h) 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 (g) 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))~~ (6) 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))~~ will:

(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; and

(e) Provide appropriate training to agency personnel.

(4) At least twenty days before the effective date of a rule described in subsection (6) of this section, the agency is encouraged to convene a meeting of interested persons affected by the rule to identify ambiguities and problem areas in the rule and determine how to resolve the ambiguities and problem areas. If the agency convenes such a meeting, the agency shall include the meeting in the plan described under subsection (3) of this section.

~~(5)~~ After adopting a rule described in ~~subscction ((5))~~ (6) of this section regulating the same activity or subject matter as another provision of federal or state law, an agency shall do all of the following:

(a) Provide to the ~~((business-assistance-center))~~ department of community, trade, and economic development a list citing by reference the other federal and state laws that regulate the same activity or subject matter;

(b) Coordinate implementation and enforcement of the rule with the other federal and state entities regulating the same activity or subject matter by making every effort to do one or more of the following:

(i) Deferring to the other entity;
 (ii) Designating a lead agency; or
 (iii) Entering into an agreement with the other entities specifying how the agency and entities will coordinate implementation and enforcement.

If the agency is unable to comply with this subsection ~~((4))~~ ~~(5)~~(b), the agency shall report to the legislature pursuant to (c) of this subsection;

(c) 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))~~ ~~(6)~~(a) Except as provided in (b) of this subsection, this scction applies to:

(i) Significant legislative rules of the departments of eeology, 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 75.20 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)) seventy-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 state-wide 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;

or

(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.

(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)) (7) By January 31, 1996, and by January 31st of each even-numbered year thereafter, the office of financial management, after consulting with state agencies, counties, and cities, and business, labor, and environmental

organizations, shall report to the governor and the legislature regarding the effects of this section on the regulatory system in this state. The report shall document:

(a) The rules proposed to which this section applied and to the extent possible, how compliance with this section affected the substance of the rule, if any, that the agency ultimately adopted;

(b) The costs incurred by state agencies in complying with this section;

(c) Any legal action maintained based upon the alleged failure of any agency to comply with this section, the costs to the state of such action, and the result;

(d) The extent to which this section has adversely affected the capacity of agencies to fulfill their legislatively prescribed mission;

(e) The extent to which this section has improved the acceptability of state rules to those regulated; and

(f) Any other information considered by the office of financial management to be useful in evaluating the effect of this section.

*Sec. 3 was vetoed. See message at end of chapter.

****NEW SECTION.*** *Sec. 4. A new section is added to chapter 34.05 RCW to read as follows:*

Within two hundred days after the effective date of a rule that imposes additional requirements on businesses the violation of which subjects a person to a penalty, assessment, or administrative sanction, an agency shall make a good faith effort to notify businesses affected by the rule of the requirements of the rule and how to obtain technical assistance to comply. For purposes of this section, "good faith" means: (1) The agency at least notifies businesses in the standard industrial classifications or their successor identified in the rule-making file as businesses affected by the rule that are registered with the department of revenue; or (2) for rules imposing additional requirements only on persons or firms licensed, registered, or operating under a permit, the agency notifies those persons or firms holding the license, registration, or permit. Inadvertent failure to notify a specific business under this section does not invalidate a rule.

*Sec. 4 was vetoed. See message at end of chapter.

Sec. 5. RCW 34.05.330 and 1996 c 318 s 1 are each amended to read as follows:

(1) Any person may petition an agency requesting the adoption, amendment, or repeal of any rule. The office of financial management shall prescribe by rule the format for such petitions and the procedure for their submission, consideration, and disposition and provide a standard form that may be used to petition any agency. Within sixty days after submission of a petition, the agency shall either (a) deny the petition in writing, stating (i) its reasons for the denial, specifically addressing the concerns raised by the petitioner, and, where appropriate, (ii) the alternative means by which it will address the concerns raised

by the petitioner, or (b) initiate rule-making proceedings in accordance with ~~((this chapter))~~ RCW 34.05.320.

(2) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, and the petition alleges that the rule is not within the intent of the legislature or was not adopted in accordance with all applicable provisions of law, the person may petition for review of the rule by the joint administrative rules review committee under RCW 34.05.655.

(3) If an agency denies a petition to repeal or amend a rule submitted under subsection (1) of this section, the petitioner, within thirty days of the denial, may appeal the denial to the governor. The governor shall immediately file notice of the appeal with the code reviser for publication in the Washington state register. Within forty-five days after receiving the appeal, the governor shall either (a) deny the petition in writing, stating (i) his or her reasons for the denial, specifically addressing the concerns raised by the petitioner, and, (ii) where appropriate, the alternative means by which he or she will address the concerns raised by the petitioner; (b) for agencies listed in RCW 43.17.010, direct the agency to initiate rule-making proceedings in accordance with this chapter; or (c) for agencies not listed in RCW 43.17.010, recommend that the agency initiate rule-making proceedings in accordance with this chapter. The governor's response to the appeal shall be published in the Washington state register and copies shall be submitted to the chief clerk of the house of representatives and the secretary of the senate.

(4) In petitioning for repeal or amendment of a rule under this section, a person is encouraged to address, among other concerns:

- (a) Whether the rule is authorized;
- (b) Whether the rule is needed;
- (c) Whether the rule conflicts with or duplicates other federal, state, or local laws;
- (d) Whether alternatives to the rule exist that will serve the same purpose at less cost;
- (e) Whether the rule applies differently to public and private entities;
- (f) Whether the rule serves the purposes for which it was adopted;
- (g) Whether the costs imposed by the rule are unreasonable;
- (h) Whether the rule is clearly and simply stated;
- (i) Whether the rule is different than a federal law applicable to the same activity or subject matter without adequate justification; and
- (j) Whether the rule was adopted according to all applicable provisions of law.

(5) ~~The ((business assistance center))~~ department of community, trade, and economic development and the office of financial management shall coordinate efforts among agencies to inform the public about the existence of this rules review process.

(6) The office of financial management shall initiate the rule making required by subsection (1) of this section by September 1, 1995.

Sec. 6. RCW 34.05.354 and 1997 c 409 s 208 are each amended to read as follows:

~~(1) ((Not later than April 1st or October 1st of each year, each agency shall submit to the code reviser, according to procedures and time lines established by the code reviser, rules that it determines should be repealed by the expedited repeal procedures provided for in this section. An agency shall file a copy of a preproposal notice of inquiry, as provided in RCW 34.05.310(1), that identifies the rule as one that is proposed for expedited repeal.~~

~~—(2))~~ An agency may ((propose)) file notice for the expedited repeal of rules under the procedures set forth in this section for rules meeting any one ~~((or more))~~ of the following criteria:

(a) The statute on which the rule is based has been repealed and has not been replaced by another statute providing statutory authority for the rule;

(b) The statute on which the rule is based has been declared unconstitutional by a court with jurisdiction, there is a final judgment, and no statute has been enacted to replace the unconstitutional statute;

(c) The rule is no longer necessary because of changed circumstances; or

(d) Other rules of the agency or of another agency govern the same activity as the rule, making the rule redundant.

~~((3))~~ (2) An agency shall file a copy of a preproposal notice of inquiry, as provided in RCW 34.05.310(1), that identifies the rule as one that is proposed for expedited repeal. The agency shall also send a copy of the preproposal notice of inquiry to any person who has requested notification of copies of proposals for the expedited repeal of rules or of agency rule making. The preproposal notice of inquiry shall include a statement that any person who objects to the repeal of the rule must file a written objection to the repeal within thirty days after the preproposal notice of inquiry is published. The notice of inquiry shall also include an explanation of the reasons the agency believes the expedited repeal of the rule is appropriate.

~~((4))~~ (3) The code reviser shall publish all rules proposed for expedited repeal in a separate section of ~~((a regular edition of))~~ the Washington state register ~~((or in a special edition of the Washington state register. The publication shall be not later than May 31st or November 30th of each year, or in the first register published after that date)).~~

~~((5))~~ (4) Any person may file a written objection to the expedited repeal of a rule. The notice shall be filed with the agency rules coordinator within thirty days after the notice of inquiry has been published in the Washington state register. The written objection need not state any reason for objecting to the expedited repeal of the rule.

~~((6))~~ (5) If no written objections to the expedited repeal of a rule are filed with the agency within thirty days after the preproposal notice of inquiry is published, the agency may enter an order repealing the rule without further notice or an opportunity for a public hearing. The order shall be published in the manner required by this chapter for any other order of the agency adopting, amending, or

repealing a rule. If a written objection to the expedited repeal of the rule is filed with the agency within thirty days after the notice of inquiry has been published, the preproposal notice of inquiry published pursuant to this section shall be considered a preproposal notice of inquiry for the purposes of RCW 34.05.310(1) and the agency may initiate rule adoption proceedings in accordance with the provisions of this chapter.

Sec. 7. RCW 34.05.370 and 1996 c 102 s 2 are each amended to read as follows:

(1) Each agency shall maintain an official rule-making file for each rule that it (a) proposes by publication in the state register, or (h) adopts. The file and materials incorporated by reference shall be available for public inspection.

(2) The agency rule-making file shall contain all of the following:

(a) ~~((Copies of all publications))~~ A list of citations to all notices in the state register with respect to the rule or the proceeding upon which the rule is based;

(b) Copies of any portions of the agency's public rule-making docket containing entries relating to the rule or the proceeding on which the rule is based;

(c) All written petitions, requests, submissions, and comments received by the agency and all other written material regarded by the agency as important to adoption of the rule or the proceeding on which the rule is based;

(d) Any official transcript of oral presentations made in the proceeding on which the rule is based or, if not transcribed, any tape recording or stenographic record of them, and any memorandum prepared by a presiding official summarizing the contents of those presentations;

(e) All petitions for exceptions to, amendment of, or repeal or suspension of, the rule;

(f) Citations to data, factual information, studies, or reports on which the agency relies in the adoption of the rule, indicating where such data, factual information, studies, or reports are available for review by the public, but this subsection (2)(f) does not require the agency to include in the rule-making file any data, factual information, studies, or reports gathered pursuant to chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(g) The concise explanatory statement required by RCW 34.05.325(6); and

(h) Any other material placed in the file by the agency.

(3) Internal agency documents are exempt from inclusion in the rule-making file under subsection (2) of this section to the extent they constitute preliminary drafts, notes, recommendations, and intra-agency memoranda in which opinions are expressed or policies formulated or recommended, except that a specific document is not exempt from inclusion when it is publicly cited by an agency in connection with its decision.

(4) Upon judicial review, the file required by this section constitutes the official agency rule-making file with respect to that rule. Unless otherwise required by another provision of law, the official agency rule-making file need not be the exclusive basis for agency action on that rule.

***NEW SECTION.** *Sec. 8. A new section is added to chapter 34.05 RCW to read as follows:*

(1) The legislature finds that under the governor's Executive Order 97-02, agencies have begun systematic reviews of existing rules and have eliminated some unnecessary rules and improved clarity for other rules.

(2) Effective July 1, 2001, each state agency shall review its rules that have significant effects on businesses, labor, consumers, and the environment. Agencies shall establish a rules review schedule that allows each rule filing under the criteria of this section to be reviewed every seven years. Agencies shall determine if their rules should be (a) retained in their current form, or (b) amended or repealed, if they do not meet the review criteria specified in this section. Agencies shall concentrate their regulatory review on rules or portions of a rule that have been the subject of petitions filed under RCW 34.05.330 or have been the source of complaints, concerns, or other difficulties that relate to matters other than the specific mandates of the statute on which the rule is based. Agencies that have already established regulatory review processes shall make them consistent with the requirements of this section. Each agency head shall designate a person responsible for regulatory review who shall serve as the agency's contact for regulatory review.

(3) The following criteria will be used for the review of each rule identified for review:

(a) Need. Is the rule necessary to comply with the statutes that authorize it? Is the rule obsolete, duplicative, or ambiguous to a degree that warrants repeal or revision? Have laws or other circumstances changed so that the rule should be amended or repealed? Is the rule necessary to protect or safeguard the health, welfare, or safety of Washington's citizens?

(b) Effectiveness and efficiency. Is the rule providing the results that it was originally designed to achieve in a reasonable manner? Are there regulatory alternatives or new technologies that could more effectively or efficiently achieve the same objectives?

(c) Clarity. Is the rule written and organized in a clear and concise manner so that it can be readily understood by those to whom it applies?

(d) Intent and statutory authority. Is the rule consistent with legislative intent of the statutes that authorize it? Is the rule based upon sufficient statutory authority? Is there a need to develop a more specific legislative authorization in order to protect the health, safety, and welfare of Washington's citizens?

(e) Coordination. Could additional consultation and coordination with other governmental jurisdictions and state agencies with similar regulatory authority eliminate or reduce duplication and inconsistency? Agencies should consult with and coordinate with other jurisdictions that have similar regulatory requirements when it is likely that coordination can reduce duplication and inconsistency.

(f) Cost. Have qualitative and quantitative benefits of the rule been considered in relation to its cost?

(g) Fairness. Does the rule result in equitable treatment of those required to comply with it? Should it be modified to eliminate or minimize any disproportionate impacts on the regulated community? Should it be strengthened to provide additional protection?

(4)(a) By July 1, 2002, and July 1st of each year thereafter, each agency shall report to the rules review committee on the rules reviewed during the previous fiscal year and other measures taken to improve its regulatory program. The reports must include, but not be limited to: (i) The number of rule sections amended or repealed and the number of pages eliminated in the Washington Administrative Code; (ii) a summary of rules amended or repealed based on the review criteria in this section; (iii) a summary of agency actions in response to petitions under RCW 34.05.330; (iv) a summary of the results of the agency's review of policy and interpretive statements and similar documents; (v) a summary of the agency's review of reporting requirements imposed on businesses; and (vi) recommendations for statutory or administrative changes resulting from the regulatory reviews. More frequent reports may be requested, as necessary. Agencies shall make the reports available to persons who have requested notification of agency rule making and shall submit a summary of the report for publication in the Washington State Register.

(b) As part of its regulatory review, each agency shall review its existing policy and interpretive statements or similar documents to determine whether or not they must, by law, be adopted as rules. The review must include consultation with the attorney general. Agencies shall concentrate their review on those statements and documents that have been the source of complaints, concerns, or other difficulties.

(c) Each agency shall also review its reporting requirements that are applied generally to all businesses or classes of businesses to ensure that they are necessary and consistent with the principles and objectives of this section. The goals of the review must be to achieve reporting requirements that, to the extent possible, are coordinated with other state agencies with similar requirements, are economical and easy to understand, and rely on electronic transfer of information.

(5)(a) An agency is deemed to have met the requirements of this section ninety days after publication in the Washington State Register unless the rules review committee receives a written objection of the agency's compliance with the requirements of this section.

(b) If a written objection is received within the ninety-day period, the rules review committee will make a determination as to whether the agency did indeed comply with this section.

(c) If the committee finds the agency has failed to meet the requirements of this section, the agency will have one hundred twenty days to meet the requirements and receive approval by a majority vote of the committee. If the

agency fails to comply with the requirements of this section after the one hundred twenty days, the committee may, by a majority vote of its members, recommend suspension of a rule or rules included in the report. Within seven days of that vote the committee shall transmit to the appropriate standing committees of the legislature, the governor, the code reviser, and the agency written notice of its objection and any recommended suspension based on failure to meet the rules review requirements. Within thirty days of receipt of the notice, the governor shall transmit to the committee, the code reviser, and the agency written approval or disapproval of the recommended suspension. If the suspension is approved by the governor, it is effective from the date of that approval and continues until ninety days after the expiration of the next regular legislative session.

(d) If the governor disapproves the recommendation of the rules review committee to suspend a rule or rules in the report, the agency shall treat the transmittal of that decision, along with the findings of the rules review committee, as a petition by the committee to repeal the rule or rules under RCW 34.05.330.

(e) The code reviser shall publish these transmittals according to RCW 34.05.640(5).

*Sec. 8 was vetoed. See message at end of chapter.

Sec. 9. RCW 34.05.610 and 1996 c 318 s 2 are each amended to read as follows:

(1) There is hereby created a joint administrative rules review committee which shall be a bipartisan committee consisting of four senators and four representatives from the state legislature. The senate members of the committee shall be appointed by the president of the senate, and the house members of the committee shall be appointed by the speaker of the house. Not more than two members from each house may be from the same political party. The appointing authorities shall also appoint one alternate member from each caucus of each house. All appointments to the committee are subject to approval by the caucuses to which the appointed members belong.

(2) Members and alternates shall be appointed as soon as possible after the legislature convenes in regular session in an odd-numbered year, and their terms shall extend until their successors are appointed and qualified at the next regular session of the legislature in an odd-numbered year or until such persons no longer serve in the legislature, whichever occurs first. Members and alternates may be reappointed to the committee.

(3) On or about January 1, 1999, the president of the senate shall appoint the chairperson (~~(in even-numbered years)~~) and the vice chairperson (~~(in odd-numbered years)~~) from among the committee membership. The speaker of the house shall appoint the chairperson (~~(in odd-numbered years)~~) and the vice chairperson in alternating even-numbered years beginning in the year 2000 from among the committee membership. The secretary of the senate shall appoint the chairperson and the vice chairperson in the alternating even-numbered years

beginning in the year 2002 from among the committee membership. Such appointments shall be made in January of each even-numbered year as soon as possible after a legislative session convenes.

(4) The chairperson of the committee shall cause all meeting notices and committee documents to be sent to the members and alternates. A vacancy shall be filled by appointment of a legislator from the same political party as the original appointment. The appropriate appointing authority shall make the appointment within thirty days of the vacancy occurring.

**Sec. 10. RCW 34.12.040 and 1981 c 67 s 4 are each amended to read as follows:*

(1) Except as provided in subsection (2) of this section, whenever a state agency conducts a hearing which is not presided over by officials of the agency who are to render the final decision, the hearing shall be conducted by an administrative law judge assigned under this chapter. In assigning administrative law judges, the chief administrative law judge shall wherever practical ((+)) (a) use personnel having expertise in the field or subject matter of the hearing, and ((2)) (b) assign administrative law judges primarily to the hearings of particular agencies on a long-term basis.

(2) An employee of the office of the insurance commissioner may conduct a hearing as provided in RCW 48.04.010(5).

**Sec. 10 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 11. A new section is added to chapter 43.132 RCW to read as follows:*

(1) To determine the fiscal impact of proposed rules on units of local government, an agency shall prepare a local government economic impact statement if the proposed rule will impose costs on units of local government.

(2) The economic impact statement shall describe the reporting, recordkeeping, and other compliance requirements of the proposed rule and analyze the costs of compliance for local governments. An agency shall file the statement with the code reviser along with the notice required under RCW 34.05.320.

(3) The department of community, trade, and economic development shall develop a guide to assist agencies in preparing the economic impact statement. The guide shall be developed through a collaborative process with agencies and local governments and other interested persons.

(4) An agency shall maintain a list of proposed rules for which it prepares an economic impact statement and a summary of the costs. By December 1st of each year, an agency shall submit the list and summary to the joint administrative rules review committee.

(5) This section does not apply to:

(a) A rule proposed for expedited repeal or expedited adoption, unless the agency receives written objection;

(b) Rules described in RCW 34.05.310(4); and

(c) Rules adopted solely for the purpose of conformity or compliance, or both, with federal statutes or regulations.

*Sec. 11 was vetoed. See message at end of chapter.

**Sec. 12. RCW 48.04.010 and 1990 1st ex.s. c 3 s 1 are each amended to read as follows:*

(1) The commissioner may hold a hearing for any purpose within the scope of this code as he or she may deem necessary. The commissioner shall hold a hearing:

(a) If required by any provision of this code; or

(b) Upon written demand for a hearing made by any person aggrieved by any act, threatened act, or failure of the commissioner to act, if such failure is deemed an act under any provision of this code, or by any report, promulgation, or order of the commissioner other than an order on a hearing of which such person was given actual notice or at which such person appeared as a party, or order pursuant to the order on such hearing.

(2) Any such demand for a hearing shall specify in what respects such person is so aggrieved and the grounds to be relied upon as basis for the relief to be demanded at the hearing.

(3) Unless a person aggrieved by a written order of the commissioner demands a hearing thereon within ninety days after receiving notice of such order, or in the case of a licensee under Title 48 RCW within ninety days after the commissioner has mailed the order to the licensee at the most recent address shown in the commissioner's licensing records for the licensee, the right to such hearing shall conclusively be deemed to have been waived.

(4) If a hearing is demanded by a licensee whose license has been temporarily suspended pursuant to RCW 48.17.540, the commissioner shall hold such hearing demanded within thirty days after receipt of the demand or within thirty days of the effective date of a temporary license suspension issued after such demand, unless postponed by mutual consent.

(5) A hearing held under this section must be conducted by an administrative law judge unless the person demanding the hearing agrees in writing to have an employee of the commissioner conduct the hearing.

*Sec. 12 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 13. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.*

*Sec. 13 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 14. 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 the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 3, 4, 8, 10, 11, 12, and 13, Engrossed Second Substitute House Bill No. 2345 entitled:

"AN ACT Relating to administrative law;"

Engrossed Second Substitute House Bill No. 2345 makes numerous changes throughout the Administrative Procedures Act (APA) that proponents claim will improve the rule making process and provide better notification of regulatory actions.

I am deeply committed to meaningful regulatory improvement in state government and have demonstrated that commitment by undertaking a major reform effort under Executive Order 97-02. That program has already resulted in the elimination of nearly 2,000 rules and the rewriting of hundreds of regulations in plain English. Agencies are also eliminating regulatory inefficiencies, improving customer service, reducing conflicting regulations, using negotiated rule making, and expanding effective outreach and voluntary compliance among the regulated community. Those are examples of meaningful regulatory reform, and I welcome proposals that will further those goals.

Unfortunately, most of the provisions in E2SHB 2345 do not further those goals. Sections 1, 3, and 4 would mandate additional notification, meetings, and other requirements for agencies, and would add costs and complexity to the regulatory process. They would also result in additional bureaucratic red tape, and duplicate information and services that are already being provided under current law and practices. In some cases, the language in those sections is ambiguous regarding who should be notified about what actions. Those sections would only create more opportunities for litigation regarding the meaning of the requirements and the extent to which agencies may or may not have complied. Proponents of this bill did not provide hard evidence of system-wide problems that would justify these changes. Anecdotes and disagreements with individual agencies about a rule should not be used as a rationale to make costly changes in the APA that affect all agencies.

Section 8 of the bill would require a rule review process that is similar to that already established in E.O. 97-02. Under that executive order, all agencies are conducting rule review in an efficient and orderly manner, and that review is yielding results. Statutory rule review is, therefore, unnecessary and could open up new opportunities for litigation on technical grounds relating to the adequacy of the reviews.

Sections 10 and 12 of the bill would require the Office of the Insurance Commissioner to use adjudicators from the Office of Administrative Hearings. I vetoed the same sections after the 1997 legislative session, and I am not aware of any evidence that would justify changing the current adjudication process and singling out the Insurance Commissioner for different treatment.

Section 11 of the bill would require agencies to prepare local government economic impact statements on rules that impose any costs on local governments. While funding was made available for this program, the Legislature chose to condition the availability of those funds on enactment of sections 1 and 4 of the bill, which I have vetoed.

Finally, section 13 of the bill is a "null and void" clause that would nullify the entire act if funding is not made available. The supplemental budget act conditions funding for portions of this bill on the approval of certain sections. Since I am vetoing those necessary sections, funding will disappear. Section 13 must, therefore, be vetoed in order to preserve sections in this bill that I have approved.

For these reasons, I have vetoed sections 1, 3, 4, 8, 10, 11, 12, and 13 of Engrossed Second Substitute House Bill No. 2345.

With the exception of sections 1, 3, 4, 8, 10, 11, 12, and 13, Engrossed Second Substitute House Bill No. 2345 is approved."

CHAPTER 281

[Engrossed Substitute House Bill 2417]

LOCAL VEHICLE LICENSE FEES TO FUND TRANSPORTATION PROJECTS

AN ACT Relating to local vehicle license fees adopted to fund specific projects; and amending RCW 82.80.020 and 82.80.080.

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

Sec. 1. RCW 82.80.020 and 1996 c 139 s 4 are each amended to read as follows:

(1) The legislative authority of a county, or subject to subsection (7) of this section, a qualifying city or town located in a county that has not imposed a fifteen-dollar fee under this section, may fix and impose an additional fee, not to exceed fifteen dollars per vehicle, for each vehicle that is subject to license fees under RCW 46.16.060 and for each vehicle that is subject to RCW 46.16.070 with an unladen weight of six thousand pounds or less, and that is determined by the department of licensing to be registered within the boundaries of the county.

(2) The department of licensing shall administer and collect the fee. The department shall deduct a percentage amount, as provided by contract, not to exceed two percent of the taxes collected, for administration and collection expenses incurred by it. The remaining proceeds shall be remitted to the custody of the state treasurer for monthly distribution under RCW 82.80.080.

(3) The proceeds of this fee shall be used strictly for transportation purposes in accordance with RCW 82.80.070.

(4) A county or qualifying city or town imposing this fee or initiating an exemption process shall delay the effective date at least six months from the date the ordinance is enacted to allow the department of licensing to implement administration and collection of or exemption from the fee.

(5) The legislative authority of a county or qualifying city or town may develop and initiate an exemption process of the fifteen dollar fee for the registered owners of vehicles residing within the boundaries of the county or qualifying city or town: (a) Who are sixty-one years old or older at the time payment of the fee is due and whose household income for the previous calendar year is less than an amount prescribed by the county or qualifying city or town legislative authority((;)); or (b) who ((has)) have a physical disability.

(6) The legislative authority of a county or qualifying city or town shall develop and initiate an exemption process of the fifteen-dollar fee for vehicles registered within the boundaries of the county that are licensed under RCW 46.16.374.

(7) For purposes of this section, a "qualifying city or town" means a city or town residing within a county having a population of greater than seventy-five thousand in which is located all or part of a national monument. A qualifying city or town may impose the fee authorized in subsection (1) of this section subject to the following conditions and limitations:

(a) The city or town may impose the fee only if authorized to do so by a majority of voters voting at a general or special election on a proposition for that

purpose. At a minimum, the ballot measure shall contain: (i) A description of the transportation project proposed for funding, properly identified by mileposts or other designations that specify the project parameters; (ii) the proposed number of months or years necessary to fund the city or town's share of the project cost; and (iii) the amount of fee to be imposed for the project.

(b) The city or town may not impose a fee that, if combined with the county fee, exceeds fifteen dollars. If a county imposes or increases a fee under this section that, if combined with the fee imposed by a city or town, exceeds fifteen dollars, the city or town fee shall be reduced or eliminated as needed so that in no city or town does the combined fee exceed fifteen dollars. All revenues from county-imposed fees shall be distributed as called for in RCW 82.80.020.

(c) Any fee imposed by a city or town under this section shall expire at the end of the term of months or years provided in the ballot measure, or when the city or town's bonded indebtedness on the project is retired, whichever is sooner.

(8) The fee imposed under subsection (7) of this section shall apply only to renewals and shall not apply to ownership transfer transactions.

Sec. 2. RCW 82.80.080 and 1990 c 42 s 213 are each amended to read as follows:

(1) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020, levied by counties to the levying counties, and cities contained in those counties, based on the relative per capita population. County population for purposes of this section is equal to one and one-half of the unincorporated population of the county. In calculating the distributions, the state treasurer shall use the population estimates prepared by the state office of financial management and shall further calculate the distribution based on information supplied by the departments of licensing and revenue, as appropriate.

(2) The state treasurer shall distribute revenues, less authorized deductions, generated by the local option taxes authorized in RCW 82.80.010 and 82.80.020 levied by qualifying cities and towns to the levying cities and towns.

Passed the House March 11, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 282

[Engrossed House Bill 2501]

WHOLESALE MOTOR VEHICLE DEALERS—REGULATION—EXEMPTIONS

AN ACT Relating to wholesale motor vehicle auctions; amending RCW 46.70.011, 46.79.010, 46.80.010, and 46.70.101; adding a new section to chapter 46.70 RCW; adding a new section to chapter 46.79 RCW; and adding a new section to chapter 46.80 RCW.

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

**Sec. 1. RCW 46.70.011 and 1996 c 194 s 1 are each amended to read as follows:*

As used in this chapter:

(1) "Vehicle" means and includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(2) "Motor vehicle" means every vehicle which is self-propelled and every vehicle which is propelled by electric power obtained from overhead trolley wires, but not operated upon rails, and which is required to be registered and titled under Title 46 RCW, Motor Vehicles.

(3) "Vehicle dealer" means any person, firm, association, corporation, or trust, not excluded by subsection (4) of this section, engaged in the business of buying, selling, listing, exchanging, offering, brokering, leasing with an option to purchase, auctioning, soliciting, or advertising the sale of new or used vehicles, or arranging or offering or attempting to solicit or negotiate on behalf of others, a sale, purchase, or exchange of an interest in new or used motor vehicles, irrespective of whether the motor vehicles are owned by that person. Vehicle dealers shall be classified as follows:

(a) A "motor vehicle dealer" is a vehicle dealer that deals in new or used motor vehicles, or both;

(b) A "mobile home and travel trailer dealer" is a vehicle dealer that deals in mobile homes, park trailers, or travel trailers, or more than one type of these vehicles;

(c) A "miscellaneous vehicle dealer" is a vehicle dealer that deals in motorcycles or vehicles other than motor vehicles or mobile homes and travel trailers or any combination of such vehicles;

(d) "Wholesale motor vehicle auction dealer" is a person or firm offering motor vehicles for sale by competitive bidding at a permanent location and regularly scheduled dates and times. A salvage pool operation is not a wholesale motor vehicle auction dealer.

(4) The term "vehicle dealer" does not include, nor do the licensing requirements of RCW 46.70.021 apply to, the following persons, firms, associations, or corporations:

(a) Receivers, trustees, administrators, executors, guardians, or other persons appointed by, or acting under a judgment or order of, any court; or

(b) Public officers while performing their official duties; or

(c) Employees of vehicle dealers who are engaged in the specific performance of their duties as such employees; or

(d) Any person engaged in an isolated sale of a vehicle in which he is the registered or legal owner, or both, thereof; or

(e) Any person, firm, association, corporation, or trust, engaged in the selling of equipment other than vehicles, subject to registration, used for agricultural or industrial purposes; or

(f) A real estate broker licensed under chapter 18.85 RCW, or his authorized representative, who, on behalf of the legal or registered owner of a used mobile home negotiates the purchase, sale, or exchange of the used mobile home in conjunction with the purchase, sale, exchange, rental, or lease of the land upon which the used mobile home is located and the real estate broker is not acting as an agent, subagent, or representative of a vehicle dealer licensed under this chapter; or

(g) Owners who are also operators of the special highway construction equipment or of the highway construction equipment for which a vehicle license and display vehicle license number plate is required as defined in RCW 46.16.010; or

(h) Any bank, trust company, savings bank, mutual savings bank, savings and loan association, credit union, and any parent, subsidiary, or affiliate thereof, authorized to do business in this state under state or federal law with respect to the sale or other disposition of a motor vehicle owned and used in their business; or with respect to the acquisition and sale or other disposition of a motor vehicle in which the entity has acquired an interest as a lessor, lessee, or secured party.

(5) "Vehicle salesperson" means any person who for any form of compensation sells, auctions, leases with an option to purchase, or offers to sell or to so lease vehicles on behalf of a vehicle dealer.

(6) "Department" means the department of licensing, which shall administer and enforce the provisions of this chapter.

(7) "Director" means the director of licensing.

(8) "Manufacturer" means any person, firm, association, corporation, or trust, resident or nonresident, who manufactures or assembles new and unused vehicles or remanufactures vehicles in whole or in part and further includes the terms:

(a) "Distributor," which means any person, firm, association, corporation, or trust, resident or nonresident, who in whole or in part offers for sale, sells, or distributes any new and unused vehicle to vehicle dealers or who maintains factory representatives.

(b) "Factory branch," which means a branch office maintained by a manufacturer for the purpose of selling or offering for sale, vehicles to a distributor, wholesaler, or vehicle dealer, or for directing or supervising in whole or in part factory or distributor representatives, and further includes any sales promotion organization, whether a person, firm, or corporation, which is engaged in promoting the sale of new and unused vehicles in this state of a particular brand or make to vehicle dealers.

(c) "Factory representative," which means a representative employed by a manufacturer, distributor, or factory branch for the purpose of making or promoting for the sale of their vehicles or for supervising or contracting with their dealers or prospective dealers.

(9) *"Established place of business"* means a location meeting the requirements of RCW 46.70.023(1) at which a vehicle dealer conducts business in this state.

(10) *"Principal place of business"* means that dealer firm's business location in the state, which place the dealer designates as their principal place of business.

(11) *"Subagency"* means any place of business of a vehicle dealer within the state, which place is physically and geographically separated from the principal place of business of the firm or any place of business of a vehicle dealer within the state, at which place the firm does business using a name other than the principal name of the firm, or both.

(12) *"Temporary subagency"* means a location other than the principal place of business or subagency within the state where a licensed vehicle dealer may secure a license to conduct the business and is licensed for a period of time not to exceed ten days for a specific purpose such as auto shows, shopping center promotions, tent sales, exhibitions, or similar merchandising ventures. No more than six temporary subagency licenses may be issued to a licensee in any twelve-month period.

(13) *"Wholesale vehicle dealer"* means a vehicle dealer who buys and sells other than at retail.

(14) *"Retail vehicle dealer"* means a vehicle dealer who may buy and sell at both wholesale and retail.

(15) *"Listing dealer"* means a used mobile home dealer who makes contracts with sellers who will compensate the dealer for obtaining a willing purchaser for the seller's mobile home.

(16) *"Auction"* means a transaction conducted by means of exchanges between an auctioneer and the members of the audience, constituting a series of oral invitations for offers for the purchase of vehicles made by the auctioneer, offers to purchase by members of the audience, and the acceptance of the highest or most favorable offer to purchase.

(17) *"Auction company"* means a sole proprietorship, partnership, corporation, or other legal or commercial entity licensed under chapter 18.11 RCW that only sells or offers to sell vehicles at auction or only arranges or sponsors auctions.

(18) *"Buyer's agent"* means any person, firm, partnership, association, limited liability company, limited liability partnership, or corporation retained or employed by a consumer to arrange for or to negotiate, or both, the purchase of a new motor vehicle on behalf of the consumer, and who is paid a fee or receives other compensation from the consumer for its services.

(19) *"New motor vehicle"* means any motor vehicle that is self-propelled and is required to be registered and titled under Title 46 RCW, has not been previously titled to a retail purchaser or licensee, and is not a "used vehicle" as defined under RCW 46.04.660.

*Sec. 1 was vetoed. See message at end of chapter.

NEW SECTION. **Sec. 2.** A new section is added to chapter 46.70 RCW to read as follows:

(1) A wholesale motor vehicle auction dealer may:

(a) Sell any classification of motor vehicle;

(b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or

(c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" as defined in RCW 46.80.010 may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

(2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle" as defined by RCW 46.80.010, the dealer must disclose this fact on the bill of sale.

***Sec. 3.** *RCW 46.79.010 and 1990 c 250 s 69 are each amended to read as follows:*

The definitions set forth in this section apply throughout this chapter unless the context indicates otherwise.

(1) *"Junk vehicle" means a motor vehicle certified under RCW 46.55.230 as meeting all the following requirements:*

(a) Is three years old or older;

(b) Is extensively damaged, such damage including but not limited to any of the following: A broken window or windshield or missing wheels, tires, motor, or transmission;

(c) Is apparently inoperable;

(d) Is without a valid, current registration plate;

(e) Has a fair market value equal only to the value of the scrap in it.

(2) *"Scrap processor" means a licensed establishment that maintains a hydraulic baler and shears, or a shredder for recycling salvage.*

(3) *"Demolish" means to destroy completely by use of a hydraulic baler and shears, or a shredder.*

(4) *"Hulk hauler" means any person who deals in vehicles for the sole purpose of transporting and/or selling them to a licensed ((motor)) vehicle wrecker or scrap processor in substantially the same form in which they are obtained. A hulk hauler may not sell second-hand motor vehicle parts to anyone other than a licensed vehicle wrecker or scrap processor, except for those parts specifically enumerated in RCW 46.79.020(2), as now or hereafter amended, which may be sold to a licensed ((motor)) vehicle wrecker or disposed of at a public facility for waste disposal.*

(5) *"Director" means the director of licensing.*

(6) *"Major component parts" include engines and short blocks, frames, transmissions or transfer cases, cabs, doors, front or rear differentials, front or*

rear clips, quarter panels or fenders, bumpers, truck beds or boxes, seats, and hoods.

(7) "Wholesale motor vehicle auction dealer" is a person or firm offering motor vehicles for sale by competitive bidding at a permanent location and regularly scheduled dates and times. A salvage pool operation is not a wholesale motor vehicle auction dealer.

*Sec. 3 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 4. A new section is added to chapter 46.79 RCW to read as follows:

(1) A wholesale motor vehicle auction dealer may:

(a) Sell any classification of motor vehicle;

(b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or

(c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" as defined in RCW 46.80.010 may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

(2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle" as defined by RCW 46.80.010, the dealer must disclose this fact on the bill of sale.

*Sec. 5. RCW 46.80.010 and 1995 c 256 s 4 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter.

(1) *"Vehicle wrecker" means every person, firm, partnership, association, or corporation engaged in the business of buying, selling, or dealing in vehicles of a type required to be licensed under the laws of this state, for the purpose of wrecking, dismantling, disassembling, or substantially changing the form of a vehicle, or who buys or sells integral second-hand parts of component material thereof, in whole or in part, or who deals in second-hand vehicle parts.*

(2) *"Established place of business" means a building or enclosure which the vehicle wrecker occupies either continuously or at regular periods and where his books and records are kept and business is transacted and which must conform with zoning regulations.*

(3) *"Major component part" includes at least each of the following vehicle parts: (a) Engines and short blocks; (b) frame; (c) transmission and/or transfer case; (d) cab; (e) door; (f) front or rear differential; (g) front or rear clip; (h) quarter panel; (i) truck bed or box; (j) seat; (k) hood; (l) bumper; (m) fender; and (n) airbag. The director may supplement this list by rule.*

(4) *"Wrecked vehicle" means a vehicle which is disassembled or dismantled or a vehicle which is acquired with the intent to dismantle or disassemble and never again to operate as a vehicle, or a vehicle which has sustained such*

damage that its cost to repair exceeds the fair market value of a like vehicle which has not sustained such damage, or a damaged vehicle whose salvage value plus cost to repair equals or exceeds its fair market value, if repaired, or a vehicle which has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state for which the salvage value plus cost to repair exceeds its fair market value, if repaired; further, it is presumed that a vehicle is a wreck if it has sustained such damage or deterioration that it may not lawfully operate upon the highways of this state.

(5) "Wholesale motor vehicle auction dealer" is a person or firm offering motor vehicles for sale by competitive bidding at a permanent location and regularly scheduled dates and times. A salvage pool operation is not a wholesale motor vehicle auction dealer.

*Sec. 5 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 6. A new section is added to chapter 46.80 RCW to read as follows:

(1) A wholesale motor vehicle auction dealer may:

(a) Sell any classification of motor vehicle;

(b) Sell only to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state; or

(c) Sell a motor vehicle belonging to the United States government, the state of Washington, or a political subdivision to nonlicensed persons as may be required by the contracting public agency. However, a publicly owned "wrecked vehicle" may be sold to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW by the state of Washington or licensed by any other state.

(2) If the wholesale motor vehicle auction dealer knows that a vehicle is a "wrecked vehicle," the dealer must disclose this fact on the bill of sale.

Sec. 7. RCW 46.70.101 and 1996 c 282 s 3 are each amended to read as follows:

The director may by order deny, suspend, or revoke the license of any vehicle dealer or vehicle manufacturer or, in lieu thereof or in addition thereto, may by order assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, if the director finds that the order is in the public interest and that the applicant or licensee:

(1) In the case of a vehicle dealer:

(a) The applicant or licensee, or any partner, officer, director, owner of ten percent or more of the assets of the firm, or managing employee:

(i) Was the holder of a license issued pursuant to this chapter, which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled or which license was assessed a civil penalty and the assessed amount has not been paid;

(ii) Has been adjudged guilty of a crime which directly relates to the business of a vehicle dealer and the time elapsed since the adjudication is less than ten

years, or suffering any judgment within the preceding five years in any civil action involving fraud, misrepresentation, or conversion. For the purposes of this section, adjudged guilty shall mean in addition to a final conviction in either a state or municipal court, an unvacated forfeiture of bail or collateral deposited to secure a defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt regardless of whether the sentence is deferred or the penalty is suspended;

(iii) Has knowingly or with reason to know made a false statement of a material fact in his application for license or any data attached thereto, or in any matter under investigation by the department;

(iv) Has knowingly, or with reason to know, provided the department with false information relating to the number of vehicle sales transacted during the past one year in order to obtain a vehicle dealer license plate;

(v) Does not have an established place of business as required in this chapter;

(vi) Refuses to allow representatives or agents of the department to inspect during normal business hours all books, records, and files maintained within this state;

(vii) Sells, exchanges, offers, brokers, auctions, solicits, or advertises a new or current model vehicle to which a factory new vehicle warranty attaches and fails to have a valid, written service agreement as required by this chapter, or having such agreement refuses to honor the terms of such agreement within a reasonable time or repudiates the same, except for sales by wholesale motor vehicle auction dealers to franchise motor vehicle dealers of the same make licensed under Title 46 RCW or franchise motor vehicle dealers of the same make licensed by any other state;

(viii) Is insolvent, either in the sense that their liabilities exceed their assets, or in the sense that they cannot meet their obligations as they mature;

(ix) Fails to pay any civil monetary penalty assessed by the director pursuant to this section within ten days after such assessment becomes final;

(x) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183;

(xi) Knowingly, or with reason to know, allows a salesperson employed by the dealer, or acting as their agent, to commit any of the prohibited practices set forth in subsection (1)(a) of this section and RCW 46.70.180.

(b) The applicant or licensee, or any partner, officer, director, owner of ten percent of the assets of the firm, or any employee or agent:

(i) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(ii) Has defrauded or attempted to defraud the state, or a political subdivision thereof of any taxes or fees in connection with the sale or transfer of a vehicle;

(iii) Has forged the signature of the registered or legal owner on a certificate of title;

(iv) Has purchased, sold, disposed of, or has in his or her possession any vehicle which he or she knows or has reason to know has been stolen or appropriated without the consent of the owner;

(v) Has willfully failed to deliver to a purchaser a certificate of ownership to a vehicle which he has sold;

(vi) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates or manufacturer license plates;

(vii) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(viii) Has engaged in practices inimical to the health or safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction or safety of vehicles, except for sales by wholesale motor vehicle auction dealers to motor vehicle dealers and vehicle wreckers licensed under Title 46 RCW or motor vehicle dealers licensed by any other state;

(ix) Has aided or assisted an unlicensed dealer or salesperson in unlawful activity through active or passive participation in sales, allowing use of facilities, dealer license number, or by any other means;

(x) Converts or appropriates, whether temporarily or permanently, property or funds belonging to a customer, dealer, or manufacturer, without the consent of the owner of the property or funds; or

(xi) Has sold any vehicle with actual knowledge that:

(A) It has any of the following brands on the title: "SALVAGE/REBUILT," "JUNK," or "DESTROYED"; or

(B) It has been declared totaled out by an insurance carrier and then rebuilt;

or

(C) The vehicle title contains the specific comment that the vehicle is "rebuilt";

without clearly disclosing that brand or comment in writing.

(c) The licensee or any partner, officer, director, or owner of ten percent or more of the assets of the firm holds or has held any such position in any other vehicle dealership licensed pursuant to this chapter which is subject to final proceedings under this section.

(2) In the case of a manufacturer, or any partner, officer, director, or majority shareholder:

(a) Was or is the holder of a license issued pursuant to this chapter which was revoked for cause and never reissued by the department, or which license was suspended for cause and the terms of the suspension have not been fulfilled, or which license was assessed a civil penalty and the assessed amount has not been paid;

(b) Has knowingly or with reason to know, made a false statement of a material fact in his application for license, or any data attached thereto, or in any matter under investigation by the department;

(c) Has failed to comply with the applicable provisions of chapter 46.12 or 46.16 RCW or this chapter or any rules and regulations adopted thereunder;

(d) Has defrauded or attempted to defraud the state or a political subdivision thereof, of any taxes or fees in connection with the sale or transfer of a vehicle;

(e) Has purchased, sold, disposed of, or has in his possession, any vehicle which he knows or has reason to know has been stolen or appropriated without the consent of the owner;

(f) Has committed any act in violation of RCW 46.70.090 relating to vehicle dealer license plates and manufacturer license plates;

(g) Has committed any act in violation of RCW 46.70.180 relating to unlawful acts and practices;

(h) Sells or distributes in this state or transfers into this state for resale, any new or unused vehicle to which a warranty attaches or has attached and refuses to honor the terms of such warranty within a reasonable time or repudiates the same;

(i) Fails to maintain one or more resident employees or agents to provide service or repairs to vehicles located within the state of Washington only under the terms of any warranty attached to new or unused vehicles manufactured and which are or have been sold or distributed in this state or transferred into this state for resale unless such manufacturer requires warranty service to be performed by all of its dealers pursuant to a current service agreement on file with the department;

(j) Fails to reimburse within a reasonable time any vehicle dealer within the state of Washington who in good faith incurs reasonable obligations in giving effect to warranties that attach or have attached to any new or unused vehicle sold or distributed in this state or transferred into this state for resale by any such manufacturer;

(k) Engaged in practices inimical to the health and safety of the citizens of the state of Washington including but not limited to failure to comply with standards set by the state of Washington or the federal government pertaining to the construction and safety of vehicles;

(l) Is insolvent either in the sense that his or her liabilities exceed his or her assets or in the sense that he or she cannot meet his or her obligations as they mature;

(m) Fails to notify the department of bankruptcy proceedings in the manner required by RCW 46.70.183.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1, 3, and 5, Engrossed House Bill No. 2501 entitled:

"AN ACT Relating to wholesale motor vehicle auctions;"

Engrossed House Bill No. 2501 modifies state law relating to wholesale motor vehicle auction dealers.

Sections 1, 3, and 5 of the bill each contains the definition of "wholesale motor vehicle auction dealer," which is technically flawed. The definition would include all firms, wholesale and retail, that offer motor vehicles for sale by competitive bidding at a permanent location and with regularly scheduled dates. This would unintentionally force such retailers, as well as wholesalers, to sell only to motor vehicle dealers and vehicle wreckers. That result would limit the options available to consumers and likely result in some dealers operating illegally.

For these reasons, I have vetoed sections 1, 3, and 5 of Engrossed House Bill No. 2501.

With the exception of sections 1, 3, and 5, Engrossed House Bill No. 2501 is approved."

CHAPTER 283

[Substitute House Bill 2544]

PENSION FUNDING COUNCIL—PENSION FUNDING WORK GROUP

AN ACT Relating to funding of the state retirement systems; amending RCW 41.45.020, 41.45.030, 41.45.060, and 41.45.090; and adding new sections to chapter 41.45 RCW.

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

Sec. 1. RCW 41.45.020 and 1995 c 239 s 306 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the (~~(economic and revenue forecast)~~) pension funding council created in ((RCW 82.33.010) section 2 of this act.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" and "law enforcement officers' and fire fighters' retirement system plan II" mean the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan I" and "public employees' retirement system plan II" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan I," "teachers' retirement system plan II," and "teachers' retirement system plan III" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

(7) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

(8) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

(9) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(10) "Work group" means the pension funding work group created in section 4 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 41.45 RCW to read as follows:

(1) The pension funding council is hereby created. The council consists of the:

- (a) Director of the department of retirement systems;
- (b) Director of the office of financial management;
- (c) Chair and ranking minority member of the house of representatives appropriations committee; and
- (d) Chair and ranking minority member of the senate ways and means committee.

The council may select officers as the members deem necessary.

(2) The pension funding council shall adopt changes to economic assumptions and contribution rates by an affirmative vote of at least four members.

NEW SECTION. Sec. 3. A new section is added to chapter 41.45 RCW to read as follows:

The pension funding council shall solicit and administer a biennial actuarial audit of the actuarial valuations used for rate-setting purposes. This audit will be conducted concurrent with the actuarial valuation performed by the state actuary. At least once in each six-year period, the pension funding council shall solicit and administer an actuarial audit of the results of the experience study required in RCW 41.45.090.

NEW SECTION. Sec. 4. A new section is added to chapter 41.45 RCW to read as follows:

(1) A pension funding work group is hereby created. The work group shall consist of one staff member selected by the executive head or chairperson of each of the following agencies or committees:

- (a) Department of retirement systems;
- (b) Office of financial management;
- (c) State investment board;
- (d) Ways and means committee of the senate;
- (e) Appropriations committee of the house of representatives; and
- (f) Economic and revenue forecast council.

(2) The state actuary shall make available to the work group information related to economic assumptions and contribution rates.

(3) The pension funding work group shall provide support to the pension funding council. Meetings of the pension funding work group may be called by any member of the group for the purpose of assisting the pension funding council, reviewing actuarial valuations of the state retirement systems, reviewing

economic assumptions, or for any other purpose which may assist the pension funding council.

(4) Recommendations from both affected employee and employer groups will be actively sought during the work group process. The work group shall conduct an open public meeting on these recommendations.

**Sec. 5. RCW 41.45.030 and 1995 c 233 s 1 are each amended to read as follows:*

(1) ~~((Beginning September 1, 1995, and every two years thereafter, the state actuary shall submit to the council information regarding the experience and financial condition of each state retirement system. The council shall review this and such other information as it may require.~~

—(2) ~~By December 31, 1995, and every two years thereafter,))~~ The council, by affirmative vote of ((five)) four councilmembers, shall adopt changes to the following long-term economic assumptions:

- (a) Growth in system membership;*
- (b) Growth in salaries, exclusive of merit or longevity increases;*
- (c) Growth in inflation; and*
- (d) Investment rate of return.*

(2) The council shall work with the ((department of retirement systems;)) pension funding work group and the state actuary((, and the executive director of the state investment board,)) and shall consider long-term historical averages, in developing the economic assumptions.

(3) The assumptions adopted by the council shall be used by the state actuary in conducting all actuarial studies of the state retirement systems.

**Sec. 5 was vetoed. See message at end of chapter.*

Sec. 6. RCW 41.45.060 and 1995 c 239 s 309 are each amended to read as follows:

(1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, ((1996)) 1998, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt ((both)) changes to: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

(6) The director of the department of retirement systems shall collect those rates adopted by the council.

Sec. 7. RCW 41.45.090 and 1989 c 273 s 9 are each amended to read as follows:

The department shall collect and keep in convenient form such data as shall be necessary for an actuarial valuation of the assets and liabilities of the state retirement systems, and for making an actuarial investigation into the mortality, service, compensation, and other experience of the members and beneficiaries of those systems. The department and state actuary shall enter into a memorandum of understanding regarding the specific data the department will collect, when it will be collected, and how it will be maintained. The department shall notify the state actuary of any changes it makes, or intends to make, in the collection and maintenance of such data.

At least once in each six-year period, the state actuary shall conduct an actuarial ~~((investigation))~~ experience study of the mortality, service, compensation and other experience of the members and beneficiaries of each state retirement system, and into the financial condition of each system. The results of each investigation shall be filed with the department, the office of financial management, ~~((and))~~ the budget writing committees of the Washington house of representatives and senate, and the pension funding council. Upon the basis of such actuarial investigation the department shall adopt such tables, schedules, factors, and regulations as are deemed necessary in the light of the findings of the actuary for the proper operation of the state retirement systems.

Passed the House February 16, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Substitute House Bill No. 2544 entitled:

"AN ACT Relating to funding of the state retirement systems;"

Substitute House Bill No. 2544 makes several improvements to the state retirement system funding statutes. It creates a Pension Funding Council to adopt long-term economic assumptions and contribution rates, and a work group to support that council. It also establishes an open process for reviewing possible changes to assumptions and contribution

rates and requires a periodic actuarial audit of the valuation reports used to set contribution rates. I commend the Joint Committee on Pension Policy for developing this broadly supported proposal.

Section 5 of this bill would eliminate the current requirements that long-term economic assumptions be changed only as part of a regular two-year cycle, and would reduce the number of votes needed to make a change in the assumptions from five to four. These changes would create a risk that adjustments in long-term economic assumptions could be made to address short-term budget problems, rather than focusing on the appropriate goal of funding pensions in a responsible long-term manner.

For this reason I have vetoed section 5 of Substitute House Bill No. 2544.

With the exception of section 5, Substitute House Bill No. 2544 is approved."

CHAPTER 284

[House Bill 2550]

CHARITABLE GIFT ANNUITY BUSINESS

AN ACT Relating to institutions conducting a charitable gift annuity business; amending RCW 48.38.010, 48.38.020, 48.38.040, 48.38.050, and 48.31.020; and adding new sections to chapter 48.38 RCW.

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

Sec. 1. RCW 48.38.010 and 1979 c 130 s 6 are each amended to read as follows:

The commissioner may grant a certificate of exemption to any insurer or educational, religious, charitable, or scientific institution conducting a charitable gift annuity business:

(1) Which is organized and operated exclusively as, or for the purpose of aiding, an educational, religious, charitable, or scientific institution which is organized as a nonprofit organization without profit to any person, firm, partnership, association, corporation, or other entity;

(2) Which possesses a current tax exempt status under the laws of the United States;

(3) Which serves such purpose by issuing charitable gift annuity contracts only for the benefit of such educational, religious, charitable, or scientific institution;

(4) Which appoints the insurance commissioner as its true and lawful attorney upon whom may be served lawful process in any action, suit, or proceeding in any court, which appointment shall be irrevocable, shall bind the insurer or institution or any successor in interest, shall remain in effect as long as there is in force in this state any contract made or issued by the insurer or institution, or any obligation arising therefrom, and shall be processed in accordance with RCW 48.05.210;

(5) Which is fully and legally organized and qualified to do business and has been actively doing business under the laws of the state of its domicile for a period of at least three years prior to its application for a certificate of exemption;

(6) Which has and maintains minimum unrestricted net assets of five hundred thousand dollars. "Unrestricted net assets" means the excess of total assets over

total liabilities that are neither permanently restricted nor temporarily restricted by donor-imposed stipulations:

(7) Which files with the insurance commissioner its application for a certificate of exemption showing:

(a) Its name, location, and organization date;

(b) The kinds of charitable annuities it proposes to offer;

(c) A statement of the financial condition, management, and affairs of the organization and any affiliate thereof, as that term is defined in RCW ((48.31A.010)) 48.31B.005, on a form satisfactory to, or furnished by the insurance commissioner;

(d) Such other documents, stipulations, or information as the insurance commissioner may reasonably require to evidence compliance with the provisions of this chapter;

((7)) (8) Which subjects itself and any affiliate thereof, as that term is defined in RCW ((48.31A.010)) 48.31B.005, to periodic examinations conducted under chapter 48.03 RCW as may be deemed necessary by the insurance commissioner;

((8)) (9) Which files with the insurance commissioner for the commissioner's advance approval a copy of any policy or contract form to be offered or issued to residents of this state. The grounds for disapproval of the policy or contract form shall be those set forth in RCW 48.18.110; and

((9)) (10) Which:

(a) Files with the insurance commissioner on or before March 1 of each year a copy of its annual statement prepared pursuant to the laws of its state of domicile, as well as such other financial material as may be requested, including the annual statement or other such financial materials as may be requested relating to any affiliate, as that term is defined in RCW ((48.31A.010)) 48.31B.005; and

(b) Coincident with the filing of its annual statement, pays an annual filing fee of twenty-five dollars plus five dollars for each charitable gift annuity contract written for residents of this state during the previous calendar year; and

(c) Which includes on or attaches to the first page of the annual statement the statement of a qualified actuary setting forth the actuary's opinion relating to annuity reserves and other actuarial items. "Qualified actuary" as used in this subsection means a member in good standing of the American academy of actuaries or a person who has otherwise demonstrated actuarial competence to the satisfaction of the insurance regulatory official of the domiciliary state.

Sec. 2. RCW 48.38.020 and 1979 c 130 s 7 are each amended to read as follows:

(1) Upon granting to such insurer or institution under RCW 48.38.010 a certificate of exemption to conduct a charitable gift annuity business, the insurance commissioner shall require it to establish and maintain a ((reserve)) separate reserve fund adequate to meet the future payments under its charitable gift annuity contracts ((and, in any event, the reserve fund shall)).

(2) The assets of the separate reserve fund:

(a) Shall be held legally and physically segregated from the other assets of the certificate of exemption holder;

(b) Shall be invested in the same manner that persons of reasonable prudence, discretion, and intelligence exercise in the management of a like enterprise, not in regard to speculating but in regard to the permanent disposition of their funds, considering the probable income as well as the probable safety of their capital. Investments shall be of sufficient value, liquidity, and diversity to assure the insurer or institution's ability to meet its outstanding obligations; and

(c) Shall not be liable for any debts of the insurer or institution holding a certificate of exemption under this chapter, other than those incurred pursuant to the issuance of charitable gift annuities.

(3) The amount of the separate reserve fund shall be:

(a) For contracts issued prior to July 1, 1998, not ((be)) less than an amount computed in accordance with the standard of valuation based on the 1971 individual annuity mortality table(~~(-or any modification of this table approved by the insurance commissioner.)~~) with six percent interest for single premium immediate annuity contracts and four percent interest for all other individual annuity contracts;

(b) For contracts issued on or after July 1, 1998, in an amount not less than the aggregate reserves calculated according to the standards set forth in RCW 48.74.030 for other annuities with no cash settlement options;

(c) Plus a surplus of ten percent of the combined amounts under (a) and (b) of this subsection.

(4) The general assets of the insurer or institution holding a certificate of exemption under this chapter shall be liable for the payment of annuities to the extent that the separate reserve fund is inadequate.

~~((2))~~ (5) For any failure on its part to establish and maintain the ((reserve)) separate reserve fund, the insurance commissioner shall revoke its certificate of exemption.

Sec. 3. RCW 48.38.040 and 1979 c 130 s 9 are each amended to read as follows:

(1) An insurer or institution holding a certificate of exemption under this chapter shall be exempt from all other provisions of this title except as specifically enumerated in this chapter by reference.

(2) An insurer or institution holding a certificate of exemption under this chapter is subject to chapter 48.31 RCW.

Sec. 4. RCW 48.38.050 and 1979 c 130 s 10 are each amended to read as follows:

(1) The insurance commissioner may refuse to grant, or may revoke or suspend, a certificate of exemption if the insurance commissioner finds that the insurer or institution does not meet the requirements of this chapter or if the insurance commissioner finds that the insurer or institution has violated RCW

48.01.030 or any provisions of chapter 48.30 RCW or is found by the insurance commissioner to be in such condition that its further issuance of charitable gift annuities would be hazardous to annuity contract holders and the people of this state.

(2) After hearing or with the consent of the insurer or institution and in addition to or in lieu of the suspension, revocation, or refusal to renew any certificate of exemption, the commissioner may levy a fine upon the insurer or institution in an amount not more than ten thousand dollars. The order levying such a fine shall specify the period within which the fine shall be fully paid and which period shall not be less than fifteen nor more than thirty days from the date of the order. Upon failure to pay such a fine when due the commissioner shall revoke the certificate of exemption of the insurer or institution if not already revoked, and the fine shall be recovered in a civil action brought in behalf of the commissioner by the attorney general. Any fine so collected shall be paid by the commissioner to the state treasurer for the account of the general fund.

NEW SECTION. Sec. 5. A new section is added to chapter 48.38 RCW to read as follows:

An insurer or institution holding a certificate of exemption to issue charitable gift annuities under this chapter shall not transact or be authorized to transact a variable annuity business as described in chapter 48.18A RCW.

NEW SECTION. Sec. 6. A new section is added to chapter 48.38 RCW to read as follows:

The commissioner may adopt rules to implement and administer this chapter.

NEW SECTION. Sec. 7. A new section is added to chapter 48.38 RCW to read as follows:

After June 30, 1998, an insurer or institution which does not have the minimum unrestricted net assets required by RCW 48.38.010(6) may not issue any new charitable gift annuities until the insurer or institution has and maintains the minimum unrestricted net assets required by RCW 48.38.010(6).

Sec. 8. RCW 48.31.020 and 1989 c 151 s 1 are each amended to read as follows:

For the purposes of this chapter, other than as to RCW 48.31.010, and in addition to persons included under RCW ~~((48.31.140))~~ 48.99.010, the term "insurer" shall be deemed to include an insurer authorized under chapter 48.05 RCW, an insurer or institution holding a certificate of exemption under RCW 48.38.010, a health care service contractor registered under chapter 48.44 RCW, and a health maintenance organization registered under chapter 48.46 RCW, as well as all persons engaged as, or purporting to be engaged as insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations in this state, and to persons in process of organization to become insurers, institutions issuing charitable gift annuities, health care service contractors, or health maintenance organizations.

Passed the House March 9, 1998.
Passed the Senate March 4, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 285

[Engrossed Substitute House Bill 2551]
UNRECORDED UTILITY LIENS

AN ACT Relating to unrecorded utility liens; amending RCW 57.08.081 and 87.03.445; and adding a new section to chapter 35.21 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 35.21 RCW to read as follows:

(1) Prior to furnishing utility services, a city or town may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by RCW 35.21.290 or 35.67.200. A city or town may determine how to apply partial payments on past due accounts.

(2) A city or town may provide a real property owner or the owner's designee with duplicates of tenant utility service bills, or may notify an owner or the owner's designee that a tenant's utility account is delinquent. However, if an owner or the owner's designee notifies the city or town in writing that a property served by the city or town is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the city or town shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the city or town notifies the tenant of the tenant's delinquency or by mail. When a city or town provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the city or town shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a city or town fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection, the city or town shall have no lien against the premises for the tenant's delinquent and unpaid charges.

Sec. 2. RCW 57.08.081 and 1997 c 447 s 19 are each amended to read as follows:

(1) The commissioners of any district shall provide for revenues by fixing rates and charges for furnishing sewer and drainage service and facilities to those to whom service is available or for providing water, such rates and charges to be fixed as deemed necessary by the commissioners, so that uniform charges will be made for the same class of customer or service and facility. Rates and charges may be combined for the furnishing of more than one type of sewer service and facility, such as, but not limited to, storm or surface water and sanitary.

(2) In classifying customers of such water, sewer, or drainage system, the board of commissioners may in its discretion consider any or all of the following factors: The difference in cost to various customers; the location of the various customers within and without the district; the difference in cost of maintenance, operation, repair, and replacement of the various parts of the system; the different character of the service furnished various customers; the quantity and quality of the service and facility furnished; the time of its use; the achievement of water conservation goals and the discouragement of wasteful practices; capital contributions made to the system including but not limited to assessments; and any other matters which present a reasonable difference as a ground for distinction. Rates shall be established as deemed proper by the commissioners and as fixed by resolution and shall produce revenues sufficient to take care of the costs of maintenance and operation, revenue bond and warrant interest and principal amortization requirements, and all other charges necessary for efficient and proper operation of the system. Prior to furnishing services, a district may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(3) The commissioners shall enforce collection of connection charges, and rates and charges for water supplied against property owners connecting with the system or receiving such water, and for sewer and drainage services charged against property to which and its owners to whom the service is available, such charges being deemed charges against the property served, by addition of penalties of not more than ten percent thereof in case of failure to pay the charges at times fixed by resolution. The commissioners may provide by resolution that where either connection charges or rates and charges for services supplied are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate of not more than the prime lending rate of the district's bank plus four percentage points per year shall be a lien against the property upon which the service was received, subject only to the lien for general taxes.

(4) The district may, at any time after the connection charges or rates and charges for services supplied or available and penalties are delinquent for a period of sixty days, bring suit in foreclosure by civil action in the superior court of the county in which the real property is located. The court may allow, in addition to the costs and disbursements provided by statute, attorneys' fees, title search and report costs, and expenses as it adjudges reasonable. The action shall be in rem, and may be brought in the name of the district against an individual or against all of those who are delinquent in one action. The laws and rules of the court shall control as in other civil actions.

(5) In addition to the right to foreclose provided in this section, the district may also cut off all or part of the service after charges for water or sewer service supplied or available are delinquent for a period of ~~((sixty))~~ thirty days.

(6) A district may determine how to apply partial payments on past due accounts.

(7) A district may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the district in writing that a property served by the district is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the district shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the district notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a district fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (7), the district shall have no lien against the premises for the tenant's delinquent and unpaid charges.

Sec. 3. RCW 87.03.445 and 1979 ex.s. c 185 s 5 are each amended to read as follows:

(1) The cost and expense of purchasing and acquiring property, and construction, reconstruction, extension, and betterment of the works and improvements herein provided for, and the expenses incidental thereto, and indebtedness to the United States for district lands assumed by the district, and for the carrying out of the purposes of this chapter, may be paid for by the board of directors out of the funds received from bond sales as well as other district funds.

(2) For the purpose of defraying the costs and expenses of the organization of the district, and of the care, operation, management, maintenance, repair, and improvement of the district and its irrigation water, domestic water, electric power, drainage, or sewer facilities or of any portion thereof, or for the payment of any indebtedness due the United States or the state of Washington, or for the payment of district bonds, the board may either fix rates or tolls and charges, and collect the same from all persons for whom district service is made available for irrigation water, domestic water, electric power, drainage or sewerage, and other purposes, or it may provide for the payment of said costs and expenses by a levy of assessment therefor, or by both said rates or tolls and charges and assessment.

(3) If the assessment method is utilized, the levy of assessments shall be made on the completion and equalization of the assessment roll each year, and the board shall have the same powers and functions for the purpose of said levy as possessed by it in case of levy to pay bonds of the district. The procedure for the collection of assessments by such levy shall in all respects conform with the provisions of this chapter, relating to the collection of assessments for the payment of principal and interest of bonds herein provided for, and shall be made at the same time.

(4) If the rates or tolls and charges method is adopted in whole or in part, the secretary shall deliver to the board of directors, within the time for filing the assessment roll, a schedule containing the names of the owners or reputed owners, as shown on the rolls of the county treasurer as of the first Tuesday in November of each year such a schedule is filed of the various parcels of land against which rates or tolls and charges are to be levied, the description of each such parcel of land and the amount to be charged against each parcel for irrigation water, domestic water, electric power, drainage, sewerage, and other district costs and expenses. Said schedule of rates or tolls and charges shall be equalized pursuant to the same notice, in the same manner, at the same time and with the same legal effect as in the case of assessments. Such schedule of rates or tolls and charges for a given year shall be filed with the proper county treasurer within the same time as that provided by law for the filing of the annual assessment roll, and the county treasurer shall collect and receipt for the payment of said rates or tolls and charges and credit them to the proper funds of the district. The board may designate the time and manner of making such collections and shall require the same to be paid in advance of delivery of water and other service. All tolls and charges levied shall also at once become and constitute an assessment upon and against the lands for which they are levied, with the same force and effect, and the same manner of enforcement, and with the same rate of interest from date of delinquency, in case of nonpayment, as other district assessments.

(5) As an alternative method of imposing, collecting, and enforcing such rates or tolls and charges, the board may also base such rates or tolls and charges upon the quantity of irrigation water, domestic water, or electric power delivered, or drainage or sewage disposed of, and may fix a minimum rate or toll and charge to be paid by each parcel of land or use within the district for the delivery or disposal of a stated quantity of each such service with a graduated charge for additional quantities of such services delivered or disposed of. If the board elects to utilize this alternative method of imposing, collecting, and enforcing such rates or tolls and charges, there shall be no requirement that the schedule referred to in the preceding paragraph be prepared, be filed with the board of directors by the secretary, be equalized, or be filed with a county treasurer. The board shall enforce collection of such rates or tolls and charges against property to which and its owners to whom the service is available, such rates or tolls and charges being deemed charges against the property to which the service is available. Prior to furnishing services, a board may require a deposit to guarantee payment for services. However, failure to require a deposit does not affect the validity of any lien authorized by this section.

(6) The board may provide by resolution that where such rates or tolls and charges are delinquent for any specified period of time, the district shall certify the delinquencies to the treasurer of the county in which the real property is located, and the charges and any penalties added thereto and interest thereon at the rate not to exceed twelve percent per annum fixed by resolution shall be a lien against the property to which the service was available, subject only to the lien

for general taxes. The district may, at any time after such rates or tolls and charges and penalties provided for herein are delinquent for a period of one year, bring suit in foreclosure by civil action in the superior court of the county in which the real property is situated.

(7) A board may determine how to apply partial payments on past due accounts.

(8) A board may provide a real property owner or the owner's designee with duplicate bills for service to tenants, or may notify an owner or the owner's designee that a tenant's service account is delinquent. However, if an owner or the owner's designee notifies the board in writing that a property served by the board is a rental property, asks to be notified of a tenant's delinquency, and has provided, in writing, a complete and accurate mailing address, the board shall notify the owner or the owner's designee of a tenant's delinquency at the same time and in the same manner the board notifies the tenant of the tenant's delinquency or by mail. When a district provides a real property owner or the owner's designee with duplicates of tenant utility service bills or notice that a tenant's utility account is delinquent, the district shall notify the tenant that it is providing the duplicate bills or delinquency notice to the owner or the owner's designee. After January 1, 1999, if a board fails to notify the owner of a tenant's delinquency after receiving a written request to do so and after receiving the other information required by this subsection (8), the board shall have no lien against the premises for the tenant's delinquent and unpaid charges.

(9) The court may allow, in addition to the costs and disbursements provided by statute, such ((attorney's)) attorneys' fees as it may adjudge reasonable. The action shall be in rem against the property, and in addition may be brought in the name of the district against an individual, or against all of those who are delinquent, in one action, and the rules of the court shall control as in other civil actions. The board may in the same year use the assessment method for part of the lands in the district and the rates or tolls and charges method for the remaining lands in the district in such proportion as it may deem advisable for the best interest of the district.

(10) The procedures herein provided for the collection and enforcement of rates, tolls, and charges also shall be applicable and available to the districts board of directors for the collection and enforcement of charges for water imposed by contract entered into or administered by the district's board of directors.

Passed the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 286

[Engrossed Substitute House Bill 2830]

IMPLEMENTING LAND USE STUDY COMMISSION RECOMMENDATIONS

AN ACT Relating to recommendations of the land use study commission; amending RCW 35.13.182, 36.70A.020, 36.70A.060, and 36.70A.070; amending 1995 c 347 s 433 (uncodified); amending 1995 c 347 s 411 (uncodified); amending 1995 c 347 s 412 (uncodified); adding new sections to chapter 35.13 RCW; and adding a new section to chapter 36.70A RCW.

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

Sec. 1. RCW 35.13.182 and 1997 c 429 s 37 are each amended to read as follows:

(1) The legislative body of a city or town planning under chapter 36.70A RCW as of June 30, 1994, may resolve to annex territory to the city or town if there is, within the city or town, unincorporated territory containing residential property owners within the same county and within the same urban growth area designated under RCW 36.70A.110 as the city or town:

(a) Containing less than one hundred acres and having at least eighty percent of the boundaries of such area contiguous to the city or town (~~if such area existed before June 30, 1994~~); or

(b) Of any size and having at least eighty percent of the boundaries of the area contiguous to the city if the area existed before June 30, 1994.

(2) The resolution shall describe the boundaries of the area to be annexed, state the number of voters residing in the area as nearly as may be, and set a date for a public hearing on the resolution for annexation. Notice of the hearing shall be given by publication of the resolution at least once a week for two weeks before the date of the hearing in one or more newspapers of general circulation within the city or town and one or more newspapers of general circulation within the area to be annexed.

(3) For purposes of subsection (1)(b) of this section, territory bounded by a river, lake, or other body of water is considered contiguous to a city that is also bounded by the same river, lake, or other body of water.

NEW SECTION. **Sec. 2.** A new section is added to chapter 35.13 RCW to read as follows:

The annexation ordinance provided for in RCW 35.13.182 is subject to referendum for forty-five days after its passage. Upon the filing of a timely and sufficient referendum petition with the legislative body, signed by qualified electors in number equal to not less than ten percent of the votes cast in the last general state election in the area to be annexed, the question of annexation shall be submitted to the voters of the area in a general election if one is to be held within ninety days or at a special election called for that purpose not less than forty-five days nor more than ninety days after the filing of the referendum petition. Notice of the election shall be given as provided in RCW 35.13.080 and the election shall be conducted as provided in the general election law. The annexation shall be deemed approved by the voters unless a majority of the votes cast on the proposition are in opposition thereto.

After the expiration of the forty-fifth day from but excluding the date of passage of the annexation ordinance, if no timely and sufficient referendum petition has been filed, the area annexed shall become a part of the city or town upon the date fixed in the ordinance of annexation.

NEW SECTION. Sec. 3. A new section is added to chapter 35.13 RCW to read as follows:

On the date set for hearing as provided in RCW 35.13.182(2), residents or property owners of the area included in the resolution for annexation shall be afforded an opportunity to be heard. The legislative body may provide by ordinance for annexation of the territory described in the resolution, but the effective date of the ordinance shall be not less than forty-five days after the passage thereof. The legislative body shall cause notice of the proposed effective date of the annexation, together with a description of the property to be annexed, to be published at least once each week for two weeks subsequent to passage of the ordinance, in one or more newspapers of general circulation within the city and in one or more newspapers of general circulation within the area to be annexed. If the annexation ordinance provides for assumption of indebtedness or adoption of a proposed zoning regulation, the notice shall include a statement of such requirements.

***Sec. 4. RCW 36.70A.020 and 1990 1st ex.s. c 17 s 2 are each amended to read as follows:**

The following goals are adopted to guide the development and adoption of comprehensive plans and development regulations of those counties and cities that are required or choose to plan under RCW 36.70A.040. The following goals are not listed in order of priority and shall be used exclusively for the purpose of guiding the development of comprehensive plans and development regulations:

(1) Urban growth. Encourage development in urban areas where adequate public facilities and services exist or can be provided in an efficient manner. Urban growth areas should have concentrated employment centers, separated by adequate buffers that protect critical areas, and need not be uniformly urban in nature.

(2) Reduce sprawl. Reduce the inappropriate conversion of undeveloped land into sprawling, low-density development.

(3) Transportation. Encourage efficient multimodal transportation systems that are based on regional priorities and coordinated with county and city comprehensive plans.

(4) Housing. Encourage the availability of affordable housing to all economic segments of the population of this state, promote a variety of residential densities and housing types, and encourage preservation of existing housing stock.

(5) Economic development. Encourage economic development throughout the state that is consistent with adopted comprehensive plans, promote economic

opportunity for all citizens of this state, especially for unemployed and for disadvantaged persons, and encourage growth in areas experiencing insufficient economic growth, all within the capacities of the state's natural resources, public services, and public facilities.

(6) Property rights. Private property shall not be taken for public use without just compensation having been made. The property rights of landowners shall be protected from arbitrary and discriminatory actions.

(7) Permits. Applications for both state and local government permits should be processed in a timely and fair manner to ensure predictability.

(8) Natural resource industries. Maintain and enhance natural resource-based industries, including productive timber, agricultural, and fisheries industries. Encourage the conservation of productive forest lands and productive agricultural lands, and discourage incompatible uses.

(9) Open space and recreation. Encourage the retention of open space and development of recreational opportunities, conserve fish and wildlife habitat, increase access to natural resource lands and water, and develop parks.

(10) Environment. Protect the environment and enhance the state's high quality of life, including air and water quality, and the availability of water.

(11) Citizen participation and coordination. Encourage the involvement of citizens in the planning process and ensure coordination between communities and jurisdictions to reconcile conflicts.

(12) Public facilities and services. Ensure that those public facilities and services necessary to support development shall be adequate to serve the development at the time the development is available for occupancy and use without decreasing current service levels below locally established minimum standards.

(13) Historic preservation. Identify and encourage the preservation of laads, sites, and structures, that have historical or archaeological significance.

*Sec. 4 was vetoed. See message at end of chapter.

Sec. 5. RCW 36.70A.060 and 1991 sp.s. c 32 s 21 are each amended to read as follows:

(1) Each county that is required or chooses to plan under RCW 36.70A.040, and each city within such county, shall adopt development regulations on or before September 1, 1991, to assure the conservation of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170. Regulations adopted under this subsection may not prohibit uses legally existing on any parcel prior to their adoption and shall remain in effect until the county or city adopts development regulations pursuant to RCW ((36.70A.120)) 36.70A.040. Such regulations shall assure that the use of lands adjacent to agricultural, forest, or mineral resource lands shall not interfere with the continued use, in the accustomed manner and in accordance with best management practices, of these designated lands for the production of food, agricultural products, or timber, or for the extraction of minerals. Counties and cities shall require that all plats, short plats, development permits, and building permits issued for development

activities on, or within ((three)) five hundred feet of, lands designated as agricultural lands, forest lands, or mineral resource lands, contain a notice that the subject property is within or near designated agricultural lands, forest lands, or mineral resource lands on which a variety of commercial activities may occur that are not compatible with residential development for certain periods of limited duration. The notice for mineral resource lands shall also inform that an application might be made for mining-related activities, including mining, extraction, washing, crushing, stockpiling, blasting, transporting, and recycling of minerals.

(2) Each county and city shall adopt development regulations that protect critical areas that are required to be designated under RCW 36.70A.170. For counties and cities that are required or choose to plan under RCW 36.70A.040, such development regulations shall be adopted on or before September 1, 1991. For the remainder of the counties and cities, such development regulations shall be adopted on or before March 1, 1992.

(3) Such counties and cities shall review these designations and development regulations when adopting their comprehensive plans under RCW 36.70A.040 and implementing development regulations under RCW 36.70A.120 and may alter such designations and development regulations to insure consistency.

(4) Forest land and agricultural land located within urban growth areas shall not be designated by a county or city as forest land or agricultural land of long-term commercial significance under RCW 36.70A.170 unless the city or county has enacted a program authorizing transfer or purchase of development rights.

**Sec. 6. RCW 36.70A.070 and 1997 c 429 s 7 are each amended to read as follows:*

The comprehensive plan of a county or city that is required or chooses to plan under RCW 36.70A.040 shall consist of a map or maps, and descriptive text covering objectives, principles, and standards used to develop the comprehensive plan. The plan shall be an internally consistent document and all elements shall be consistent with the future land use map. A comprehensive plan shall be adopted and amended with public participation as provided in RCW 36.70A.140.

Each comprehensive plan shall include a plan, scheme, or design for each of the following:

(1) A land use element designating the proposed general distribution and general location and extent of the uses of land, where appropriate, for agriculture, timber production, housing, commerce, industry, recreation, open spaces, general aviation airports, public utilities, public facilities, and other land uses. The land use element shall include population densities, building intensities, and estimates of future population growth. The land use element shall provide for protection of the quality and quantity of ground water used for public water supplies. Where applicable, the land use element shall review drainage, flooding, and storm water run-off in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those

discharges that pollute waters of the state, including Puget Sound or waters entering Puget Sound.

(2) A housing element ensuring the vitality and character of established residential neighborhoods that: (a) Includes an inventory and analysis of existing and projected housing needs; (b) includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences; (c) identifies sufficient land for housing, including, but not limited to, government-assisted housing, housing for low-income families, manufactured housing, multifamily housing, and group homes and foster care facilities; and (d) makes adequate provisions for existing and projected needs of all economic segments of the community, including affordable housing and adequate housing located within reasonable commuting distances to employment centers.

(3) A capital facilities plan element consisting of: (a) An inventory of existing capital facilities owned by public entities, showing the locations and capacities of the capital facilities; (b) a forecast of the future needs for such capital facilities; (c) the proposed locations and capacities of expanded or new capital facilities; (d) at least a six-year plan that will finance such capital facilities within projected funding capacities and clearly identifies sources of public money for such purposes; and (e) a requirement to reassess the land use element if probable funding falls short of meeting existing needs and to ensure that the land use element, capital facilities plan element, and financing plan within the capital facilities plan element are coordinated and consistent.

(4) A utilities element consisting of the general location, proposed location, and capacity of all existing and proposed utilities, including, but not limited to, electrical lines, telecommunication lines, and natural gas lines.

(5) Rural element. Counties shall include a rural element including lands that are not designated for urban growth, agriculture, forest, or mineral resources. The following provisions shall apply to the rural element:

(a) Growth management act goals and local circumstances. Because circumstances vary from county to county, in establishing patterns of rural densities and uses, a county may consider local circumstances, but shall develop a written record explaining how the rural element harmonizes the planning goals in RCW 36.70A.020 and meets the requirements of this chapter.

(b) Rural development. The rural element shall permit rural development, forestry, and agriculture in rural areas. The rural element shall provide for a variety of rural densities, uses, essential public facilities, and rural governmental services needed to serve the permitted densities and uses. In order to achieve a variety of rural densities and uses, counties may provide for clustering, density transfer, design guidelines, conservation easements, and other innovative techniques that will accommodate appropriate rural densities and uses that are not characterized by urban growth and that are consistent with rural character.

(c) Measures governing rural development. The rural element shall include measures that apply to rural development and protect the rural character of the area, as established by the county, by:

- (i) Containing or otherwise controlling rural development;*
- (ii) Assuring visual compatibility of rural development with the surrounding rural area;*
- (iii) Reducing the inappropriate conversion of undeveloped land into sprawling, low-density development in the rural area;*
- (iv) Protecting critical areas, as provided in RCW 36.70A.060, and surface water and ground water resources; and*
- (v) Protecting against conflicts with the use of agricultural, forest, and mineral resource lands designated under RCW 36.70A.170.*

(d) Limited areas of more intensive rural development. Subject to the requirements of this subsection and except as otherwise specifically provided in this subsection (5)(d), the rural element may allow for limited areas of more intensive rural development, including necessary public facilities and public services to serve the limited area as follows:

(i) Rural development consisting of the infill, development, or redevelopment of existing commercial, industrial, residential, or mixed-use areas, whether characterized as shoreline development, villages, hamlets, rural activity centers, or crossroads developments. A commercial, industrial, residential, shoreline, or mixed-use area shall be subject to the requirements of (d)(iv) of this subsection, but shall not be subject to the requirements of (c)(ii) and (iii) of this subsection. An industrial area is not required to be principally designed to serve the existing and projected rural population;

(ii) The intensification of development on lots containing, or new development of, small-scale recreational or tourist uses, including commercial facilities to serve those recreational or tourist uses, that rely on a rural location and setting, but that do not include new residential development. A small-scale recreation or tourist use is not required to be principally designed to serve the existing and projected rural population. Public services and public facilities shall be limited to those necessary to serve the recreation or tourist use and shall be provided in a manner that does not permit low-density sprawl;

(iii) The intensification of development on lots containing isolated nonresidential uses or new development of isolated cottage industries and isolated small-scale businesses that are not principally designed to serve the existing and projected rural population and nonresidential uses, but do provide job opportunities for rural residents. Public services and public facilities shall be limited to those necessary to serve the isolated nonresidential use and shall be provided in a manner that does not permit low-density sprawl;

(iv) A county shall adopt measures to minimize and contain the existing areas or uses of more intensive rural development, as appropriate, authorized under this subsection. Lands included in such existing areas or uses shall not extend beyond the logical outer boundary of the existing area or use, thereby

allowing a new pattern of low-density sprawl. Existing areas are those that are clearly identifiable and contained and where there is a logical boundary delineated predominately by the built environment, but that may also include undeveloped lands if limited as provided in this subsection. The county shall establish the logical outer boundary of an area of more intensive rural development. In establishing the logical outer boundary the county shall address (A) the need to preserve the character of existing natural neighborhoods and communities, (B) physical boundaries such as bodies of water, streets and highways, and land forms and contours, (C) the prevention of abnormally irregular boundaries, and (D) the ability to provide public facilities and public services in a manner that does not permit low-density sprawl;

(v) For purposes of (d) of this subsection, an existing area or existing use is one that was in existence:

(A) On July 1, 1990, in a county that was initially required to plan under all of the provisions of this chapter;

(B) On the date the county adopted a resolution under RCW 36.70A.040(2), in a county that is planning under all of the provisions of this chapter under RCW 36.70A.040(2); or

(C) On the date the office of financial management certifies the county's population as provided in RCW 36.70A.040(5), in a county that is planning under all of the provisions of this chapter pursuant to RCW 36.70A.040(5).

(e) Exception. This subsection shall not be interpreted to permit in the rural area a major industrial development or a master planned resort unless otherwise specifically permitted under RCW 36.70A.360 and 36.70A.365.

(6) A transportation element that implements, and is consistent with, the land use element. The transportation element shall include the following subelements:

(a) Land use assumptions used in estimating travel;

(b) Facilities and services needs, including:

(i) An inventory of air, water, and ground transportation facilities and services, including railways, transit alignments, and general aviation airport facilities, to define existing capital facilities and travel levels as a basis for future planning. This inventory must include state-owned transportation facilities, including interstate highway exits and ferry terminals, within the city or county's jurisdictional boundaries;

(ii) Level of service standards for all arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(iii) Specific actions and requirements for bringing into compliance any facilities or services that are below an established level of service standard;

(iv) Forecasts of traffic for at least ten years based on the adopted land use plan to provide information on the location, timing, and capacity needs of future growth;

(v) *Identification of system expansion needs and transportation system management needs to meet current and future demands;*

(c) *Finance, including:*

(i) *An analysis of funding capability to judge needs against probable funding resources;*

(ii) *A multiyear financing plan based on the needs identified in the comprehensive plan, the appropriate parts of which shall serve as the basis for the six-year street, road, or transit program required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems;*

(iii) *If probable funding falls short of meeting identified needs, a discussion of how additional funding will be raised, or how land use assumptions will be reassessed to ensure that level of service standards will be met;*

(d) *Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;*

(e) *Demand-management strategies.*

After adoption of the comprehensive plan by jurisdictions required to plan or who choose to plan under RCW 36.70A.040, local jurisdictions must adopt and enforce ordinances which prohibit development approval if the development causes the level of service on a transportation facility to decline below the standards adopted in the transportation element of the comprehensive plan, unless transportation improvements or strategies to accommodate the impacts of development are made concurrent with the development. These strategies may include increased public transportation service, ride sharing programs, demand management, and other transportation systems management strategies. For the purposes of this subsection (6) "concurrent with the development" shall mean that improvements or strategies are in place at the time of development, or that a financial commitment is in place to complete the improvements or strategies within six years.

The transportation element described in this subsection, and the six-year plans required by RCW 35.77.010 for cities, RCW 36.81.121 for counties, and RCW 35.58.2795 for public transportation systems, must be consistent.

**Sec. 6 was vetoed. See message at end of chapter.*

NEW SECTION. Sec. 7. A new section is added to chapter 36.70A RCW to read as follows:

As part of the review required by RCW 36.70A.130(1), a county or city shall review its mineral resource lands designations adopted pursuant to RCW 36.70A.170 and mineral resource lands development regulations adopted pursuant to RCW 36.70A.040 and 36.70A.060. In its review, the county or city shall take into consideration:

(1) New information made available since the adoption or last review of its designations or development regulations, including data available from the department of natural resources relating to mineral resource deposits; and

(2) New or modified model development regulations for mineral resource lands prepared by the department of natural resources, the department of community, trade, and economic development, or the Washington state association of counties.

Sec. 8. 1995 c 347 s 433 (uncodified) is amended to read as follows:

((Sections 413 and 421 of this act)) RCW 36.70B.090 and 64.40.050 shall expire June 30, ((1998)) 2000. The provisions of ((sections 413 and 421 of this act)) RCW 36.70B.090 and 64.40.050 shall apply to project permit applications determined to be complete pursuant to RCW 36.70B.070 on or before June 30, ((1998)) 2000.

Sec. 9. 1995 c 347 s 411 (uncodified) is amended to read as follows:

The amendments to RCW ((36.70A.065)) 36.70B.080 contained in section 409 ((of this act)), chapter 347, Laws of 1995 shall expire July 1, ((1998)) 2000.

Sec. 10. 1995 c 347 s 412 (uncodified) is amended to read as follows:

Section 410 ((of this act)), chapter 347, Laws of 1995 shall take effect July 1, ((1998)) 2000.

Passed the House March 12, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 4 and 6, Engrossed Substitute House Bill No. 2830 entitled:

"AN ACT Relating to recommendations of the land use study commission;"

This bill mostly reflects the consensus recommendations of the Land Use Study Commission (LUSC), which consists of representatives from a full spectrum of land use interests, including business, agriculture, local and state government, neighborhood activists and environmentalists. As I have stated before, LUSC provides a great framework for the debate over how best to improve the state's Growth Management Act. I commend the members of LUSC for all of their hard work. LUSC has been extremely effective, and I am disappointed that the Legislature did not authorize its continuation, or authorize another forum within which complex land use and environmental issues can be thoroughly debated and discussed.

When I vetoed HB 1472 last year, I asked LUSC to review the issue of mineral resource lands designations. The Legislature also asked LUSC to review the 120-day permit timeline. This bill reflects LUSC's response to our requests. The bill also makes some technical changes to the GMA annexation provisions.

While ESHB 2830 reflects the consensus recommendations which I support, I cannot sign the bill in its entirety. The language added to sections 4 and 6 amending the goals of the Growth Management Act does not necessarily make bad planning goals, but I am concerned about the implementation of those changes and vague language. For example, would the language in sections 4 and 6 mean that cities and counties who have completed their GMA plans and regulations would have to revisit them to ensure that the new goals are addressed? If so, what is the cost? What does "reasonable commuting distances" mean? In some parts of the country, great distances are acceptable commutes. These two new sections could invite more litigation and create more confusion surrounding GMA. In addition, section 6 makes changes to the same statute amended by HB 1487, which I signed into law on March 27, 1998.

For these reasons, I have vetoed sections 4 and 6 of Engrossed Substitute House Bill No. 2830.

With the exception of sections 4 and 6, Engrossed Substitute House Bill No. 2830 is approved."

CHAPTER 287

[Engrossed Second Substitute House Bill 2831]

UNBUNDLING COSTS OF ELECTRIC SERVICES

AN ACT Relating to unbundling the components of electrical service; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. The definitions in this section apply throughout chapter . . . , Laws of 1998 (this act) unless the context clearly requires otherwise.

- (1) "Commission" means the utilities and transportation commission.
- (2) "Conservation" means an increase in efficiency in the use of energy use that yields a decrease in energy consumption while providing the same or higher levels of service. Conservation includes low-income weatherization programs and programs that result in overall reductions of electrical system requirements.
- (3) "Consumer-owned utility" means a municipal electric utility, an electric cooperative, a public utility district, an irrigation district, a port district, or a water-sewer district that is engaged in the business of distributing electricity to retail electric customers in this state.
- (4) "Control area services" means scheduling, reactive power, spinning reserves, nonspinning reserves, voltage control and regulation, load following, and other related services necessary to sustain reliable delivery of electricity.
- (5) "Delivery services" means the services needed to deliver electricity to a retail electric customer using transmission, distribution, and related facilities. Delivery services include control area services, and the real property upon which the delivery plant, equipment, and other delivery infrastructure is located.
- (6) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.
- (7) "Electric meters in service" means those meters that record in at least nine of twelve calendar months in any calendar year not less than two hundred fifty kilowatt hours per month.
- (8) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in the business of distributing electricity to more than one retail electric customer in the state.
- (9) "Electric utility" means any electrical company or consumer-owned utility as defined in this section.
- (10) "Electricity" means electric energy, measured in kilowatt hours, or electric capacity, measured in kilowatts.
- (11) "Governing body" means the council of a city or town, the commissioners of a municipal electric utility, an irrigation district, a port district, a water-

sewer district, or a public utility district, or the board of directors of an electric cooperative that has the authority to set and approve rates.

(12) "Irrigation district" means an irrigation district authorized by chapter 87.03 RCW.

(13) "Municipal electric utility" means a utility providing electrical service that is operated by a city or town as authorized by chapter 35.92 RCW.

(14) "Port district" means a port district within which an industrial district has been established as authorized by Title 53 RCW.

(15) "Public utility district" means a district authorized by chapter 54.04 RCW.

(16) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(17) "Retail electric customer" means any person or entity, including, but not limited to, a residential, commercial, or industrial customer, that purchases electricity for ultimate consumption and not for resale.

(18) "Small utility" means any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

(19) "State" means the state of Washington.

(20) "Unbundle" means to separately identify, and publish the accounting, functionalization, classification, and assignment or allocation of the costs of electrical service.

(21) "Water-sewer district" means a water-sewer district authorized by Title 57 RCW.

NEW SECTION. Sec. 2. (1)(a) By September 30, 1998, each electrical company shall submit a cost study described in subsections (2) and (3) of this section, and a service quality and reliability report described in subsection (4) of this section, to the commission. The commission shall review each cost study and each service quality and reliability report in an open public meeting to determine whether the filings meet the requirements of this section, and to identify any issues in dispute. Nothing in chapter . . . , Laws of 1998 (this act) shall be construed as either increasing or limiting the authority of the commission to conduct hearings on disputed issues.

(b) Except as provided in section 4 of this act, by September 1, 1998, each consumer-owned utility shall submit a cost study described in subsections (2) and (3) of this section, and a service quality and reliability report described in subsection (4) of this section, to its governing body in an open public meeting. The governing body shall determine whether the study and report meet the requirements of this section. By October 1, 1998, each consumer-owned utility

shall submit the cost study and service quality and reliability report to the state auditor.

(2) Except as provided in section 4 of this act, by September 30, 1998, every electric utility shall unbundle. At a minimum, an electric utility shall include in such unbundling the accounting treatment for generation and energy supply, delivery services separately identifying transmission, distribution, and control area services, metering and billing, customer account services, programs to support conservation or renewable resources other than hydroelectric power, fish and wildlife mitigation, general administration and overhead, and taxes; the functionalization of costs separately for generation and energy supply, transmission, distribution, and other; the classification of costs separately to include, but not be limited to, energy and capacity; and the assignment or allocation of costs separately to include, but not be limited to, residential, small commercial, industrial, and other. For the purpose of chapter . . . , Laws of 1998 (this act), as directed by the commission for an electrical company or the governing body of a consumer-owned utility, the electric utility shall use the data from either the cost study used to formulate the retail rates in effect as of the effective date of this act, or a more recent cost study.

(3) The cost study required of each electric utility under subsection (1) of this section shall include the following documentation:

(a) A description of the fundamental cost study theory used, such as fully embedded costs, marginal or incremental costs, or some combination thereof;

(b) A detailed description of the classifications, functions, and assignments or allocations of electrical service unbundled;

(c) The costs attributed to each of these classifications, functions, and assignments or allocations and, if proportional attribution of costs between classifications, functions, and assignments or allocations is necessary, the proposed method of attribution;

(d) For utilities that operate in more than one state, the costs attributable to operations in Washington;

(e) For each class of retail electric customers, the method by which the utility calculated costs, and classified, functionalized, and assigned or allocated costs;

(f) If the utility used marginal costs for the classifications, or assignments or allocations, a clear description of those classifications, or assignments or allocations, and the rationale for this choice; and

(g) The time period over which cost data were compiled.

(4) The service quality and reliability report required of each electric utility under subsection (1) of this section shall include, to the extent such data are currently collected and reasonably available, the following information:

(a) The level of satisfaction of the utility's customers as measured by customer surveys;

(b) The number of customer complaints filed during a calendar year with the commission if the utility is an electrical company or with the governing body if the utility is a consumer-owned utility;

(c) The number of minutes the average customer or feeder line is without electricity during a calendar year; and

(d) The number of times the average customer or feeder line is without power during a calendar year.

If available, the report shall include a copy of the survey instrument or script used to collect the information described in (a) of this subsection.

NEW SECTION. Sec. 3. (1) The state auditor shall receive, analyze, and summarize the studies and reports required of consumer-owned utilities under section 2 of this act. The state auditor may consult with the commission, the department of community, trade, and economic development, the electric utilities, and others in analyzing and summarizing the studies and reports.

(2) By December 1, 1998, the state auditor and commission shall prepare a joint report on the results of the cost studies and service quality and reliability reports required under section 2 of this act, and shall submit the joint report to the energy and utilities committees of the senate and house of representatives. The joint report shall include the following information:

(a) A summary of the cost studies submitted by electric utilities;

(b) Observations regarding the consistency or lack of consistency among utilities in methods of classification, functionalization, and assignment or allocation, and in descriptions of unbundled costs;

(c) A summary of the service quality and reliability reports submitted by electric utilities;

(d) Observations regarding the consistency or lack of consistency among utilities in the amount and kinds of information available regarding service quality and reliability; and

(e) An examination of alternative formats for simple, standardized disclosure of fuel mix, air emissions, and other environmental impacts of coal, hydroelectric, natural gas, nuclear, wind, and other generating resources, including the approaches used by utilities that have offered pilot programs to their customers allowing market access.

In the report, the commission shall also describe any issues arising from the cost studies and service quality and reliability reports submitted by electrical companies.

NEW SECTION. Sec. 4. (1) The legislature finds that: (a) Small utilities operate on a nonprofit basis, and typically serve rural areas where the cost of providing service exceeds that of urban areas; (b) most small utilities are full-requirements customers of the Bonneville power administration and do not purchase electricity and related products and services individually for resale to utility customers; and (c) the additional expense of unbundling and preparing service quality and reliability reports is likely to significantly outweigh the potential benefits to small utilities.

(2) The provisions of section 2 of this act do not apply to a small utility. However, nothing in this section prohibits the governing body of a small utility

from determining the utility should unbundle and comply with any or all of the provisions of section 2 of this act applicable to other consumer-owned utilities.

(3) A small utility whose governing body has determined the utility should unbundle is encouraged, but not required, to submit a cost study and service quality and reliability report described in section 2 of this act to the state auditor.

****NEW SECTION. Sec. 5. Any municipal electric utility formed by a municipality with a population of more than four hundred thousand as of the effective date of this section shall submit a report to its governing body by December 1, 1998, with the following information:***

(1) The ratio of the municipal electric utility's customers to its employees as of the effective date of this section, and the changes in the ratio that have occurred over the previous ten years; and

(2) The annual sources of funding and the amount of annual expenditures, including federal funds, by the municipal electric utility on conservation, renewable resources, and low-income weatherization and energy bill-paying assistance programs during the previous ten years. This part of the report shall describe: (a) The amount of electricity saved by such conservation programs; (b) the overhead costs to the municipal electric utility to administer such programs, including but not limited to amounts expended by other municipal departments and nonprofit entities in administering such programs; and (c) for low-income weatherization programs, the overhead cost per unit weatherized as compared to the overhead costs of comparable programs administered by the state.

*Sec. 5 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 6. Nothing in chapter . . . , Laws of 1998 (this act) shall be construed as requiring an electric utility to establish new rates or to adopt new rate-making methods, or to require the commission to approve new revenue levels for electrical companies. In addition, nothing in chapter . . . , Laws of 1998 (this act) shall be construed as conferring on any state agency jurisdiction, supervision, or control over any consumer-owned utility.

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 the House March 10, 1998.

Passed the Senate March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 5, Engrossed Second Substitute House Bill No. 2831 entitled:

"AN ACT Relating to unbundling the components of electrical service;"

E2SHB 2831 requires utilities to provide information on the components of electricity costs and on their histories of system reliability and customer satisfaction. This information,

to be assembled and reported by the Washington Utilities and Transportation Commission and the State Auditor, should prove useful in evaluating our current electric system and proposed changes to it.

Section 5 of the bill would single out one utility, Seattle City Light, and require it to produce additional information. No justification is offered for why one utility should be treated differently from others. Moreover, the information requested is already available and has been provided to interested parties. Section 5 is therefore unnecessary.

For these reasons, I have vetoed section 5 of Engrossed Second Substitute House Bill No. 2831.

With the exception of section 5, Engrossed Second Substitute House Bill No. 2831 is approved."

CHAPTER 288

[Engrossed House Bill 3041]

OFFICE OF THE FAMILY AND CHILDREN'S OMBUDSMAN—EXEMPTIONS FROM CERTAIN PROCEEDINGS—CONFIRMATION OF OMBUDSMAN

AN ACT Relating to the exemption of the office of the family and children's ombudsman from certain judicial and administrative proceedings; amending RCW 43.06A.010 and 43.06A.020; adding new sections to chapter 43.06A RCW; and declaring an emergency.

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

NEW SECTION. Sec. 1. A new section is added to chapter 43.06A RCW to read as follows:

Neither the ombudsman nor the ombudsman's staff may be compelled, in any judicial or administrative proceeding, to testify or to produce evidence regarding the exercise of the official duties of the ombudsman or of the ombudsman's staff. All related memoranda, work product, notes, and case files of the ombudsman's office are confidential, are not subject to discovery, judicial or administrative subpoena, or other method of legal compulsion, and are not admissible in evidence in a judicial or administrative proceeding. This section shall not apply to the legislative oversight committee.

NEW SECTION. Sec. 2. A new section is added to chapter 43.06A RCW to read as follows:

Identifying information about complainants or witnesses shall not be subject to any method of legal compulsion, nor shall such information be revealed to the legislative oversight committee or the governor except under the following circumstances: (1) The complainant or witness waives confidentiality; (2) under a legislative subpoena when there is a legislative investigation for neglect of duty or misconduct by the ombudsman or ombudsman's office when the identifying information is necessary to the investigation of the ombudsman's acts; or (3) under an investigation or inquiry by the governor as to neglect of duty or misconduct by the ombudsman or ombudsman's office when the identifying information is necessary to the investigation of the ombudsman's acts.

For the purposes of this section, "identifying information" includes the complainant's or witness's name, location, telephone number, likeness, social

security number or other identification number, or identification of immediate family members.

NEW SECTION. Sec. 3. A new section is added to chapter 43.06A RCW to read as follows:

The privilege described in section 1 of this act does not apply when:

(1) The ombudsman or ombudsman's staff member has direct knowledge of an alleged crime, and the testimony, evidence, or discovery sought is relevant to that allegation;

(2) The ombudsman or a member of the ombudsman's staff has received a threat of, or becomes aware of a risk of, imminent serious harm to any person, and the testimony, evidence, or discovery sought is relevant to that threat or risk;

(3) The ombudsman has been asked to provide general information regarding the general operation of, or the general processes employed at, the ombudsman's office; or

(4) The ombudsman or ombudsman's staff member has direct knowledge of a failure by any person specified in RCW 26.44.030, including the state family and children's ombudsman or any volunteer in the ombudsman's office, to comply with RCW 26.44.030.

NEW SECTION. Sec. 4. A new section is added to chapter 43.06A RCW to read as follows:

When the ombudsman or ombudsman's staff member has reasonable cause to believe that any public official, employee, or other person has acted in a manner warranting criminal or disciplinary proceedings, the ombudsman or ombudsman's staff member shall report the matter, or cause a report to be made, to the appropriate authorities.

NEW SECTION. Sec. 5. A new section is added to chapter 43.06A RCW to read as follows:

Nothing in this chapter shall be construed to conflict with the duty to report specified in RCW 26.44.030.

****Sec. 6. RCW 43.06A.010 and 1996 c 131 s 2 are each amended to read as follows:***

There is hereby created an office of the family and children's ombudsman within the office of the governor for the purpose of promoting public awareness and understanding of family and children services, identifying system issues and responses for the governor and the legislature to act upon, and monitoring and ensuring compliance with administrative acts, relevant statutes, rules, and policies pertaining to family and children's services and the placement, supervision, and treatment of children in the state's care or in state-licensed facilities or residences. The ombudsman shall report directly to the governor and the legislative oversight committee and shall exercise his or her powers and duties independently of the secretary.

****Sec. 6 was vetoed. See message at end of chapter.***

Sec. 7. RCW 43.06A.020 and 1996 c 131 s 3 are each amended to read as follows:

(1) Subject to confirmation by the senate, the governor shall appoint an ombudsman who shall be a person of recognized judgment, independence, objectivity, and integrity, and shall be qualified by training or experience, or both, in family and children's services law and policy. Prior to the appointment, the governor shall consult with, and may receive recommendations from the committee, regarding the selection of the ombudsman.

(2) The person appointed ombudsman shall hold office for a term of three years and shall continue to hold office until reappointed or until his or her successor is appointed. The governor may remove the ombudsman only for neglect of duty, misconduct, or inability to perform duties. Any vacancy shall be filled by similar appointment for the remainder of the unexpired term.

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.** 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 the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Engrossed House Bill No. 3041, entitled:

"AN ACT Relating to the exemption of the office of the family and children's ombudsman from certain judicial and administrative proceedings;"

Engrossed House Bill No. 3041 provides the Office of the Family and Children's Ombudsman (OFCO) an exemption from disclosure of certain information related to its inquiries. The purpose of the exemption is to enable the OFCO to conduct and complete its inquiries in a manner that elicits as much useful information as possible. The possibility of premature disclosure, or the inability of the office to maintain reasonable confidences, could compromise the work of the office. This bill places limits on the exemption that assure that the OFCO is obligated to report child abuse, or the threat of child abuse, as well as other criminal behavior.

The OFCO currently reports directly to the Governor. Section 6 of EHB 3041 would have the OFCO also reporting to the legislative oversight committee. I do not support such a dilution of accountability. The work of the office is too important to subject it to an ambiguous and untested administrative arrangement.

For this reason, I have vetoed section 6 of Engrossed House Bill No. 3041.

With the exception of section 6, Engrossed House Bill No. 3041 is approved."

CHAPTER 289

[Substitute House Bill 3099]

INDUSTRIAL LAND BANK ESTABLISHMENT—AUTHORITY EXPANDED AND EXTENDED

AN ACT Relating to industrial developments; amending RCW 36.70A.367; and creating a new section.

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

NEW SECTION. Sec. 1. The legislature finds that to fulfill the economic development goal of this chapter, it is beneficial to expand the limited authorization for pilot projects for identifying locations for major industrial activity in advance of specific proposals by an applicant. The legislature further finds that land bank availability may provide economically disadvantaged counties the opportunity to attract new industrial activity by offering expeditious siting and therefore promote a community's economic health and vitality. The purpose of this act is to authorize and evaluate additional pilot projects for major industrial activity in economically disadvantaged counties.

Sec. 2. RCW 36.70A.367 and 1997 c 402 s 1 are each amended to read as follows:

(1) In addition to the major industrial development allowed under RCW 36.70A.365, a county required or choosing to plan under RCW 36.70A.040 that ~~((has a population greater than two hundred fifty thousand and that is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand or a county that has a population greater than one hundred forty thousand and is adjacent to another country))~~ meets the criteria in subsection (9) of this section may establish, in consultation with cities consistent with provisions of RCW 36.70A.210, a process for designating a bank of no more than two master planned locations for major industrial activity outside urban growth areas.

(2) A master planned location for major industrial developments outside an urban growth area may be included in the urban industrial land bank for the county if criteria including, but not limited to, the following are met:

(a) New infrastructure is provided for and/or applicable impact fees are paid;
(b) Transit-oriented site planning and traffic demand management programs are implemented;

(c) Buffers are provided between the major industrial development and adjacent nonurban areas;

(d) Environmental protection including air and water quality has been addressed and provided for;

(e) Development regulations are established to ensure that urban growth will not occur in adjacent nonurban areas;

(f) Provision is made to mitigate adverse impacts on designated agricultural lands, forest lands, and mineral resource lands;

(g) The plan for the major industrial development is consistent with the county's development regulations established for protection of critical areas; and

(h) An inventory of developable land has been conducted as provided in RCW 36.70A.365.

(3) In selecting master planned locations for inclusion in the urban industrial land bank, priority shall be given to locations that are adjacent to, or in close proximity to, an urban growth area.

(4) Final approval of inclusion of a master planned location in the urban industrial land bank shall be considered an adopted amendment to the comprehensive plan adopted pursuant to RCW 36.70A.070, except that RCW 36.70A.130(2) does not apply so that inclusion or exclusion of master planned locations may be considered at any time.

(5) Once a master planned location has been included in the urban industrial land bank, manufacturing and industrial businesses that qualify as major industrial development under RCW 36.70A.365 may be located there.

(6) Nothing in this section may be construed to alter the requirements for a county to comply with chapter 43.21C RCW.

(7) The authority of a county to engage in the process of including or excluding master planned locations from the urban industrial land bank shall terminate on December 31, ((1998)) 1999. However, any location included in the urban industrial land bank on December 31, ((1998)) 1999, shall remain available for major industrial development as long as the criteria of subsection (2) of this section continue to be met.

(8) For the purposes of this section, "major industrial development" means a master planned location suitable for manufacturing or industrial businesses that: (a) Requires a parcel of land so large that no suitable parcels are available within an urban growth area; or (b) is a natural resource-based industry requiring a location near agricultural land, forest land, or mineral resource land upon which it is dependent; or (c) requires a location with characteristics such as proximity to transportation facilities or related industries such that there is no suitable location in an urban growth area. The major industrial development may not be for the purpose of retail commercial development or multitenant office parks.

(9) This section applies to a county that at the time the process is established under subsection (1) of this section:

(a) Has a population greater than two hundred fifty thousand and is part of a metropolitan area that includes a city in another state with a population greater than two hundred fifty thousand;

(b) Has a population greater than one hundred forty thousand and is adjacent to another country; or

(c) Has a population greater than forty thousand but less than seventy-five thousand and has an average level of unemployment for the preceding three years that exceeds the average state unemployment for those years by twenty percent; and

(i) Is bordered by the Pacific Ocean; or

(ii) Is located in the Interstate 5 or Interstate 90 corridor.

Passed the House March 10, 1998.
Passed the Senate March 6, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 290

[Engrossed Substitute Senate Bill 5305]

CONTROLLING DRUGS USED TO FACILITATE RAPE

AN ACT Relating to controlling drugs used to facilitate rape; amending RCW 69.50.401, 69.50.406, 9A.44.050, and 9A.44.100; reenacting and amending RCW 9.94A.030, 9.94A.320, and 13.40.357; adding a new section to chapter 9A.44 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

Sec. 1. RCW 69.50.401 and 1997 c 71 s 2 are each amended to read as follows:

(a) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(1) Any person who violates this subsection with respect to:

(i) a controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(ii) methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, or (A) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (B) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(iii) any other controlled substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a substance classified in Schedule IV, except flunitrazepam, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(b) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(1) Any person who violates this subsection with respect to:

(i) a counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(ii) a counterfeit substance which is methamphetamine, is guilty of a crime and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(iii) any other counterfeit substance classified in Schedule I, II, or III, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(iv) a counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both;

(v) a counterfeit substance classified in Schedule V, is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(c) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance. Any person who violates this subsection is guilty of a crime and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both.

(d) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter. Any person who violates this subsection is guilty of a crime, and upon conviction may be imprisoned for not more than five years, fined not more than ten thousand dollars, or both, except as provided for in subsection (e) of this section.

(e) Except as provided for in subsection (a)(I)(iii) of this section any person found guilty of possession of forty grams or less of marijuana shall be guilty of a misdemeanor.

(f) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance. A violation of this subsection shall be punished as a class C felony punishable in accordance with RCW 9A.20.021.

This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.410.

Sec. 2. RCW 69.50.406 and 1996 c 205 s 7 are each amended to read as follows:

(a) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, or flunitrazepam listed in Schedule IV, to a person under eighteen years of age is punishable by the fine authorized by RCW 69.50.401(a)(1) (i) or (ii), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(a)(1) (i) or (ii), or by both.

(b) Any person eighteen years of age or over who violates RCW 69.50.401(a) by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his junior is punishable by the fine authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), by a term of imprisonment up to twice that authorized by RCW 69.50.401(a)(1) (iii), (iv), or (v), or both.

Sec. 3. RCW 9.94A.030 and 1997 c 365 s 1, 1997, c 340 s 4, 1997 c 339 s 1, 1997 c 338 s 2, 1997 c 144 s 1, and 1997 c 70 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) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department of corrections, means that the department 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.

(2) "Commission" means the sentencing guidelines commission.

(3) "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.

(4) "Community custody" means that portion of an inmate's sentence of confinement in lieu of earned early release time or imposed pursuant to RCW 9.94A.120 (6), (8), or (10) served in the community subject to controls placed on the inmate's movement and activities by the department of corrections.

(5) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease

supervision) or at such time as the offender is transferred to community custody in lieu of earned early release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(6) "Community service" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(7) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. For first-time offenders, the supervision may include crime-related prohibitions and other conditions imposed pursuant to RCW 9.94A.120(5). For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(8) "Confinement" means total or partial confinement as defined in this section.

(9) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Court-ordered 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 the provisions in RCW 38.52.430.

(11) "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.

(12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere. The history shall include, where known, for each conviction (a) whether the defendant has been placed on probation and the length and terms thereof; and (b) whether the defendant has been incarcerated and the length of incarceration.

(13) "Day fine" means a fine imposed by the sentencing judge 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.

(14) "Day reporting" means a program of enhanced supervision designed to monitor the defendant's daily activities and compliance with sentence conditions, and in which the defendant is required to report daily to a specific location designated by the department or the sentencing judge.

(15) "Department" means the department of corrections.

(16) "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 supervision, the number of actual hours or days of community service work, or dollars or terms of a legal financial obligation. The fact that an offender through "earned early release" can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(17) "Disposable earnings" means that part of the earnings of an individual 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.

(18) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.401(d)) 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.

(19) "Escape" means:

(a) 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.

(20) "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), or felony hit-and-run injury-accident (RCW 46.52.020(4)); or

(h) 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.

(21) "Fines" means the requirement that the offender pay a specific sum of money over a specific period of time to the court.

(22) "First-time offender" means any person who is convicted of a felony (a) not classified as a violent offense or a sex offense under this chapter, or (b) that is not the manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV, nor the manufacture, delivery, or possession with intent to deliver methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2), nor the selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marihuana, who previously has never been convicted of a felony in this state, federal court, or another state, and who has never participated in a program of deferred prosecution for a felony offense.

(23) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies, as now existing or hereafter amended:

(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;

(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, as "sexual motivation" is defined under this section;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.125;

(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.

(24) "Nonviolent offense" means an offense which is not a violent offense.

(25) "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. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(26) "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, 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 as defined in this section.

(27) "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.360; 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) 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, or burglary in the first degree, with a finding of sexual motivation; or (C) an attempt to commit any crime listed in this subsection (27)(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. A conviction for rape of a child in the first degree constitutes a conviction under subsection (27)(b)(i) 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 subsection (27)(b)(i) only when the offender was eighteen years of age or older when the offender committed the offense.

(28) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

(29) "Restitution" means the requirement that the offender pay a specific sum of money over a specific period of time to the court as payment of damages. The sum may include both public and private costs. The imposition of a restitution order does not preclude civil redress.

(30) "Serious traffic offense" means:

(a) Driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), 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.

(31) "Serious violent offense" is a subcategory of violent offense and means:

(a) Murder in the first degree, homicide by abuse, murder in the second degree, manslaughter in the first degree, assault in the first degree, kidnapping in the first degree, or rape in the first degree, assault of a child in the first degree, or 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.

(32) "Sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(33) "Sex offense" means:

(a) A felony that is a violation of chapter 9A.44 RCW or RCW 9A.64.020 or 9.68A.090 or a felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(b) A felony with a finding of sexual motivation under RCW 9.94A.127 or 13.40.135; or

(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 sex offense under (a) of this subsection.

(34) "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.

(35) "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.

(36) "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.

(37) "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.

(38) "Violent offense" means:

(a) Any of the following felonies, as now existing or hereafter amended: Any felony defined under any law as a class A felony or an attempt to commit a class A felony, criminal solicitation of or criminal conspiracy to commit a class A felony, manslaughter in the first degree, manslaughter in the second degree, indecent liberties if committed by forcible compulsion, kidnapping in the second degree, arson in the second degree, assault in the second degree, assault of a child in the second degree, extortion in the first degree, robbery in the second degree, drive-by shooting, vehicular assault, and 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.

(39) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community of not less than thirty-five hours per week that complies with RCW 9.94A.135. The civic improvement tasks shall have minimal negative impact on existing private industries or the labor force in the county where the service or labor is performed. The civic improvement tasks shall not affect employment opportunities for people with developmental disabilities contracted through sheltered workshops as defined in RCW 82.04.385. Only those offenders sentenced to a facility operated or utilized

under contract by a county or the state are eligible to participate on a work crew. Offenders sentenced for a sex offense as defined in subsection (33) of this section are not eligible for the work crew program.

(40) "Work ethic camp" means an alternative incarceration program 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.

(41) "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. Participation in work release shall be conditioned upon the offender attending work or school at regularly defined hours and abiding by the rules of the work release facility.

(42) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

Sec. 4. RCW 9.94A.320 and 1997 c 365 s 4, 1997 c 346 s 3, 1997 c 340 s 1, 1997 c 338 s 51, 1997 c 266 s 15, and 1997 c 120 s 5 are each reenacted and amended to read as follows:

TABLE 2
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

XV	Aggravated Murder 1 (RCW 10.95.020)
XIV	Murder 1 (RCW 9A.32.030) Homicide by abuse (RCW 9A.32.055) Malicious explosion 1 (RCW 70.74.280(1))
XIII	Murder 2 (RCW 9A.32.050) Malicious explosion 2 (RCW 70.74.280(2)) Malicious placement of an explosive 1 (RCW 70.74.270(1))
XII	Assault 1 (RCW 9A.36.011) Assault of a Child 1 (RCW 9A.36.120) Rape 1 (RCW 9A.44.040) Rape of a Child 1 (RCW 9A.44.073) Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
XI	Rape 2 (RCW 9A.44.050) Rape of a Child 2 (RCW 9A.44.076) Manslaughter 1 (RCW 9A.32.060)
X	Kidnapping 1 (RCW 9A.40.020) Child Molestation 1 (RCW 9A.44.083)

- Malicious explosion 3 (RCW 70.74.280(3))
- Over 18 and deliver heroin ~~((or))~~, a narcotic from Schedule I or II, or flunitrazepam from Schedule IV to someone under 18 (RCW 69.50.406)
- Leading Organized Crime (RCW 9A.82.060(1)(a))
- Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
- IX
 - Assault of a Child 2 (RCW 9A.36.130)
 - Robbery 1 (RCW 9A.56.200)
 - Explosive devices prohibited (RCW 70.74.180)
 - Malicious placement of an explosive 2 (RCW 70.74.270(2))
 - Over 18 and deliver narcotic from Schedule III, IV, or V or a nonnarcotic, except flunitrazepam, from Schedule I-V to someone under 18 and 3 years junior (RCW 69.50.406)
 - Controlled Substance Homicide (RCW 69.50.415)
 - Sexual Exploitation (RCW 9.68A.040)
 - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
 - Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
- VIII
 - Arson I (RCW 9A.48.020)
 - Promoting Prostitution 1 (RCW 9A.88.070)
 - Selling for profit (controlled or counterfeit) any controlled substance (RCW 69.50.410)
 - Manufacture, deliver, or possess with intent to deliver heroin or cocaine (RCW 69.50.401(a)(1)(i))
 - Manufacture, deliver, or possess with intent to deliver methamphetamine (RCW 69.50.401(a)(1)(ii))
 - Possession of ephedrine or pseudoephedrine with intent to manufacture methamphetamine (RCW 69.50.440)

- Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)
- Manslaughter 2 (RCW 9A.32.070)
- VII Burglary 1 (RCW 9A.52.020)
- Vehicular Homicide, by disregard for the safety of others (RCW 46.61.520)
- Introducing Contraband 1 (RCW 9A.76.140)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Child Molestation 2 (RCW 9A.44.086)
- Dealing in depictions of minor engaged in sexually explicit conduct (RCW 9.68A.050)
- Sending, bringing into state depictions of minor engaged in sexually explicit conduct (RCW 9.68A.060)
- Involving a minor in drug dealing (RCW 69.50.401(f))
- Drive-by Shooting (RCW 9A.36.045)
- Unlawful Possession of a Firearm in the first degree (RCW 9A.41.040(1)(a))
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- VI Bribery (RCW 9A.68.010)
- Rape of a Child 3 (RCW 9A.44.079)
- Intimidating a Juror/Witness (RCW 9A.72.110, 9A.72.130)
- Malicious placement of an imitation device 2 (RCW 70.74.272(1)(b))
- Incest 1 (RCW 9A.64.020(1))
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule I or II (except heroin or cocaine) or flunitrazepam from Schedule IV (RCW 69.50.401(a)(1)(i))
- Intimidating a Judge (RCW 9A.72.160)
- Bail Jumping with Murder 1 (RCW 9A.76.170(2)(a))
- Theft of a Firearm (RCW 9A.56.300)
- V Persistent prison misbehavior (RCW 9.94.070)
- Criminal Mistreatment 1 (RCW 9A.42.020)

Abandonment of dependent person 1 (RCW 9A.42.060)
Rape 3 (RCW 9A.44.060)
Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
Child Molestation 3 (RCW 9A.44.089)
Kidnapping 2 (RCW 9A.40.030)
Extortion 1 (RCW 9A.56.120)
Incest 2 (RCW 9A.64.020(2))
Perjury 1 (RCW 9A.72.020)
Extortionate Extension of Credit (RCW 9A.82.020)
Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
Rendering Criminal Assistance 1 (RCW 9A.76.070)
Bail Jumping with class A Felony (RCW 9A.76.170(2)(b))
Sexually Violating Human Remains (RCW 9A.44.105)
Delivery of imitation controlled substance by person eighteen or over to person under eighteen (RCW 69.52.030(2))
Possession of a Stolen Firearm (RCW 9A.56.310)

IV

Residential Burglary (RCW 9A.52.025)
Theft of Livestock 1 (RCW 9A.56.080)
Robbery 2 (RCW 9A.56.210)
Assault 2 (RCW 9A.36.021)
Escape 1 (RCW 9A.76.110)
Arson 2 (RCW 9A.48.030)
Commercial Bribery (RCW 9A.68.060)
Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
Malicious Harassment (RCW 9A.36.080)
Threats to Bomb (RCW 9.61.160)
Willful Failure to Return from Furlough (RCW 72.66.060)
Hit and Run—Injury Accident (RCW 46.52.020(4))
Hit and Run with Vessel—Injury Accident (RCW 88.12.155(3))

- Vehicular Assault (RCW 46.61.522)
- Manufacture, deliver, or possess with intent to deliver narcotics from Schedule III, IV, or V or nonnarcotics from Schedule I-V (except marijuana ((or)), methamphetamines, or flunitrazepam) (RCW 69.50.401 (a)(1) (iii) through (v))
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Knowingly Trafficking in Stolen Property (RCW 9A.82.050(2))
- III Criminal Gang Intimidation (RCW 9A.46.120)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Abandonment of dependent person 2 (RCW 9A.42.070)
- Extortion 2 (RCW 9A.56.130)
- Unlawful Imprisonment (RCW 9A.40.040)
- Assault 3 (RCW 9A.36.031)
- Assault of a Child 3 (RCW 9A.36.140)
- Custodial Assault (RCW 9A.36.100)
- Unlawful possession of firearm in the second degree (RCW 9.41.040(I)(b))
- Harassment (RCW 9A.46.020)
- Promoting Prostitution 2 (RCW 9A.88.080)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- Burglary 2 (RCW 9A.52.030)
- Introducing Contraband 2 (RCW 9A.76.150)
- Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
- Patronizing a Juvenile Prostitute (RCW 9.68A.100)
- Escape 2 (RCW 9A.76.120)
- Perjury 2 (RCW 9A.72.030)
- Bail Jumping with class B or C Felony (RCW 9A.76.170(2)(c))
- Intimidating a Public Servant (RCW 9A.76.180)
- Tampering with a Witness (RCW 9A.72.120)
- Manufacture, deliver, or possess with intent to deliver marijuana (RCW 69.50.401(a)(1)(iii))

- Delivery of a material in lieu of a controlled substance (RCW 69.50.401(c))
- Manufacture, distribute, or possess with intent to distribute an imitation controlled substance (RCW 69.52.030(1))
- Recklessly Trafficking in Stolen Property (RCW 9A.82.050(1))
- Theft of livestock 2 (RCW 9A.56.080)
- Securities Act violation (RCW 21.20.400)
- II Unlawful Practice of Law (RCW 2.48.180)
- Malicious Mischief 1 (RCW 9A.48.070)
- Possession of Stolen Property 1 (RCW 9A.56.150)
- Theft 1 (RCW 9A.56.030)
- Class B Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Trafficking in Insurance Claims (RCW 48.30A.015)
- Unlicensed Practice of a Profession or Business (RCW 18.130.190(7))
- Health Care False Claims (RCW 48.80.030)
- Possession of controlled substance that is either heroin or narcotics from Schedule I or II or flunitrazepam from Schedule IV (RCW 69.50.401(d))
- Possession of phencyclidine (PCP) (RCW 69.50.401(d))
- Create, deliver, or possess a counterfeit controlled substance (RCW 69.50.401(b))
- Computer Trespass 1 (RCW 9A.52.110)
- Escape from Community Custody (RCW 72.09.310)
- I Theft 2 (RCW 9A.56.040)
- Class C Felony Theft of Rental, Leased, or Lease-purchased Property (RCW 9A.56.096(4))
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Forgery (RCW 9A.60.020)
- Taking Motor Vehicle Without Permission (RCW 9A.56.070)
- Vehicle Prowl 1 (RCW 9A.52.095)

- Attempting to Elude a Pursuing Police Vehicle (RCW 46.61.024)
- Malicious Mischief 2 (RCW 9A.48.080)
- Reckless Burning 1 (RCW 9A.48.040)
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Use of Food Stamps (RCW 9.91.140 (2) and (3))
- False Verification for Welfare (RCW 74.08.055)
- Forged Prescription (RCW 69.41.020)
- Forged Prescription for a Controlled Substance (RCW 69.50.403)
- Possess Controlled Substance that is a Narcotic from Schedule III, IV, or V or Non-narcotic from Schedule I-V (except phencyclidine or flunitrazepam) (RCW 69.50.401(d))

Sec. 5. RCW 13.40.0357 and 1997 c 338 s 12 and 1997 c 66 s 6 are each reenacted and amended to read as follows:

DESCRIPTION AND OFFENSE CATEGORY

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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	Arson and Malicious Mischief	
A	Arson 1 (9A.48.020)	B+
B	Arson 2 (9A.48.030)	C
C	Reckless Burning 1 (9A.48.040)	D
D	Reckless Burning 2 (9A.48.050)	E
B	Malicious Mischief 1 (9A.48.070)	C
C	Malicious Mischief 2 (9A.48.080)	D
D	Malicious Mischief 3 (<\$50 is E class) (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
A	Possession of Incendiary Device (9.40.120)	B+
	Assault and Other Crimes Involving Physical Harm	
A	Assault 1 (9A.36.011)	B+

B+	Assault 2 (9A.36.021)	C+
C+	Assault 3 (9A.36.031)	D+
D+	Assault 4 (9A.36.041)	E
B+	Drive-By Shooting (9A.36.045)	C+
D+	Reckless Endangerment (9A.36.050)	E
C+	Promoting Suicide Attempt (9A.36.060)	D+
D+	Coercion (9A.36.070)	E
C+	Custodial Assault (9A.36.100)	D+
	Burglary and Trespass	
B+	Burglary 1 (9A.52.020)	C+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C
D	Burglary Tools (Possession of) (9A.52.060)	E
D	Criminal Trespass 1 (9A.52.070)	E
E	Criminal Trespass 2 (9A.52.080)	E
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
	Drugs	
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030)	D+
E	Possession of Legend Drug (69.41.030)	E
B+	Violation of Uniform Controlled Substances Act - Narcotic ((or)), <u>Methamphetamine, or Flunitrazepam</u> Sale (69.50.401(a)(1) (i) or (ii))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(a)(1)(iii))	C
E	Possession of Marihuana <40 grams (69.50.401(e))	E
C	Fraudulently Obtaining Controlled Substance (69.50.403)	C

C+	Sale of Controlled Substance for Profit (69.50.410)	C+
E	Unlawful Inhalation (9.47A.020)	E
B	Violation of Uniform Controlled Substances Act - Narcotic ((or)), <u>Methamphetamine, or Flunitrazepam</u> Counterfeit Substances (69.50.401(b)(1) (i) or (ii))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.401(b)(1) (iii), (iv), (v))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(d))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.401(c))	C
	Firearms and Weapons	
B	Theft of Firearm (9A.56.300)	C
B	Possession of Stolen Firearm (9A.56.310)	C
E	Carrying Loaded Pistol Without Permit (9.41.050)	E
C	Possession of Firearms by Minor (<18) (9.41.040(1)(b)(iii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
	Homicide	
A+	Murder 1 (9A.32.030)	A
A+	Murder 2 (9A.32.050)	B+
B+	Manslaughter 1 (9A.32.060)	C+
C+	Manslaughter 2 (9A.32.070)	D+
B+	Vehicular Homicide (46.61.520)	C+
	Kidnapping	
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+

	Obstructing Governmental Operation	
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E
B	Introducing Contraband 1 (9A.76.140)	C
C	Introducing Contraband 2 (9A.76.150)	D
E	Introducing Contraband 3 (9A.76.160)	E
B+	Intimidating a Public Servant (9A.76.180)	C+
B+	Intimidating a Witness (9A.72.110)	C+
	Public Disturbance	
C+	Riot with Weapon (9A.84.010)	D+
D+	Riot Without Weapon (9A.84.010)	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
	Sex Crimes	
A	Rape 1 (9A.44.040)	B+
A-	Rape 2 (9A.44.050)	B+
C+	Rape 3 (9A.44.060)	D+
A-	Rape of a Child 1 (9A.44.073)	B+
B+	Rape of a Child 2 (9A.44.076)	C+
B	Incest 1 (9A.64.020(1))	C
C	Incest 2 (9A.64.020(2))	D
D+	Indecent Exposure	
	(Victim <14) (9A.88.010)	E
E	Indecent Exposure	
	(Victim 14 or over) (9A.88.010)	E
B+	Promoting Prostitution 1 (9A.88.070)	C+
C+	Promoting Prostitution 2 (9A.88.080)	D+
E	O & A (Prostitution) (9A.88.030)	E
B+	Indecent Liberties (9A.44.100)	C+
A-	Child Molestation 1 (9A.44.083)	B+
B	Child Molestation 2 (9A.44.086)	C+
	Theft, Robbery, Extortion, and Forgery	
B	Theft 1 (9A.56.030)	C
C	Theft 2 (9A.56.040)	D

D	Theft 3 (9A.56.050)	E
B	Theft of Livestock (9A.56.080)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200)	B+
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
B	Possession of Stolen Property 1 (9A.56.150)	C
C	Possession of Stolen Property 2 (9A.56.160)	D
D	Possession of Stolen Property 3 (9A.56.170)	E
C	Taking Motor Vehicle Without Owner's Permission (9A.56.070)	D
	Motor Vehicle Related Crimes	
E	Driving Without a License (46.20.005)	E
C	Hit and Run - Injury (46.52.020(4))	D
D	Hit and Run-Attended (46.52.020(5))	E
E	Hit and Run-Unattended (46.52.010)	E
C	Vehicular Assault (46.61.522)	D
C	Attempting to Elude Pursuing Police Vehicle (46.61.024)	D
E	Reckless Driving (46.61.500)	E
D	Driving While Under the Influence (46.61.502 and 46.61.504)	E
	Other	
B	Bomb Threat (9.61.160)	C
C	Escape 1 ¹ (9A.76.110)	C
C	Escape 2 ¹ (9A.76.120)	C
D	Escape 3 (9A.76.130)	E
E	Obscene, Harassing, Etc., Phone Calls (9.61.230)	E
A	Other Offense Equivalent to an Adult Class A Felony	B+
B	Other Offense Equivalent to an Adult Class B Felony	C
C	Other Offense Equivalent to an Adult Class C Felony	D

D	Other Offense Equivalent to an Adult Gross Misdemeanor	E
E	Other Offense Equivalent to an Adult Misdemeanor	E
V	Violation of Order of Restitution, Community Supervision, or Confinement (13.40.200) ²	V

¹Escape 1 and 2 and Attempted Escape 1 and 2 are classed as C offenses and the standard range is established as follows:

1st escape or attempted escape during 12-month period - 4 weeks confinement

2nd escape or attempted escape during 12-month period - 8 weeks confinement

3rd and subsequent escape or attempted escape during 12-month period - 12 weeks confinement

²If the court finds that a respondent has violated terms of an order, it may impose a penalty of up to 30 days of confinement.

JUVENILE SENTENCING STANDARDS

This schedule must be used for juvenile offenders. The court may select sentencing option A, B, or C.

**OPTION A
JUVENILE OFFENDER SENTENCING GRID
STANDARD RANGE**

	A+	<u>180 WEEKS TO AGE 21 YEARS</u>			
	A	<u>103 WEEKS TO 129 WEEKS</u>			
	A-	15-36 WEEKS	152-65 1WEEKS	180-100 1WEEKS	1103-129 1WEEKS
		EXCEPT			
		30-40			
		WEEKS FOR			
		15-17			
		YEAR OLDS			
Current Offense Category	B+	15-36 WEEKS	152-65 1WEEKS	180-100 1WEEKS	1103-129 1WEEKS
	B	LOCAL SANCTIONS (LS)	 115-36 WEEKS		152-65 1WEEKS
	C+	LS		 115-36 WEEKS	
	C	LS			115-36 WEEKS

		Local Sanctions:	1 _____
D+	LS	0 to 30 Days 0 to 12 Months Community Supervision 0 to 150 Hours Community Service	
D	LS	\$0 to \$500 Fine	
E	LS		
			0 1 2 3 4 or more
			PRIOR ADJUDICATIONS

NOTE: References in the grid to days or weeks mean periods of confinement.

(1) The vertical axis of the grid is the current offense category. The current offense category is determined by the offense of adjudication.

(2) The horizontal axis of the grid is the number of prior adjudications included in the juvenile's criminal history. Each prior felony adjudication shall count as one point. Each prior violation, misdemeanor, and gross misdemeanor adjudication shall count as 1/4 point. Fractional points shall be rounded down.

(3) The standard range disposition for each offense is determined by the intersection of the column defined by the prior adjudications and the row defined by the current offense category.

(4) RCW 13.40.180 applies if the offender is being sentenced for more than one offense.

(5) A current offense that is a violation is equivalent to an offense category of E. However, a disposition for a violation shall not include confinement.

OR

OPTION B

CHEMICAL DEPENDENCY DISPOSITION ALTERNATIVE

If the juvenile offender is subject to a standard range disposition of local sanctions or 15 to 36 weeks of confinement and has not committed an A- or B+ offense, the court may impose a disposition under RCW 13.40.160(5) and 13.40.165.

OR

OPTION C

MANIFEST INJUSTICE

If the court determines that a disposition under option A or B would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

**Sec. 6. RCW 9A.44.050 and 1997 c 392 s 514 are each amended to read as follows:*

(1) A person is guilty of rape in the second degree when, under circumstances not constituting rape in the first degree, the person engages in sexual intercourse with another person:

(a) By forcible compulsion;

(b) When the victim is incapable of consent by reason of being physically helpless or mentally incapacitated, including physical helplessness or mental incapacity induced by any controlled substance and the perpetrator knows of the helplessness or incapacity;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual intercourse occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual intercourse with the knowledge that the sexual intercourse was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2) Rape in the second degree is a class A felony.

*Sec. 6 was vetoed. See message at end of chapter.

**Sec. 7. RCW 9A.44.100 and 1997 c 392 s 515 are each amended to read as follows:*

(1) A person is guilty of indecent liberties when he knowingly causes another person who is not his spouse to have sexual contact with him or another:

(a) By forcible compulsion;

(b) When the other person is incapable of consent by reason of being mentally defective, mentally incapacitated, or physically helpless, including mental incapacity or physical helplessness induced by any controlled substance and the perpetrator knows of the defect, incapacity, or helplessness;

(c) When the victim is developmentally disabled and the perpetrator is a person who is not married to the victim and who has supervisory authority over the victim;

(d) When the perpetrator is a health care provider, the victim is a client or patient, and the sexual contact occurs during a treatment session, consultation, interview, or examination. It is an affirmative defense that the defendant must prove by a preponderance of the evidence that the client or patient consented to the sexual contact with the knowledge that the sexual contact was not for the purpose of treatment;

(e) When the victim is a resident of a facility for mentally disordered or chemically dependent persons and the perpetrator is a person who is not married to the victim and has supervisory authority over the victim; or

(f) When the victim is a frail elder or vulnerable adult and the perpetrator is a person who is not married to the victim and who has a significant relationship with the victim.

(2) Indecent liberties is a class B felony.

*Sec. 7 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 8. A new section is added to chapter 9A.44 RCW to read as follows:

Rape crisis centers, law enforcement, and hospital emergency rooms shall provide to all personnel investigating cases of sexual assault training on how to recognize the presence of sedating substances, how to test for the substances, and the appropriate chain of custody procedures to follow so that the evidence may be used in a court of law. The training required by this section may be incorporated into existing training programs.

*Sec. 8 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 9. This act applies to crimes committed on or after July 1, 1998.

NEW SECTION. Sec. 10. This act takes effect July 1, 1998.

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.

Passed the Senate March 9, 1998.

Passed the House March 3, 1998:

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 6, 7, and 8, Engrossed Substitute Senate Bill No. 5305 entitled:

"AN ACT Relating to controlling drugs used to facilitate rape;"

I support the main goal of ESSB 5305, to treat flunitrazepam, the so-called "date rape" drug, with the seriousness it deserves. However, prosecutors and legislators who sponsored and worked for passage of this bill have asked me to veto sections 6 and 7. Those sections would add confusing language to the definitions of second-degree rape and indecent liberties, two very serious sex offenses. The language is not necessary to convict people who use drugs to make victims helpless, and it could make conviction more difficult for other crimes by requiring proof that the accused person knew of the victim's helpless condition.

Section 8 of ESSB 5305 would require rape crisis centers, law enforcement, and hospital emergency rooms to train personnel who investigate sexual assault cases on how to recognize and test for sedatives like flunitrazepam, and how to preserve evidence for use in court. The intent of that section is commendable, but it is vague and lacks any mechanism for implementation. For example, it does not adequately specify who is required to train whom. It is also misplaced in the criminal code. I urge the interested parties to work together to develop effective, workable legislation on this subject for the next session.

For these reasons, I have vetoed sections 6, 7, and 8 of Engrossed Substitute Senate Bill No. 5305.

With the exception of sections 6, 7, and 8, I am approving Engrossed Substitute Senate Bill No. 5305."

CHAPTER 291

[Substitute Senate Bill 6175]

FINANCING CONTRACTS FOR PUBLIC ENTITIES—REVISIONS

AN ACT Relating to financing contracts; amending RCW 39.94.010, 39.94.020, 39.94.030, and 39.94.040; adding a new section to chapter 39.94 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 39.94 RCW to read as follows:

(1) It is the intent of the legislature that the financing program authorized by this chapter be self-supporting.

(2) The state treasurer is authorized to levy fees and apply specified investment earnings from time to time in amounts not to exceed sums sufficient to pay program expenses including, but not limited to, costs of issuance, and to create reserves to assure timely payment of financing contracts. The investment earnings available for this purpose represent the earnings on payments received from state and other agencies.

Sec. 2. RCW 39.94.010 and 1989 c 356 s 1 are each amended to read as follows:

The purposes of this chapter are to confirm the authority of the state, its agencies, departments, and instrumentalities, the state board for community ~~((college education))~~ and technical colleges, and the state institutions of higher education to enter into contracts for the acquisition of real and personal property which provide for payments over a term of more than one year and to exclude such contracts from the computation of indebtedness under RCW 39.42.060 and Article VIII, section 1 of the state Constitution. It is further the purpose of this chapter to permit the state, its agencies, departments, and instrumentalities, the state board for community ~~((college education))~~ and technical colleges, and the state institutions of higher education to enter into financing contracts which make provision for the issuance of certificates of participation and other financing structures. Financing contracts of the state, whether or not entered into under this chapter, shall be subject to approval by the state finance committee except as provided in this chapter.

This chapter shall be liberally construed to effect its purposes.

Sec. 3. RCW 39.94.020 and 1990 c 47 s 3 are each amended to read as follows:

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

(1) "Credit enhancement" includes insurance, letters of credit, lines of credit, or other similar agreements which enhance the security for the payment of the state's or an other agency's obligations under financing contracts.

(2) "Financing contract" means any contract entered into by the state for itself or on behalf of an other agency which provides for the use and purchase of real or personal property by the state and provides for payment by the state over a term of more than one year, and which provides that title to the subject property ~~((shall))~~ may secure performance of the state or transfer to the state or an other agency by the end of the term, upon exercise of an option, for a nominal amount or for a price determined without reference to fair market value. Financing contracts shall include, but not be limited to, conditional sales contracts, financing leases, lease purchase contracts, or refinancing contracts, but shall not include operating or true leases. For purposes of this chapter, the term "financing contract" shall not include any nonrecourse financing contract or other obligation payable only from money or other property received from private sources and not payable from any public money or property. The term "financing contract" shall include a "master financing contract."

(3) "Master financing contract" means a financing contract which provides for the use and purchase of property by the state, and which may include more than one financing contract and appropriation.

(4) "Other agency" means any commission established under Title 15 RCW, a library or regional library, an educational service district, the superintendent of public instruction, the school directors' association, a health district, or any county, city, town, school district, or other municipal corporation or quasi municipal corporation described as such by statute.

~~(5)~~ "State" means the state, agency, department, or instrumentality of the state, the state board for community ~~((college education))~~ and technical colleges, and any state institution of higher education.

~~((5))~~ ~~(6)~~ "State finance committee" means the state finance committee under chapter 43.33 RCW.

~~((6))~~ ~~(7)~~ "Trustee" means a bank or trust company, within or without the state, authorized by law to exercise trust powers.

Sec. 4. RCW 39.94.030 and 1989 c 356 s 3 are each amended to read as follows:

(1) The state may enter into financing contracts for itself or on behalf of an other agency for the use and acquisition for public purposes of real and personal property. Payments under financing contracts of the state shall be made by the state from currently appropriated funds or funds not constituting "general state revenues" as defined in Article VIII, section 1 of the state Constitution. Except as provided in subsection (4)(b) of this section, payments under financing contracts of the state on behalf of any other agency shall be made solely from the sources identified in the financing contract, which may not obligate general state revenues as defined in Article VII, section I, of the state Constitution. The treasurer of an other agency shall remit payments under financing contracts to the office of the state treasurer or to the state treasurer's designee. In the event of any deficiency of payments by an other agency under a financing contract, the treasurer of the other agency shall transfer any legally available funds of the other

agency in satisfaction of the other agency's obligations under the financing contract if such funds have been obligated by the other agency under the financing contract and, if such deficiency is not thereby cured, the office of the state treasurer is directed to withdraw from that agency's share of state revenues for distribution or other money an amount sufficient to fulfill the terms and conditions of the financing contract. The term of any financing contract shall not exceed thirty years or the remaining useful life of the property, whichever is shorter. Financing contracts may include other terms and conditions agreed upon by the parties.

(2) The state for itself or on behalf of an other agency may enter into contracts for credit enhancement, which shall limit the recourse of the provider of credit enhancement solely to the security provided under the financing contract secured by the credit enhancement.

(3) The state or an other agency may grant a security interest in real or personal property acquired under financing contracts. The security interest may be perfected as provided by the uniform commercial code - secured transactions, or otherwise as provided by law for perfecting liens on real estate. Other terms and conditions may be included as agreed upon by the parties.

(4)(a) Except under (b) of this subsection, financing contracts and contracts for credit enhancement entered into under the limitations set forth in this chapter shall not constitute a debt or the contracting of indebtedness under RCW 39.42.060 or any other law limiting debt of the state. It is the intent of the legislature that such contracts also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution. Certificates of participation in payments to be made under financing contracts also shall not constitute a debt or the contracting of an indebtedness under RCW 39.42.060 if payment is conditioned upon payment by the state under the financing contract with respect to which the same relates. It is the intent of the legislature that such certificates also shall not constitute a debt or the contracting of indebtedness under Article VIII, section 1 of the state Constitution if payment of the certificates is conditioned upon payment by the state under the financing contract with respect to which those certificates relate.

(b) A financing contract made by the state on behalf of an other agency may be secured by the pledge of revenues of the other agency or other agency's full faith and credit or may, at the option of the state finance committee, include a contingent obligation by the state for payment under such financing contract.

Sec. 5. RCW 39.94.040 and 1989 c 356 s 4 are each amended to read as follows:

(1) Except as provided in RCW 28B.10.022, the state may not enter into any financing contract for itself if the aggregate principal amount payable thereunder is greater than an amount to be established from time to time by the state finance committee or participate in a program providing for the issuance of certificates of participation, including any contract for credit enhancement, without the prior approval of the state finance committee. Except as provided in RCW 28B.10.022,

the state finance committee shall approve the form of all financing contracts or a standard format for all financing contracts. The state finance committee also may:

(a) Consolidate existing or potential financing contracts into master financing contracts with respect to property acquired by one or more agencies, departments, instrumentalities of the state, the state board for community ~~((college education))~~ and technical colleges, or a state institution of higher learning; or to be acquired by an other agency;

(b) Approve programs providing for the issuance of certificates of participation in master financing contracts for the state or for other agencies;

(c) Enter into agreements with trustees relating to master financing contracts; and

(d) Make appropriate rules for the performance of its duties under this chapter.

(2) In the performance of its duties under this chapter, the state finance committee may consult with representatives from the department of general administration, the office of financial management, and the department of information services.

(3) With the approval of the state finance committee, the state also may enter into agreements with trustees relating to financing contracts and the issuance of certificates of participation.

(4) The state may not enter into any financing contract for real property of the state without prior approval of the legislature.

(5) The state may not enter into any financing contract on behalf of an other agency without the approval of such a financing contract by the governing body of the other agency.

NEW SECTION. Sec. 6. Chapter . . . , Laws of 1998 (this act) is applicable to an other agency, as defined in RCW 39.94.020, for the financing of equipment on September 1, 1998, and for the financing of real estate on July 1, 2000.

Passed the Senate March 7, 1998.

Passed the House February 27, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 292

[Substitute Senate Bill 6181]

PROBATE, TRUST, AND ESTATE LAW—REVISIONS

AN ACT Relating to probate, trust, and estate law; amending RCW 11.02.005, 11.07.010, 11.54.070, 11.68.110, 11.68.114, 11.114.030, 83.100.020, 83.110.010, 11.84.900, 11.02.070, and 26.16.120; amending 1997 c 252 s 87 (uncodified); amending 1997 c 252 s 89 (uncodified); adding a new section to chapter 41.04 RCW; adding a new section to chapter 11.84 RCW; adding a new chapter to Title 11 RCW; creating new sections; providing an effective date; and declaring an emergency.

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

**PART I—TESTAMENTARY DISPOSITION
OF NONPROBATE ASSETS**

NEW SECTION. Sec. 101. SHORT TITLE. This chapter may be known and cited as the testamentary disposition of nonprobate assets act.

NEW SECTION. Sec. 102. PURPOSES. The purposes of this chapter are to:

(1) Enhance and facilitate the power of testators to control the disposition of assets that pass outside their wills;

(2) Provide simple procedures for resolution of disputes regarding entitlement to such assets; and

(3) Protect any financial institution or other third party having possession of or control over such an asset and transferring it to a beneficiary duly designated by the testator, unless that third party has been provided notice of a testamentary disposition as required in this chapter.

NEW SECTION. Sec. 103. CONSTRUCTION—JURISDICTION. (1) When construing sections and provisions of this chapter, the sections and provisions must:

(a) Be liberally construed and applied to promote the purposes of this chapter;

(b) Be considered part of a general act that is intended as unified coverage of the subject matter, and no part of this chapter may be deemed impliedly repealed by subsequent legislation if the construction can be reasonably avoided;

(c) Not be held invalid because of the invalidity of other sections or provisions of this chapter as long as the section or provision in question can be given effect without regard to the invalid section or provision, and to this end the sections or provisions of this chapter are severable;

(d) Not be construed by reference to section or subsection headings as used in this chapter, since these do not constitute any part of the law;

(e) Not be deemed to alter the community or separate property nature of any asset passing outside a testator's will or any individual's community or separate rights to the asset, and a testator's community or separate property rights to the asset are not affected by whether it passes outside the will or, under this chapter, by disposition under the will; and

(f) Not be construed as authorizing or extending the authority of any financial institution or other third party to sell or otherwise create assets that would pass outside a testator's will upon such terms as would contravene any other applicable federal or state law.

(2) The sections and provisions of this chapter apply to an owner who dies while a resident of this state on or after the effective date of this section and to a nonprobate asset the disposition of which on the death of the owner would otherwise be governed by the law of this state.

NEW SECTION. Sec. 104. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1)(a) "Actual knowledge" means:

(i) For a financial institution, whether acting as personal representative or otherwise, or other third party in possession or control of a nonprobate asset, receipt of written notice that: (A) Complies with section 109 of this act; (B) pertains to the testamentary disposition or ownership of a nonprobate asset in its possession or control; and (C) is received by the financial institution or third party after the death of the owner in a time sufficient to afford the financial institution or third party a reasonable opportunity to act upon the knowledge; and

(ii) For a personal representative that is not a financial institution, personal knowledge or possession of documents relating to the testamentary disposition or ownership of a nonprobate asset of the owner sufficient to afford the personal representative reasonable opportunity to act upon the knowledge, including reasonable opportunity for the personal representative to provide the written notice under section 109 of this act.

(b) For the purposes of (a) of this subsection, notice of more than thirty days is presumed to be notice that is sufficient to afford the party a reasonable opportunity to act upon the knowledge, but notice of less than five business days is presumed not to be a sufficient notice for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(2) "Beneficiary" means the person designated to receive a nonprobate asset upon the death of the owner by means other than the owner's will.

(3) "Broker" means a person defined as a broker or dealer under the federal securities laws.

(4) "Date of will" means, as to any nonprobate asset, the date of signature of the will or codicil that refers to the asset and disposes of it.

(5) "Designate" means a written means by which the owner selects a beneficiary, including but not limited to instruments under contractual arrangements and registration of accounts, and "designation" means the selection.

(6) "Financial institution" means: A bank, trust company, mutual savings bank, savings and loan association, credit union, broker, or issuer of stock or its transfer agent.

(7)(a) "Nonprobate asset" means a nonprobate asset within the meaning of RCW 11.02.005, but excluding the following:

(i) A right or interest in real property passing under a joint tenancy with right of survivorship;

(ii) A deed or conveyance for which possession has been postponed until the death of the owner;

(iii) A right or interest passing under a community property agreement; and

(iv) An individual retirement account or bond.

(b) For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5).

(8) "Owner" means a person who, during life, has beneficial ownership of the nonprobate asset.

(9) "Request" means a request by the beneficiary for transfer of a nonprobate asset after the death of the owner, if it complies with all conditions of the arrangement, including reasonable special requirements concerning necessary signatures and regulations of the financial institution or other third party, or by the personal representative of the owner's estate or the testamentary beneficiary, if it complies with the owner's will and any additional conditions of the financial institution or third party for such transfer.

(10) "Testamentary beneficiary" means a person named under the owner's will to receive a nonprobate asset under this chapter, including but not limited to the trustee of a testamentary trust.

(11) "Third party" means a person, including a financial institution, having possession of or control over a nonprobate asset at the death of the owner, including the trustee of a revocable living trust and surviving joint tenant or tenants.

NEW SECTION. Sec. 105. DISPOSITION OF NONPROBATE ASSETS UNDER WILL. (1) Subject to community property rights, upon the death of an owner the owner's interest in any nonprobate asset specifically referred to in the owner's will belongs to the testamentary beneficiary named to receive the nonprobate asset, notwithstanding the rights of any beneficiary designated before the date of the will.

(2) A general residuary gift in an owner's will, or a will making general disposition of all of the owner's property, does not entitle the devisees or legatees to receive nonprobate assets of the owner.

(3) A disposition in a will of the owner's interest in "all nonprobate assets" or of all of a category of nonprobate asset under section 104(7) of this act, such as "all of my payable on death bank accounts" or similar language, is deemed to be a disposition of all the nonprobate assets the beneficiaries of which are designated before the date of the will.

(4) If the owner designates a beneficiary for a nonprobate asset after the date of the will, the will does not govern the disposition of that nonprobate asset. If the owner revokes the later beneficiary designation, the prior will does not govern the disposition of the nonprobate asset. A beneficiary designation with respect to an asset that renews without the signature of the owner is deemed to have been made on the date on which the account was first opened.

NEW SECTION. Sec. 106. WAIVER OF RIGHT TO DISPOSE OF A NONPROBATE ASSET UNDER WILL. An owner may waive the right to dispose of a specific nonprobate asset by will under this chapter, with or without consideration, by a written instrument signed by the owner and delivered to the financial institution or other third party, including but not limited to signature cards or deposit agreements. The waiver is revocable by written instrument delivered to the financial institution or other third party unless the owner has stated that the waiver is to be irrevocable.

NEW SECTION. **Sec. 107. CONTROVERSIES BETWEEN BENEFICIARIES AND TESTAMENTARY BENEFICIARIES.** This chapter is intended to establish ownership rights to nonprobate assets upon the death of the owner, as between beneficiaries and testamentary beneficiaries. This chapter is relevant only as to controversies between these persons, and has no bearing on the right of a person to transfer a nonprobate asset under its terms in the absence of a testamentary provision under this chapter.

NEW SECTION. **Sec. 108. RIGHT TO RELY ON FORM OF NONPROBATE ASSET—DISCHARGE OF FINANCIAL INSTITUTION OR OTHER THIRD PARTY.** In transferring nonprobate assets, a financial institution or other third party may rely conclusively and entirely upon the form of the nonprobate asset and the terms of the nonprobate asset arrangement in effect on the date of death of the owner, unless the financial institution or other third party has actual knowledge of the existence of a claim by a testamentary beneficiary. A financial institution or other third party is not required to inquire as to either the source or ownership of any nonprobate asset in its possession or under its control, or as to the proposed application of an asset so transferred. A transfer of a nonprobate asset in accordance with this section constitutes a complete release and discharge of the financial institution or other third party from all claims relating to the nonprobate asset, regardless of whether or not the transfer is consistent with the actual ownership of the nonprobate asset.

NEW SECTION. **Sec. 109. NOTICE—FORM—LIMITATION ON LIABILITY FOR FAILURE TO PROVIDE NOTICE.** (1) Written notice under this chapter must be served personally or by certified mail, return receipt requested and postage prepaid, on the financial institution or other third party having the nonprobate asset in its possession or control, on the beneficiary, on the testamentary beneficiary, and on the personal representative, and proof of the mailing or service must be made by affidavit and filed under the cause number assigned to the owner's estate. Notice to a financial institution must include notice delivered as follows:

(a) If the nonprobate asset was maintained at a specific office of the financial institution, notice must be delivered to the office at which the nonprobate asset was maintained, which notice must be directed to the manager of the office;

(b) If the nonprobate asset was held in a trust administered by a financial institution, notice must be delivered to the office at which the trust was administered, which notice must be directed to a named officer responsible for the administration of the trust; and

(c) In all cases, notice must be delivered to any other location and in any other manner specifically designated in a written agreement signed by the owner and the financial institution, including but not limited to a signature card or deposit agreement.

(2) Written notice to a financial institution or other third party of the testamentary disposition of a nonprobate asset under this chapter must be in a form substantially similar to the following:

**NOTICE OF TESTAMENTARY
DISPOSITION OF NONPROBATE ASSET**

The undersigned personal representative, petitioner for appointment as personal representative, attorney for the personal representative or petitioner, or testamentary beneficiary under the will of the decedent named above (as that term is defined in section 104 of this act) hereby notifies you that the decedent named above died on (DATE MUST BE SUPPLIED) and left a will dated (DATE OF WILL MUST BE SUPPLIED) disposing of the following nonprobate asset or assets in your possession or control:

(EACH SUCH ASSET MUST BE DESCRIBED WITH REASONABLE SPECIFICITY. FOR ACCOUNTS AT FINANCIAL INSTITUTIONS, THE WRITTEN NOTICE MUST SPECIFY THE OFFICE AT WHICH THE ACCOUNT WAS MAINTAINED, THE NAME OR NAMES IN WHICH THE ACCOUNT WAS HELD, AND THE FULL ACCOUNT NUMBER. FOR ASSETS HELD IN TRUST, THE WRITTEN NOTICE MUST SPECIFY THE NAME OR NAMES OF THE GRANTOR, THE NAME OF THE TRUST, IF ANY, AND THE DATE OF THE TRUST INSTRUMENT.)

Under chapter 11.— RCW (sections 101 through 116 of this act), you may not transfer, deliver, or otherwise dispose of the asset or assets listed above in accordance with the beneficiary designation, account registration, or other arrangement made with you by the decedent. You may transfer, deliver, or otherwise dispose of the asset or assets listed above only upon receipt of the written direction of the personal representative or of the testamentary beneficiary, if the personal representative consents.

.....
.....
(CAPACITY OF SIGNER)

(3) The personal representative of the estate of the owner, a petitioner for appointment as personal representative, or the testamentary beneficiary may provide written notice under this section. The personal representative has no duty to provide written notice under this section and has no liability for failing or refusing to give the notice.

(4) Written notice under this section may be provided at any time after the death of the owner and before discharge of the personal representative on closing of the estate, and may be provided before admission to probate of the will.

NEW SECTION. Sec. 110. VESTING OF RIGHTS AND POWERS UNDER CHAPTER. The right to provide notice under section 109 of this act and the entitlement of the testamentary beneficiary to the nonprobate asset vest immediately upon death of the owner. The power of the personal representative to direct the financial institution or other third party having the nonprobate asset in its possession or under its control to transfer or otherwise dispose of the asset arises upon the later of appointment of the personal representative or admission of the will to probate.

NEW SECTION. Sec. 111. OWNERSHIP RIGHTS AS BETWEEN INDIVIDUALS PRESERVED—TESTAMENTARY BENEFICIARY MAY RECOVER NONPROBATE ASSET FROM BENEFICIARY—LIMITATION ON ACTION TO RECOVER. (1) The protection accorded to financial institutions and other third parties under section 108 of this act has no bearing on the actual rights of ownership to nonprobate assets as between beneficiaries and testamentary beneficiaries, and their heirs, successors, personal representatives, and assigns.

(2) A testamentary beneficiary entitled to a nonprobate asset otherwise transferred to a beneficiary not so entitled, and a personal representative of the owner's estate on behalf of the testamentary beneficiary, may petition the superior court having jurisdiction over the owner's estate for an order declaring that the testamentary beneficiary is so entitled, the hearing of the petition to be held in accordance with chapter 11.96 RCW.

(3) A testamentary beneficiary claiming a nonprobate asset who has not filed such a petition within the earlier of: (a) Six months from the date of admission of the will to probate; and (b) one year from the date of the owner's death, shall be forever barred from making such a claim or commencing such an action.

NEW SECTION. Sec. 112. NONPROBATE ASSETS NOT PROPERTY OF ESTATE. (1) Notwithstanding any provision of this chapter, a nonprobate asset disposed of under the owner's will may not be treated as a part of the owner's probate estate for any other purpose under this title, unless:

(a) The nonprobate asset is subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200; or

(b) Any section of this title directs otherwise, by specifically referring to this section.

(2) Provision of notice under this chapter has no effect on the administration of other assets of the estate of the owner. The personal representative has no duty to administer upon a nonprobate asset because of providing the notice, unless specifically required by this chapter or under RCW 11.18.200.

(3) RCW 11.12.110, regarding death of a devisee or legatee before the testator, does not apply to disposition of a nonprobate asset under a will.

NEW SECTION. Sec. 113. TRANSFER OF NONPROBATE ASSET TO TESTAMENTARY BENEFICIARY. (1) A financial institution's or third party's obligation to transfer a nonprobate asset to a testamentary beneficiary arises only

after it has actual knowledge of the claim of the testamentary beneficiary, and after receiving written direction from the personal representative of the owner's estate, or if the personal representative consents in writing, from the testamentary beneficiary, to make the transfer. The financial institution may also require that its customary procedures be followed in effectuating a transfer of the nonprobate asset.

(2) Subject to subsection (1) of this section, financial institutions and other third parties may transfer a nonprobate asset that has not already been distributed to the testamentary beneficiary entitled to the nonprobate asset under the owner's will, subject to liabilities and claims, estate taxes, and expenses of administration under RCW 11.18.200.

NEW SECTION. Sec. 114. AUTHORITY TO WITHHOLD TRANSFER.

(1) This chapter does not require any financial institution or other third party to transfer a nonprobate asset to a beneficiary, testamentary beneficiary, or other person claiming an interest in the nonprobate asset if the financial institution or third party has actual knowledge of the existence of a dispute between beneficiaries, testamentary beneficiaries, or other persons concerning rights or ownership to the nonprobate asset under this chapter, or if the financial institution or third party is otherwise uncertain as to who is entitled to receive the nonprobate asset under this chapter. In any such case, the financial institution or third party may, without liability, notify in writing all beneficiaries, testamentary beneficiaries, or other persons claiming an interest in the nonprobate asset of either its uncertainty as to who is entitled to transfer of the nonprobate asset or the existence of any dispute, and it may also, without liability, refuse to transfer a nonprobate asset to a beneficiary or a testamentary beneficiary until such time as either:

(a) All the beneficiaries, testamentary beneficiaries, and other interested persons have consented in writing to the transfer; or

(b) The transfer is authorized or directed by a court of proper jurisdiction.

(2) The expense of obtaining the written consent or court authorization or direction may, by order of the court, be paid by the personal representative as an expense of administration.

NEW SECTION. Sec. 115. ADVERSE CLAIM BOND. Notwithstanding section 114 of this act, a financial institution or other third party having actual knowledge of the existence of a dispute between beneficiaries, a testamentary beneficiary, or other persons concerning rights to a nonprobate asset under this chapter may condition transfer of the nonprobate asset on execution, in form and with security acceptable to the financial institution or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset on the date of the owner's death or the amount of any adverse claim, whichever is the lesser, indemnifying the financial institution or other third party from any and all liability, loss, damage, costs, and expenses, for and on account of transfer of the nonprobate asset.

NEW SECTION. Sec. 116. APPLICATION OF CHAPTER. This chapter applies to any will of an owner who dies while a resident of this state on or after the effective date of this section, regardless of whether the will was executed or republished before or after the effective date of this section and regardless of whether the beneficiary of the nonprobate asset was designated before or after the effective date of this section.

Sec. 117. RCW 11.02.005 and 1997 c 252 s 1 are each amended to read as follows:

When used in this title, unless otherwise required from the context:

(1) "Personal representative" includes executor, administrator, special administrator, and guardian or limited guardian and special representative.

(2) "Net estate" refers to the real and personal property of a decedent exclusive of homestead rights, exempt property, the family allowance and enforceable claims against, and debts of, the deceased or the estate.

(3) "Representation" refers to a method of determining distribution in which the takers are in unequal degrees of kinship with respect to the intestate, and is accomplished as follows: After first determining who, of those entitled to share in the estate, are in the nearest degree of kinship, the estate is divided into equal shares, the number of shares being the sum of the number of persons who survive the intestate who are in the nearest degree of kinship and the number of persons in the same degree of kinship who died before the intestate but who left issue surviving the intestate; each share of a deceased person in the nearest degree shall be divided among those of the deceased person's issue who survive the intestate and have no ancestor then living who is in the line of relationship between them and the intestate, those more remote in degree taking together the share which their ancestor would have taken had he or she survived the intestate. Posthumous children are considered as living at the death of their parent.

(4) "Issue" includes all the lawful lineal descendants of the ancestor and all lawfully adopted children.

(5) "Degree of kinship" means the degree of kinship as computed according to the rules of the civil law; that is, by counting upward from the intestate to the nearest common ancestor and then downward to the relative, the degree of kinship being the sum of these two counts.

(6) "Heirs" denotes those persons, including the surviving spouse, who are entitled under the statutes of intestate succession to the real and personal property of a decedent on the decedent's death intestate.

(7) "Real estate" includes, except as otherwise specifically provided herein, all lands, tenements, and hereditaments, and all rights thereto, and all interest therein possessed and claimed in fee simple, or for the life of a third person.

(8) "Will" means an instrument validly executed as required by RCW 11.12.020.

(9) "Codicil" means a will that modifies or partially revokes an existing earlier will. A codicil need not refer to or be attached to the earlier will.

(10) "Guardian" or "limited guardian" means a personal representative of the person or estate of an incompetent or disabled person as defined in RCW 11.88.010 and the term may be used in lieu of "personal representative" wherever required by context.

(11) "Administrator" means a personal representative of the estate of a decedent and the term may be used in lieu of "personal representative" wherever required by context.

(12) "Executor" means a personal representative of the estate of a decedent appointed by will and the term may be used in lieu of "personal representative" wherever required by context.

(13) "Special administrator" means a personal representative of the estate of a decedent appointed for limited purposes and the term may be used in lieu of "personal representative" wherever required by context.

(14) "Trustee" means an original, added, or successor trustee and includes the state, or any agency thereof, when it is acting as the trustee of a trust to which chapter 11.98 RCW applies.

(15) "Nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under a written instrument or arrangement other than the person's will. "Nonprobate asset" includes, but is not limited to, a right or interest passing under a joint tenancy with right of survivorship, joint bank account with right of survivorship, payable on death or trust bank account, transfer on death security or security account, deed or conveyance if possession has been postponed until the death of the person, trust of which the person is grantor and that becomes effective or irrevocable only upon the person's death, community property agreement, individual retirement account or bond, or note or other contract the payment or performance of which is affected by the death of the person. "Nonprobate asset" does not include: A payable-on-death provision of a life insurance policy, annuity, or other similar contract, or of an employee benefit plan; a right or interest passing by descent and distribution under chapter 11.04 RCW; a right or interest if, before death, the person has irrevocably transferred the right or interest, the person has waived the power to transfer it or, in the case of contractual arrangement, the person has waived the unilateral right to rescind or modify the arrangement; or a right or interest held by the person solely in a fiduciary capacity. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, RCW 11.07.010(5) applies. For the definition of "nonprobate asset" relating to revocation of a provision for a former spouse upon dissolution of marriage or declaration of invalidity of marriage, see RCW 11.07.010(5). For the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see section 104(7) of this act.

(16) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, ((1997)) 1998.

Words that import the singular number may also be applied to the plural of persons and things.

Words importing the masculine gender only may be extended to females also.

Sec. I18. RCW 11.07.010 and 1997 c 252 s 2 are each amended to read as follows:

(1) This section applies to all nonprobate assets, wherever situated, held at the time of entry by a superior court of this state of a decree of dissolution of marriage or a declaration of invalidity.

(2)(a) If a marriage is dissolved or invalidated, a provision made prior to that event that relates to the payment or transfer at death of the decedent's interest in a nonprobate asset in favor of or granting an interest or power to the decedent's former spouse is revoked. A provision affected by this section must be interpreted, and the nonprobate asset affected passes, as if the former spouse failed to survive the decedent, having died at the time of entry of the decree of dissolution or declaration of invalidity.

(b) This subsection does not apply if and to the extent that:

(i) The instrument governing disposition of the nonprobate asset expressly provides otherwise;

(ii) The decree of dissolution or declaration of invalidity requires that the decedent maintain a nonprobate asset for the benefit of a former spouse or children of the marriage, payable on the decedent's death either outright or in trust, and other nonprobate assets of the decedent fulfilling such a requirement for the benefit of the former spouse or children of the marriage do not exist at the decedent's death; or

(iii) If not for this subsection, the decedent could not have effected the revocation by unilateral action because of the terms of the decree or declaration, or for any other reason, immediately after the entry of the decree of dissolution or declaration of invalidity.

(3)(a) A payor or other third party in possession or control of a nonprobate asset at the time of the decedent's death is not liable for making a payment or transferring an interest in a nonprobate asset to a decedent's former spouse whose interest in the nonprobate asset is revoked under this section, or for taking another action in reliance on the validity of the instrument governing disposition of the nonprobate asset, before the payor or other third party has actual knowledge of the dissolution or other invalidation of marriage. A payor or other third party is liable for a payment or transfer made or other action taken after the payor or other third party has actual knowledge of a revocation under this section.

(b) This section does not require a payor or other third party to pay or transfer a nonprobate asset to a beneficiary designated in a governing instrument affected by the dissolution or other invalidation of marriage, or to another person claiming an interest in the nonprobate asset, if the payor or third party has actual knowledge of the existence of a dispute between the former spouse and the beneficiaries or other persons concerning rights of ownership of the nonprobate asset as a result of the application of this section among the former spouse and the

beneficiaries or among other persons, or if the payor or third party is otherwise uncertain as to who is entitled to the nonprobate asset under this section. In such a case, the payor or third party may, without liability, notify in writing all beneficiaries or other persons claiming an interest in the nonprobate asset of either the existence of the dispute or its uncertainty as to who is entitled to payment or transfer of the nonprobate asset. The payor or third party may also, without liability, refuse to pay or transfer a nonprobate asset in such a circumstance to a beneficiary or other person claiming an interest until the time that either:

(i) All beneficiaries and other interested persons claiming an interest have consented in writing to the payment or transfer; or

(ii) The payment or transfer is authorized or directed by a court of proper jurisdiction.

(c) Notwithstanding subsections (1) and (2) of this section and (a) and (b) of this subsection, a payor or other third party having actual knowledge of the existence of a dispute between beneficiaries or other persons concerning rights to a nonprobate asset as a result of the application of this section may condition the payment or transfer of the nonprobate asset on execution, in a form and with security acceptable to the payor or other third party, of a bond in an amount that is double the fair market value of the nonprobate asset at the time of the decedent's death or the amount of an adverse claim, whichever is the lesser, or of a similar instrument to provide security to the payor or other third party, indemnifying the payor or other third party for any liability, loss, damage, costs, and expenses for and on account of payment or transfer of the nonprobate asset.

(d) As used in this subsection, "actual knowledge" means, for a payor or other third party in possession or control of the nonprobate asset at or following the decedent's death, written notice to the payor or other third party, or to an officer of a payor or third party in the course of his or her employment, received after the decedent's death and within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge. The notice must identify the nonprobate asset with reasonable specificity. The notice also must be sufficient to inform the payor or other third party of the revocation of the provisions in favor of the decedent's spouse by reason of the dissolution or invalidation of marriage, or to inform the payor or third party of a dispute concerning rights to a nonprobate asset as a result of the application of this section. Receipt of the notice for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(4)(a) A person who purchases a nonprobate asset from a former spouse or other person, for value and without actual knowledge, or who receives from a former spouse or other person payment or transfer of a nonprobate asset without actual knowledge and in partial or full satisfaction of a legally enforceable

obligation, is neither obligated under this section to return the payment, property, or benefit nor is liable under this section for the amount of the payment or the value of the nonprobate asset. However, a former spouse or other person who, with actual knowledge, not for value, or not in satisfaction of a legally enforceable obligation, receives payment or transfer of a nonprobate asset to which that person is not entitled under this section is obligated to return the payment or nonprobate asset, or is personally liable for the amount of the payment or value of the nonprobate asset, to the person who is entitled to it under this section.

(b) As used in this subsection, "actual knowledge" means, for a person described in (a) of this subsection who purchases or receives a nonprobate asset from a former spouse or other person, personal knowledge or possession of documents relating to the revocation upon dissolution or invalidation of marriage of provisions relating to the payment or transfer at the decedent's death of the nonprobate asset, received within a time after the decedent's death and before the purchase or receipt that is sufficient to afford the person purchasing or receiving the nonprobate asset reasonable opportunity to act upon the knowledge. Receipt of the personal knowledge or possession of the documents for a period of more than thirty days is presumed to be received within a time that is sufficient to afford the payor or third party a reasonable opportunity to act upon the knowledge, but receipt of the notice for a period of less than five business days is presumed not to be a sufficient time for these purposes. These presumptions may be rebutted only by clear and convincing evidence to the contrary.

(5) As used in this section, "nonprobate asset" means those rights and interests of a person having beneficial ownership of an asset that pass on the person's death under only the following written instruments or arrangements other than the decedent's will:

(a) A payable-on-death provision of a life insurance policy, employee benefit plan, annuity or similar contract, or individual retirement account;

(b) A payable-on-death, trust, or joint with right of survivorship bank account;

(c) A trust of which the person is a grantor and that becomes effective or irrevocable only upon the person's death; or

(d) Transfer on death beneficiary designations of a transfer on death or pay on death security, if such designations are authorized under Washington law.

~~((However, for the general definition of "nonprobate asset" in this title, RCW 11.02.005 applies.))~~ For the general definition in this title of "nonprobate asset," see RCW 11.02.005(15) and for the definition of "nonprobate asset" relating to testamentary disposition of nonprobate assets, see section 104(7) of this act.

(6) This section is remedial in nature and applies as of July 25, 1993, to decrees of dissolution and declarations of invalidity entered after July 24, 1993, and this section applies as of January 1, 1995, to decrees of dissolution and declarations of invalidity entered before July 25, 1993.

PART II—PROBATE

Sec. 201. RCW 11.54.070 and 1997 c 252 s 54 are each amended to read as follows:

(1) Except as provided in ~~((subsection))~~ RCW 11.54.060(2) ~~((of this section))~~, property awarded and cash paid under this chapter is immune from all debts, including judgments and judgment liens, of the decedent and of the surviving spouse existing at the time of death.

(2) Both the decedent's and the surviving spouse's interests in any community property awarded to the spouse under this chapter are immune from the claims of creditors.

Sec. 202. RCW 11.68.110 and 1997 c 252 s 68 are each amended to read as follows:

(1) If a personal representative who has acquired nonintervention powers does not apply to the court for either of the final decrees provided for in RCW 11.68.100 as now or hereafter amended, the personal representative shall, when the administration of the estate has been completed, file a declaration that must state as follows:

(a) The date of the decedent's death and the decedent's residence at the time of death;

(b) Whether or not the decedent died testate or intestate;

(c) If the decedent died testate, the date of the decedent's last will and testament and the date of the order probating the will;

(d) That each creditor's claim which was justly due and properly presented as required by law has been paid or otherwise disposed of by agreement with the creditor, and that the amount of estate taxes due as the result of the decedent's death has been determined, settled, and paid;

(e) That the personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed;

(f) If the decedent died intestate, the names, addresses (if known), and relationship of each heir of the decedent, together with the distributive share of each heir; and

(g) The amount of fees paid or to be paid to each of the following: (i) Personal representative or representatives; (ii) lawyer or lawyers; (iii) appraiser or appraisers; and (iv) accountant or accountants; and that the personal representative believes the fees to be reasonable and does not intend to obtain court approval of the amount of the fees or to submit an estate accounting to the court for approval.

(2) Subject to the requirement of notice as provided in this section, unless an heir, devisee, or legatee of a decedent petitions the court either for an order requiring the personal representative to obtain court approval of the amount of fees paid or to be paid to the personal representative, lawyers, appraisers, or accountants, or for an order requiring an accounting, or both, within thirty days from the date of filing a declaration of completion of probate, the personal

representative will be automatically discharged without further order of the court and the representative's powers will cease thirty days after the filing of the declaration of completion of probate, and the declaration of completion of probate shall, at that time, be the equivalent of the entry of a decree of distribution in accordance with chapter 11.76 RCW for all legal intents and purposes.

(3) Within five days of the date of the filing of the declaration of completion, the personal representative or the personal representative's lawyer shall mail a copy of the declaration of completion to each heir, legatee, or devisee of the decedent, who: (a) Has not waived notice of the filing, in writing, filed in the cause(~~(, or who, not having waived notice,);~~); and (b) either has not received the full amount of the distribution to which the heir, legatee, or devisee is entitled or has a property right that might be affected adversely by the discharge of the personal representative under this section, together with a notice which shall be substantially as follows:

CAPTION
OF
CASE

NOTICE OF FILING OF
DECLARATION OF COMPLETION
OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the day of, 19. . . ; unless you shall file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing, the amount of fees paid or to be paid will be deemed reasonable, the acts of the personal representative will be deemed approved, the personal representative will be automatically discharged without further order of the court, and the Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW.

If you file and serve a petition within the period specified, the undersigned will request the court to fix a time and place for the hearing of your petition, and you will be notified of the time and place thereof, by mail, or personal service, not less than ten days before the hearing on the petition.

Dated this day of, 19. . .

.....
Personal Representative

(4) If all heirs, devisees, and legatees of the decedent entitled to notice under this section waive, in writing, the notice required by this section, the personal representative will be automatically discharged without further order of the court and the declaration of completion of probate will become effective as a decree of distribution upon the date of filing thereof. In those instances where the personal representative has been required to furnish bond, and a declaration of completion is filed pursuant to this section, any bond furnished by the personal representative

shall be automatically discharged upon the discharge of the personal representative.

Sec. 203. RCW 11.68.114 and 1997 c 252 s 70 are each amended to read as follows:

(1) The personal representative retains the powers to: Deal with the taxing authority of any federal, state, or local government; hold a reserve in an amount not to exceed three thousand dollars, for the determination and payment of any additional taxes, interest, and penalties, and of all reasonable expenses related directly or indirectly to such determination or payment; pay from the reserve the reasonable expenses, including compensation for services rendered or goods provided by the personal representative or by the personal representative's employees, independent contractors, and other agents, in addition to any taxes, interest, or penalties assessed by a taxing authority; receive and hold any credit, including interest, from any taxing authority; and distribute the residue of the reserve to the intended beneficiaries of the reserve; if:

(a) In lieu of the statement set forth in RCW 11.68.110(1)(e), the declaration of completion of probate states that:

The personal representative has completed the administration of the decedent's estate without court intervention, and the estate is ready to be closed, except for the determination of taxes and of interest and penalties thereon as permitted under this section;

and

(b) The notice of the filing of declaration of completion of probate must be in substantially the following form:

CAPTION
OF
CASE

NOTICE OF FILING OF
DECLARATION OF COMPLETION
OF PROBATE

NOTICE IS GIVEN that the attached Declaration of Completion of Probate was filed by the undersigned in the above-entitled court on the . . . day of . . . , . . . ; unless you file a petition in the above-entitled court requesting the court to approve the reasonableness of the fees, or for an accounting, or both, and serve a copy thereof upon the personal representative or the personal representative's lawyer, within thirty days after the date of the filing:

(i) The schedule of fees set forth in the Declaration of Completion of Probate will be deemed reasonable;

(ii) The Declaration of Completion of Probate will be final and deemed the equivalent of a Decree of Distribution entered under chapter 11.76 RCW;

(iii) The acts that the personal representative performed before the Declaration of Completion of Probate was filed will be deemed approved, and the personal representative will be automatically

discharged without further order of the court with respect to all such acts; and

(iv) The personal representative will retain the power to deal with the taxing authorities, together with \$. . . for the determination and payment of all remaining tax obligations. Only that portion of the reserve that remains after the settlement of any tax liability, and the payment of any expenses associated with such settlement, will be distributed to the persons legally entitled to the reserve.

(2) If the requirements in subsection (1) of this section are met, the personal representative is discharged from all claims other than those relating to the settlement of any tax obligations and the actual distribution of the reserve, at the effective date of the declaration of completion. The personal representative is discharged from liability from the settlement of any tax obligations and the distribution of the reserve, and the personal representative's powers cease, thirty days after the personal representative(~~(~~

~~(a))~~ has mailed to those persons who would have shared in the distribution of the reserve had the reserve remained intact(~~(~~

~~(b))~~ has filed with the court copies of checks or receipts showing how the reserve was in fact distributed, unless a person with an interest in the reserve petitions the court earlier within the thirty-day period for an order requiring an accounting of the reserve or an order determining the reasonableness, or lack of reasonableness, of distributions made from the reserve. If the personal representative has been required to furnish a bond, any bond furnished by the personal representative is automatically discharged upon the final discharge of the personal representative.

Sec. 204. 1997 c 252 s 87 (uncodified) is amended to read as follows:

The following acts or parts of acts are each repealed, effective December 31, 1997, for estates of decedents dying after December 31, 1997:

(1) RCW 11.40.011 and 1989 c 333 s 2, 1983 c 201 s 1, & 1967 ex.s. c 106 s 3;

(2) RCW 11.40.012 and 1989 c 333 s 3;

(3) RCW 11.40.013 and 1994 c 221 s 26 & 1989 c 333 s 4;

(4) RCW 11.40.014 and 1989 c 333 s 5;

(5) RCW 11.40.015 and 1994 c 221 s 27 & 1989 c 333 s 6;

(6) RCW 11.42.160 and 1994 c 221 s 46;

(7) RCW 11.42.170 and 1994 c 221 s 47;

(8) RCW 11.42.180 and 1994 c 221 s 48;

(9) RCW 11.44.066 and 1990 c 180 s 1 & 1974 ex.s. c 117 s 49;

(10) RCW 11.52.010 and 1987 c 442 s 116, 1984 c 260 s 17, 1974 ex.s. c 117 s 7, 1971 ex.s. c 12 s 2, 1967 c 168 s 12, & 1965 c 145 s 11.52.010;

(11) RCW 11.52.012 and 1985 c 194 s 1, 1984 c 260 s 18, 1977 ex.s. c 234 s 9, 1974 ex.s. c 117 s 8, & 1965 c 145 s 11.52.012;

(12) RCW 11.52.014 and 1965 c 145 s 11.52.014;

(13) RCW 11.52.016 and 1988 c 202 s 18, 1972 ex.s. c 80 s 1, & 1965 c 145 s 11.52.016;

(14) RCW 11.52.020 and 1985 c 194 s 2, 1984 c 260 s 19, 1974 ex.s. c 117 s 9, 1971 ex.s. c 12 s 3, 1967 c 168 s 13, & 1965 c 145 s 11.52.020;

(15) RCW 11.52.022 and 1985 c 194 s 3, 1984 c 260 s 20, 1977 ex.s. c 234 s 10, 1974 ex.s. c 117 s 10, 1971 ex.s. c 12 s 4, & 1965 c 145 s 11.52.022;

(16) RCW 11.52.024 and 1972 ex.s. c 80 s 2 & 1965 c 145 s 11.52.024;

(17) RCW 11.52.030 and 1965 c 145 s 11.52.030;

(18) RCW 11.52.040 and 1965 c 145 s 11.52.040;

(19) RCW 11.52.050 and 1967 c 168 s 14;

(20) RCW 11.68.010 and 1994 c 221 s 50, 1977 ex.s. c 234 s 18, 1974 ex.s. c 117 s 13, 1969 c 19 s 1, & 1965 c 145 s 11.68.010;

(21) RCW 11.68.020 and 1974 ex.s. c 117 s 14 & 1965 c 145 s 11.68.020;

(22) RCW 11.68.030 and 1977 ex.s. c 234 s 19, 1974 ex.s. c 117 s 15, & 1965 c 145 s 11.68.030; and

(23) RCW 11.68.040 and 1977 ex.s. c 234 s 20, 1974 ex.s. c 117 s 16, & 1965 c 145 s 11.68.040.

Sec. 205. 1997 c 252 s 89 (uncodified) is amended to read as follows:

Sections 1 through (~~73 of this act~~) 72, chapter 252, Laws of 1997 apply to estates of decedents dying after December 31, 1997. Sections 81 through 86, chapter 252, Laws of 1997 apply to all estates, trusts, and governing instruments in existence on or at any time after March 7, 1984, and to all proceedings with respect thereto after March 7, 1984, whether the proceedings commenced before or after March 7, 1984, and including distributions made after March 7, 1984. Sections 81 through 86, chapter 252, Laws of 1997 do not apply to any governing instrument, the terms of which expressly or by necessary implication make the application of sections 81 through 86, chapter 252, Laws of 1997 inapplicable. The judicial and nonjudicial dispute resolution procedures of chapter 11.96 RCW apply to sections 81 through 86, chapter 252, Laws of 1997.

PART III—UNIFORM TRANSFERS TO MINORS ACT

Sec. 301. RCW 11.114.030 and 1991 c 193 s 3 are each amended to read as follows:

(1) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: ". as custodian for (name of minor) under the Washington uniform transfers to minors act." The nomination may name one or more persons as substitute custodians to whom the property shall be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve. The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a

beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

As an alternative to naming a specific person as custodian, the nomination may provide that the custodian may be designated by the legal representative of, or other person specified by, the person having the right to designate the recipient of the property described in this subsection. The person having the right of designation of the custodian is authorized to designate himself or herself as custodian, if he or she falls within the class of persons eligible to serve as custodian under RCW 11.114.090(1).

(2) A custodian nominated under this section shall be a person to whom a transfer of property of that kind may be made under RCW 11.114.090(1).

(3) Instead of designating one specific minor, the designation may specify multiple persons or a class or classes of persons, but when the custodial property is actually created under subsection (4) of this section, it must be constituted as a separate custodianship for each beneficiary, and each beneficiary's interest in it must be determined in accordance with the governing instrument and applicable law.

(4) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under RCW 11.114.090. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to RCW 11.114.090.

PART IV—INTERNAL REVENUE CODE REFERENCES

Sec. 401. RCW 83.100.020 and 1994 c 221 s 70 are each amended to read as follows:

As used in this chapter:

- (1) "Decedent" means a deceased individual;
- (2) "Department" means the department of revenue, the director of that department, or any employee of the department exercising authority lawfully delegated to him by the director;
- (3) "Federal credit" means (a) for a transfer, the maximum amount of the credit for state taxes allowed by section 2011 of the Internal Revenue Code; and (b) for a generation-skipping transfer, the maximum amount of the credit for state taxes allowed by section 2604 of the Internal Revenue Code;
- (4) "Federal return" means any tax return required by chapter 11 or 13 of the Internal Revenue Code;
- (5) "Federal tax" means (a) for a transfer, a tax under chapter 11 of the Internal Revenue Code; and (b) for a generation-skipping transfer, the tax under chapter 13 of the Internal Revenue Code;
- (6) "Generation-skipping transfer" means a "generation-skipping transfer" as defined and used in section 2611 of the Internal Revenue Code;

(7) "Gross estate" means "gross estate" as defined and used in section 2031 of the Internal Revenue Code;

(8) "Nonresident" means a decedent who was domiciled outside Washington at his death;

(9) "Person" means any individual, estate, trust, receiver, cooperative association, club, corporation, company, firm, partnership, joint venture, syndicate, or other entity and, to the extent permitted by law, any federal, state, or other governmental unit or subdivision or agency, department, or instrumentality thereof;

(10) "Person required to file the federal return" means any person required to file a return required by chapter 11 or 13 of the Internal Revenue Code, such as the personal representative of an estate; or a transferor, trustee, or beneficiary of a generation-skipping transfer; or a qualified heir with respect to qualified real property, as defined and used in section 2032A(c) of the Internal Revenue Code;

(11) "Property" means (a) for a transfer, property included in the gross estate; and (b) for a generation-skipping transfer, all real and personal property subject to the federal tax;

(12) "Resident" means a decedent who was domiciled in Washington at time of death;

(13) "Transfer" means "transfer" as used in section 2001 of the Internal Revenue Code, or a disposition or cessation of qualified use as defined and used in section 2032A(c) of the Internal Revenue Code;

(14) "Trust" means "trust" under Washington law and any arrangement described in section 2652 of the Internal Revenue Code; and

(15) "Internal Revenue Code" means, for the purposes of this chapter and RCW 83.110.010, the United States Internal Revenue Code of 1986, as amended or renumbered on January 1, ((+1995)) 1998.

Sec. 402. RCW 83.110.010 and 1994 c 221 s 71 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Estate" means the gross estate of a decedent as determined for the purpose of federal estate tax and the estate tax payable to this state;

(2) "Excise tax" means the federal excise tax imposed by section 4980A(d) of the Internal Revenue Code, and interest and penalties imposed in addition to the excise tax;

(3) "Fiduciary" means executor, administrator of any description, and trustee;

(4) "Internal Revenue Code" means the United States Internal Revenue Code of 1986, as ~~((amended or renumbered on January 1, 1995))~~ defined in and as of the date specified in RCW 83.100.020;

(5) "Person" means any individual, partnership, association, joint stock company, corporation, government, political subdivision, governmental agency, or local governmental agency;

(6) "Persons interested in retirement distributions" means any person determined as of the date the excise tax is due, including a personal representative, guardian, trustee, or beneficiary, entitled to receive, or who has received, by reason of or following the death of a decedent, any property or interest therein which constitutes a retirement distribution as defined in section 4980A(e) of the Internal Revenue Code, but this definition excludes any alternate payee under a qualified domestic relations order as such terms are defined in section 414(p) of the Internal Revenue Code;

(7) "Person interested in the estate" means any person, including a personal representative, guardian, or trustee, entitled to receive, or who has received, from a decedent while alive or by reason of the death of a decedent any property or interest therein included in the decedent's taxable estate;

(8) "Qualified heir" means a person interested in the estate who is entitled to receive, or who has received, an interest in qualified real property;

(9) "Qualified real property" means real property for which the election described in section 2032A of the Internal Revenue Code has been made;

(10) "State" means any state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico; and

(11) "Tax" means the federal estate tax, the excise tax defined in subsection (2) of this section, and the estate tax payable to this state and interest and penalties imposed in addition to the tax.

PART V—SLAYER'S STATUTE

NEW SECTION. Sec. 501. A new section is added to chapter 41.04 RCW to read as follows:

(1) For purposes of this section, the following definitions shall apply:

(a) "Slayer" means a slayer as defined in RCW 11.84.010.

(b) "Decedent" means any person whose life is taken by a slayer, and who is entitled to benefits from the Washington state department of retirement systems by written designation or by operation of law.

(2) Property that would have passed to or for the benefit of a beneficiary under one of the retirement systems listed in RCW 41.50.030 shall not pass to that beneficiary if the beneficiary was a slayer of the decedent and the property shall be distributed as if the slayer had predeceased the decedent.

(3) A slayer is deemed to have predeceased the decedent as to property which, by designation or by operation of law, would have passed from the decedent to the slayer because of the decedent's entitlement to benefits under one of the retirement systems listed in RCW 41.50.030.

(4)(a) The department of retirement systems has no affirmative duty to determine whether a beneficiary is, or is alleged to be, a slayer. However, upon receipt of written notice that a beneficiary is a defendant in a civil lawsuit that alleges the beneficiary is a slayer or is charged with a crime that, if committed, means the beneficiary is a slayer, the department of retirement systems shall determine whether the beneficiary is a defendant in such a civil suit or has been

formally charged in court with the crime, or both. If so, the department shall withhold payment of any benefits until:

(i) The case or charges, or both if both are pending, are dismissed;

(ii) The beneficiary is found not guilty in the criminal case or prevails in the civil suit, or both if both are pending; or

(iii) The beneficiary is convicted or is found to be a slayer in the civil suit.

(b) If the case or charges, or both if both are pending, are dismissed or if a beneficiary is found not guilty or prevails in the civil suit, or both if both are pending, the department shall pay the beneficiary the benefits the beneficiary is entitled to receive. If the beneficiary is convicted or found to be a slayer in a civil suit, the department shall distribute the benefits according to subsection (2) of this section.

(5) The slayer's conviction for having participated in the willful and unlawful killing of the decedent shall be admissible in evidence against a claimant of property in any civil action arising under this section.

(6) This section shall not subject the department of retirement systems to liability for payment made to a slayer or alleged slayer prior to the department's receipt of written notice that the slayer has been convicted of, or the alleged slayer has been formally criminally or civilly charged in court with, the death of the decedent. If the conviction or civil judgment of a slayer is reversed on appeal, the department of retirement systems shall not be liable for payment made prior to the receipt of written notice of the reversal to a beneficiary other than the person whose conviction or civil judgment is reversed.

NEW SECTION. Sec. 502. A new section is added to chapter 11.84 RCW to read as follows:

Proceeds payable to a slayer as the beneficiary of any benefits flowing from one of the retirement systems listed in RCW 41.50.030, by virtue of the decedent's membership in the department of retirement systems or by virtue of the death of decedent, shall be paid instead as designated in section 501 of this act.

Sec. 503. RCW 11.84.900 and 1965 c 145 s 11.84.900 are each amended to read as follows:

This chapter shall ~~((not be considered penal in nature, but shall))~~ be construed broadly ~~((in order))~~ to effect the policy of this state that no person shall be allowed to profit by his own wrong, wherever committed.

Sec. 504. RCW 11.02.070 and 1967 c 168 s 1 are each amended to read as follows:

Except as provided in sections 501 and 502 of this act, upon the death of a decedent, a one-half share of the community property shall be confirmed to the surviving spouse, and the other one-half share shall be subject to testamentary disposition by the decedent, or shall descend as provided in chapter 11.04 RCW. The whole of the community property shall be subject to probate administration for all purposes of this title, including the payment of obligations and debts of the community, the award in lieu of homestead, the allowance for family support, and

any other matter for which the community property would be responsible or liable if the decedent were living.

Sec. 505. RCW 26.16.120 and Code 1881 s 2416 are each amended to read as follows:

Nothing contained in any of the provisions of this chapter or in any law of this state, shall prevent the husband and wife from jointly entering into any agreement concerning the status or disposition of the whole or any portion of the community property, then owned by them or afterwards to be acquired, to take effect upon the death of either. But such agreement may be made at any time by the husband and wife by the execution of an instrument in writing under their hands and seals, and to be witnessed, acknowledged and certified in the same manner as deeds to real estate are required to be, under the laws of the state, and the same may at any time thereafter be altered or amended in the same manner(~~:- PROVIDED, HOWEVER, That~~)). Such agreement shall not derogate from the right of creditors(;;); nor be construed to curtail the powers of the superior court to set aside or cancel such agreement for fraud or under some other recognized head of equity jurisdiction, at the suit of either party; **nor prevent the application of laws governing the community property and inheritance rights of slayers under chapter 11.84 RCW.**

NEW SECTION. **Sec. 506.** Sections 501 through 505 of this act apply to acts that result in unlawful killings of decedents by slayers on and after the effective date of this section.

NEW SECTION. **Sec. 507.** If any part of sections 501 through 505 of this act is found to be in conflict with federal requirements, the conflicting part of sections 501 through 505 of this act is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination does not affect the operation of the remainder of sections 501 through 505 of this act. Rules adopted under sections 501 through 505 of this act must meet federal requirements.

PART VI—MISCELLANEOUS—EFFECTIVE DATES

NEW SECTION. **Sec. 601.** Part headings and section captions used in this act are not any part of the law.

NEW SECTION. **Sec. 602.** Sections 101 through 116 of this act constitute a new chapter in Title 11 RCW.

NEW SECTION. **Sec. 603.** (1) Sections 101 through 116 and 118 of this act take effect July 1, 1999.

(2) Sections 117, 201 through 205, 301, 401, 501 through 507, and 604 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.

NEW SECTION. **Sec. 604.** (1) Sections 201 through 205 of this act are remedial in nature and apply retroactively to July 27, 1997, and thereafter.

(2) Section 301 of this act is remedial in nature and applies retroactively to July 1, 1991, and thereafter.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 293

[Substitute Senate Bill 6182]

INTERSTATE PROFESSIONAL CORPORATIONS

AN ACT Relating to facilitating interstate operations for Washington professional corporations; and amending RCW 18.100.060, 18.100.065, 18.100.090, 18.100.100, 25.15.045, and 18.100.114, and adding a new section to chapter 18.100 RCW.

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

Sec. 1. RCW 18.100.060 and 1983 c 51 s 3 are each amended to read as follows:

(1) No corporation organized under this chapter may render professional services except through individuals who are duly licensed or otherwise legally authorized to render such professional services within this state(~~(-PROVIDED; That)~~). However, nothing in this chapter shall be interpreted to:

(a) Prohibit a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional corporation in this state organized for the purpose of rendering the same professional services;

(b) Prohibit a professional corporation from rendering services outside this state through individuals who are not duly licensed or otherwise legally authorized to render professional services within this state; or

(c) Require the licensing of clerks, secretaries, bookkeepers, technicians, and other assistants employed by a professional corporation who are not usually and ordinarily considered by custom and practice to be rendering professional services to the public for which a license or other legal authorization is required.

(2) Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional corporation so long as each shareholder personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one officer and one director of the corporation is duly licensed or otherwise legally authorized to practice the profession in this state; or

(b) Each officer in charge of an office of the corporation in this state is duly licensed or otherwise legally authorized to practice the profession in this state.

Sec. 2. RCW 18.100.065 and 1983 c 51 s 7 are each amended to read as follows:

Except as otherwise provided in RCW 18.100.118, all directors of a corporation organized under this chapter and all officers other than the secretary and the treasurer shall be duly licensed or otherwise legally authorized to render the same specific professional services within this or any other state as those for which the corporation was incorporated.

Sec. 3. RCW 18.100.090 and 1997 c 18 s 2 are each amended to read as follows:

Except as otherwise provided in RCW 18.100.118, no professional corporation organized under the provisions of this chapter may issue any of its capital stock to anyone other than the trustee of a qualified trust or an individual who is duly licensed or otherwise legally authorized to render the same specific professional services within this or any other state as those for which the corporation was incorporated.

Sec. 4. RCW 18.100.100 and 1969 c 122 s 10 are each amended to read as follows:

~~((If any))~~ Unless a director, officer, shareholder, agent or employee of a corporation organized under this chapter who has been rendering professional service to the public ~~((becomes))~~ is legally ~~((disqualified))~~ qualified at all times to render such professional services within ~~((this))~~ at least one state in which the corporation conducts business, he or she shall sever all employment with, and financial interests in, such corporation forthwith. A corporation's failure to require compliance with this provision shall constitute a ground for the forfeiture of its articles of incorporation and its dissolution. When a corporation's failure to comply with this provision is brought to the attention of the office of the secretary of state, the secretary of state forthwith shall certify that fact to the attorney general for appropriate action to dissolve the corporation.

Sec. 5. RCW 25.15.045 and 1997 c 390 s 4 are each amended to read as follows:

(1) A person or group of persons licensed or otherwise legally authorized to render professional services within this or any other state may organize and become a member or members of a professional limited liability company under the provisions of this chapter for the purposes of rendering professional service. A "professional limited liability company" is subject to all the provisions of chapter 18.100 RCW that apply to a professional corporation, and its managers, members, agents, and employees shall be subject to all the provisions of chapter 18.100 RCW that apply to the directors, officers, shareholders, agents, or employees of a professional corporation, except as provided otherwise in this section. Nothing in this section prohibits a person duly licensed or otherwise legally authorized to render professional services in any jurisdiction other than this state from becoming a member of a professional limited liability company organized for the purpose of rendering the same professional services. Nothing in this section prohibits a professional limited liability company from rendering professional services outside this state through individuals who are not duly

licensed or otherwise legally authorized to render such professional services within this state. (~~Notwithstanding RCW 18.100.065,)~~ Persons engaged in a profession and otherwise meeting the requirements of this chapter may operate under this chapter as a professional limited liability company so long as each member personally engaged in the practice of the profession in this state is duly licensed or otherwise legally authorized to practice the profession in this state and:

(a) At least one manager of the company is duly licensed or otherwise legally authorized to practice the profession in this state; or

(b) Each member in charge of an office of the company in this state is duly licensed or otherwise legally authorized to practice the profession in this state.

(2) If the company's members are required to be licensed to practice such profession, and the company fails to maintain for itself and for its members practicing in this state a policy of professional liability insurance, bond, or other evidence of financial responsibility of a kind designated by rule by the state insurance commissioner and in the amount of at least one million dollars or a greater amount as the state insurance commissioner may establish by rule for a licensed profession or for any specialty within a profession, taking into account the nature and size of the business, then the company's members are personally liable to the extent that, had the insurance, bond, or other evidence of responsibility been maintained, it would have covered the liability in question.

(3) For purposes of applying the provisions of chapter 18.100 RCW to a professional limited liability company, the terms "director" or "officer" means manager, "shareholder" means member, "corporation" means professional limited liability company, "articles of incorporation" means certificate of formation, "shares" or "capital stock" means a limited liability company interest, "incorporator" means the person who executes the certificate of formation, and "bylaws" means the limited liability company agreement.

(4) The name of a professional limited liability company must contain either the words "Professional Limited Liability Company," or the words "Professional Limited Liability" and the abbreviation "Co.," or the abbreviation "P.L.L.C." or "PLLC" provided that the name of a professional limited liability company organized to render dental services shall contain the full names or surnames of all members and no other word than "chartered" or the words "professional services" or the abbreviation "P.L.L.C." or "PLLC."

(5) Subject to the provisions in article VII of this chapter, the following may be a member of a professional limited liability company and may be the transferee of the interest of an ineligible person or deceased member of the professional limited liability company:

(a) A professional corporation, if its shareholders, directors, and its officers other than the secretary and the treasurer, are licensed or otherwise legally authorized to render the same specific professional services as the professional limited liability company; and

(b) Another professional limited liability company, if the managers and members of both professional limited liability companies are licensed or otherwise legally authorized to render the same specific professional services.

(6)(a) Notwithstanding any other provision of this chapter, health care professionals who are licensed or certified pursuant to chapters 18.06, 18.19, 18.22, 18.25, 18.29, 18.34, 18.35, 18.36A, 18.50, 18.53, 18.55, 18.57, 18.57A, 18.64, 18.71, 18.71A, 18.79, 18.83, 18.89, 18.108, and 18.138 RCW may own membership interests in and render their individual professional services through one limited liability company and are to be considered, for the purpose of forming a limited liability company, as rendering the "same specific professional services" or "same professional services" or similar terms.

(b) Formation of a limited liability company under this subsection does not restrict the application of the uniform disciplinary act under chapter 18.130 RCW, or any applicable health care professional statutes under Title 18 RCW, including but not limited to restrictions on persons practicing a health profession without being appropriately credentialed and persons practicing beyond the scope of their credential.

Sec. 6. RCW 18.100.114 and 1983 c 51 s 8 are each amended to read as follows:

~~((+))~~ A corporation organized under this chapter may merge or consolidate with another corporation, domestic or foreign, organized to render the same specific professional services, only if every shareholder of each corporation is eligible to be a shareholder of the surviving or new corporation.

~~((2) Upon the merger or consolidation of a corporation organized under this chapter, the surviving or new corporation, as the case may be, may render professional services in this state only if it is organized under, and complies with, the provisions of this chapter.))~~

NEW SECTION. Sec. 7. A new section is added to chapter 18.100 RCW to read as follows:

A foreign professional corporation may render professional services in this state so long as it complies with chapter 23B.15 RCW and each individual rendering professional services in this state is duly licensed or otherwise legally authorized to render such professional services within this state.

Passed the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 294

[Second Substitute Senate Bill 6190]

SPECIAL PARKING PRIVILEGES FOR DISABLED PERSONS—REVISIONS

AN ACT Relating to special parking privileges for disabled persons; amending RCW 46.16.381 and 46.61.581; reenacting and amending RCW 46.63.020; and prescribing penalties.

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

Sec. 1. RCW 46.16.381 and 1995 c 384 s 1 are each amended to read as follows:

(1) The director shall grant special parking privileges to any person who has a disability that limits or impairs the ability to walk and meets one of the following criteria, as determined by a licensed physician:

(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) Is so severely disabled, 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 such 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; or

(g) Has a disability resulting from an acute sensitivity to automobile emissions which limits or impairs the ability to walk. The personal physician of the applicant shall document that the disability is comparable in severity to the others listed in this subsection.

(2) The applications for disabled parking permits and temporary disabled parking permits are official state documents. Knowingly providing false information in conjunction with the application is a gross misdemeanor punishable under chapter 9A.20 RCW. The following statement must appear on each application form immediately below the physician's signature and immediately below the applicant's signature: "A disabled parking permit may be issued only for a medical necessity that severely affects mobility (RCW 46.16.381). Knowingly providing false information on this application is a gross misdemeanor. The penalty is up to one year in jail and a fine of up to \$5,000 or both."

(3) Persons who qualify for special parking privileges are entitled to receive from the department of licensing a removable windshield placard bearing the international symbol of access and an individual serial number, along with a special identification card bearing the photograph, name, and date of birth of the person to whom the placard is issued, and the placard's serial number. The department shall design the placard to be displayed when the vehicle is parked by suspending it from the rearview mirror, or in the absence of a rearview mirror the card may be displayed on the dashboard of any vehicle used to transport the disabled person. Instead of regular motor vehicle license plates, disabled persons are entitled to receive special license plates bearing the international symbol of

access for one vehicle registered in the disabled person's name. Disabled persons who are not issued the special license plates are entitled to receive a second special placard upon submitting a written request to the department. Persons who have been issued the parking privileges and who are using a vehicle or are riding in a vehicle displaying the special license plates or placard may park in places reserved for mobility disabled persons. The director shall adopt rules providing for the issuance of special placards and license plates to public transportation authorities, nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, senior citizen centers, private nonprofit agencies as defined in chapter 24.03 RCW, and vehicles registered with the department as cabulances that regularly transport disabled persons who have been determined eligible for special parking privileges provided under this section. The director may issue special license plates for a vehicle registered in the name of the public transportation authority, nursing home, boarding homes, senior citizen center, private nonprofit agency, or cabulance service if the vehicle is primarily used to transport persons with disabilities described in this section. Public transportation authorities, nursing homes, boarding homes, senior citizen centers, private nonprofit agencies, and cabulance services are responsible for insuring that the special placards and license plates are not used improperly and are responsible for all fines and penalties for improper use.

~~((3))~~ (4) Whenever the disabled person transfers or assigns his or her interest in the vehicle, the special license plates shall be removed from the motor vehicle. If another vehicle is acquired by the disabled person and the vehicle owner qualifies for a special plate, the plate shall be attached to the vehicle, and the director shall be immediately notified of the transfer of the plate. If another vehicle is not acquired by the disabled person, the removed plate shall be immediately surrendered to the director.

~~((4))~~ (5) The special license plate shall be renewed in the same manner and at the time required for the renewal of regular motor vehicle license plates under this chapter. No special license plate may be issued to a person who is temporarily disabled. A person who has a condition expected to improve within six months may be issued a temporary placard for a period not to exceed six months. ~~((The director may issue a second temporary placard during that period if requested by the person who is temporarily disabled.))~~ If the condition exists after six months a new temporary placard shall be issued upon receipt of a new certification from the disabled person's physician. The permanent parking placard and photo identification card of a disabled person shall be renewed((when)) at least every five years, as required by the director, by satisfactory proof of the right to continued use of the privileges. In the event of the permit holder's death, the parking placard and photo identification card must be immediately surrendered to the department. The department shall match and purge its disabled permit data base with available death record information at least every twelve months.

~~((5))~~ (6) Each person who has been issued a permanent disabled parking permit on or before July 1, 1998, must renew the permit no later than July 1, 2003, subject to a schedule to be set by the department, or the permit will expire.

(7) Additional fees shall not be charged for the issuance of the special placards or the photo identification cards. No additional fee may be charged for the issuance of the special license plates except the regular motor vehicle registration fee and any other fees and taxes required to be paid upon registration of a motor vehicle.

~~((6))~~ (8) Any unauthorized use of the special placard (~~or the~~), special license plate, or photo identification card is a (~~misdemeanor~~) traffic infraction with a monetary penalty of two hundred fifty dollars.

~~((7))~~ (9) It is a parking infraction, with a monetary penalty of two hundred fifty dollars for a person to make inaccessible the access aisle located next to a space reserved for physically disabled persons. The clerk of the court shall report all violations related to this subsection to the department.

(10) It is a parking infraction, with a monetary penalty of (~~one hundred seventy-five~~) two hundred fifty dollars for any person to park a vehicle in a parking place provided on private property without charge or on public property reserved for physically disabled persons without a special license plate or placard. If a person is charged with a violation, the person shall not be determined to have committed an infraction if the person produces in court or before the court appearance the special license plate or placard required under this section. A local jurisdiction providing nonmetered, on-street parking places reserved for physically disabled persons may impose by ordinance time restrictions of no less than four hours on the use of these parking places. A local jurisdiction may impose by ordinance time restrictions of no less than four hours on the use of nonreserved, on-street parking spaces by vehicles displaying the special parking placards. All time restrictions must be clearly posted.

~~((8))~~ (11) The (~~penalty~~) penalties imposed under subsections ~~((7))~~ (9) and (10) of this section shall be used by that local jurisdiction exclusively for law enforcement. The court may also impose an additional penalty sufficient to reimburse the local jurisdiction for any costs it may have incurred in removal and storage of the improperly parked vehicle.

~~((9))~~ (12) Except as provided by subsection (2) of this section, it is a (~~misdemeanor~~) traffic infraction with a monetary penalty of two hundred fifty dollars for any person (~~to~~) willfully to obtain a special license plate (~~or~~), placard, or photo identification card in a manner other than that established under this section.

(13)(a) A law enforcement agency authorized to enforce parking laws may appoint volunteers, with a limited commission, to issue notices of infractions for violations of this section or RCW 46.61.581. Volunteers must be at least twenty-one years of age. The law enforcement agency appointing volunteers may establish any other qualifications the agency deems desirable.

(b) An agency appointing volunteers under this section must provide training to the volunteers before authorizing them to issue notices of infractions.

(c) A notice of infraction issued by a volunteer appointed under this subsection has the same force and effect as a notice of infraction issued by a police officer for the same offense.

(d) A police officer or a volunteer may request a person to show the person's photo identification card or special parking placard when investigating the possibility of a violation of this section. If the request is refused, the person in charge of the vehicle may be issued a notice of infraction for a violation of this section.

(14) For second or subsequent violations of this section, in addition to a monetary fine, the violator must complete a minimum of forty hours of:

(a) Community service for a nonprofit organization that serves the disabled community or persons having disabling diseases; or

(b) Any other community service that may sensitize the violator to the needs and obstacles faced by persons who have disabilities.

(15) The court may not suspend more than one-half of any fine imposed under subsection (8), (9), (10), or (12) of this section.

Sec. 2. RCW 46.61.581 and 1988 c 74 s 1 are each amended to read as follows:

A parking space or stall for a disabled person shall be indicated by a vertical sign, between thirty-six and eighty-four inches off the ground, with the international symbol of access, whose colors are white on a blue background, described under RCW 70.92.120 and the notice "State disabled parking permit required."

Failure of the person owning or controlling the property where required parking spaces are located to erect and maintain the sign is a class ((4)) 2 civil infraction under chapter 7.80 RCW for each parking space that should be so designated. The person owning or controlling the property where the required parking spaces are located shall ensure that the parking spaces are not blocked or made inaccessible, and failure to do so is a class 2 civil infraction.

Sec. 3. RCW 46.63.020 and 1997 c 229 s 13 and 1997 c 66 s 8 are each reenacted and amended to read as follows:

Failure to perform any act required or the performance of any act prohibited by this title or an equivalent administrative regulation or local law, ordinance, regulation, or resolution relating to traffic including parking, standing, stopping, and pedestrian offenses, is designated as a traffic infraction and may not be classified as a criminal offense, except for an offense contained in the following provisions of this title or a violation of an equivalent administrative regulation or local law, ordinance, regulation, or resolution:

(1) RCW 46.09.120(2) relating to the operation of a nonhighway vehicle while under the influence of intoxicating liquor or a controlled substance;

(2) RCW 46.09.130 relating to operation of nonhighway vehicles;

- (3) RCW 46.10.090(2) relating to the operation of a snowmobile while under the influence of intoxicating liquor or narcotics or habit-forming drugs or in a manner endangering the person of another;
- (4) RCW 46.10.130 relating to the operation of snowmobiles;
- (5) Chapter 46.12 RCW relating to certificates of ownership and registration and markings indicating that a vehicle has been destroyed or declared a total loss;
- (6) RCW 46.16.010 relating to initial registration of motor vehicles;
- (7) RCW 46.16.011 relating to permitting unauthorized persons to drive;
- (8) RCW 46.16.160 relating to vehicle trip permits;
- (9) RCW 46.16.381 (~~((6) or (9))~~) (2) relating to (~~unauthorized use or acquisition of~~) knowingly providing false information in conjunction with an application for a special placard or license plate for disabled persons' parking;
- (10) RCW 46.20.005 relating to driving without a valid driver's license;
- (11) RCW 46.20.091 relating to false statements regarding a driver's license or instruction permit;
- (12) RCW 46.20.336 relating to the unlawful possession and use of a driver's license;
- (13) RCW 46.20.342 relating to driving with a suspended or revoked license or status;
- (14) RCW 46.20.410 relating to the violation of restrictions of an occupational driver's license;
- (15) RCW 46.20.420 relating to the operation of a motor vehicle with a suspended or revoked license;
- (16) RCW 46.20.740 relating to operation of a motor vehicle without an ignition interlock device in violation of a license notation that the device is required;
- (17) RCW 46.20.750 relating to assisting another person to start a vehicle equipped with an ignition interlock device;
- (18) RCW 46.25.170 relating to commercial driver's licenses;
- (19) Chapter 46.29 RCW relating to financial responsibility;
- (20) RCW 46.30.040 relating to providing false evidence of financial responsibility;
- (21) RCW 46.37.435 relating to wrongful installation of suncreening material;
- (22) RCW 46.44.180 relating to operation of mobile home pilot vehicles;
- (23) RCW 46.48.175 relating to the transportation of dangerous articles;
- (24) RCW 46.52.010 relating to duty on striking an unattended car or other property;
- (25) RCW 46.52.020 relating to duty in case of injury to or death of a person or damage to an attended vehicle;
- (26) RCW 46.52.090 relating to reports by repairmen, storagemen, and appraisers;
- (27) RCW 46.52.100 relating to driving under the influence of liquor or drugs;

- (28) RCW 46.52.130 relating to confidentiality of the driving record to be furnished to an insurance company, an employer, and an alcohol/drug assessment or treatment agency;
- (29) RCW 46.55.020 relating to engaging in the activities of a registered tow truck operator without a registration certificate;
- (30) RCW 46.55.035 relating to prohibited practices by tow truck operators;
- (31) RCW 46.61.015 relating to obedience to police officers, flagmen, or fire fighters;
- (32) RCW 46.61.020 relating to refusal to give information to or cooperate with an officer;
- (33) RCW 46.61.022 relating to failure to stop and give identification to an officer;
- (34) RCW 46.61.024 relating to attempting to elude pursuing police vehicles;
- (35) RCW 46.61.500 relating to reckless driving;
- (36) RCW 46.61.502 and 46.61.504 relating to persons under the influence of intoxicating liquor or drugs;
- (37) RCW 46.61.503 relating to a person under age twenty-one driving a motor vehicle after consuming alcohol;
- (38) RCW 46.61.520 relating to vehicular homicide by motor vehicle;
- (39) RCW 46.61.522 relating to vehicular assault;
- (40) RCW 46.61.5249 relating to first degree negligent driving;
- (41) RCW 46.61.527(4) relating to reckless endangerment of roadway workers;
- (42) RCW 46.61.530 relating to racing of vehicles on highways;
- (43) RCW 46.61.685 relating to leaving children in an unattended vehicle with the motor running;
- (44) RCW 46.64.010 relating to unlawful cancellation of or attempt to cancel a traffic citation;
- (45) RCW 46.64.048 relating to attempting, aiding, abetting, coercing, and committing crimes;
- (46) Chapter 46.65 RCW relating to habitual traffic offenders;
- (47) RCW 46.68.010 relating to false statements made to obtain a refund;
- (48) Chapter 46.70 RCW relating to unfair motor vehicle business practices, except where that chapter provides for the assessment of monetary penalties of a civil nature;
- (49) Chapter 46.72 RCW relating to the transportation of passengers in for hire vehicles;
- (50) RCW 46.72A.060 relating to limousine carrier insurance;
- (51) RCW 46.72A.070 relating to operation of a limousine without a vehicle certificate;
- (52) RCW 46.72A.080 relating to false advertising by a limousine carrier;
- (53) Chapter 46.80 RCW relating to motor vehicle wreckers;
- (54) Chapter 46.82 RCW relating to driver's training schools;

(55) RCW 46.87.260 relating to alteration or forgery of a cab card, letter of authority, or other temporary authority issued under chapter 46.87 RCW;

(56) RCW 46.87.290 relating to operation of an unregistered or unlicensed vehicle under chapter 46.87 RCW.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 295

[Engrossed Substitute Senate Bill 6191]

DEEDS OF TRUST—REVISIONS

AN ACT Relating to deeds of trust; amending RCW 61.24.010, 61.24.020, 61.24.030, 61.24.040, 61.24.050, 61.24.060, 61.24.070, 61.24.080, 61.24.090, 61.24.100, 61.24.110, 61.24.130, 7.28.300, and 7.60.020; and adding new sections to chapter 61.24 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 61.24 RCW to read as follows:

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

(1) "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.

(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) "Affiliate of beneficiary" means any entity which controls, is controlled by, or is under common control with a beneficiary.

(4) "Trustee" means the person designated as the trustee in the deed of trust or appointed under RCW 61.24.010(2).

(5) "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.

(6) "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.

(7) "Commercial loan" means a loan that is not made primarily for personal, family, or household purposes.

(8) "Trustee's sale" means a nonjudicial sale under a deed of trust undertaken pursuant to this chapter.

(9) "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.

(10) "Record" and "recorded" includes the appropriate registration proceedings, in the instance of registered land.

(11) "Person" means any natural person, or legal or governmental entity.

Sec. 2. RCW 61.24.010 and 1991 c 72 s 58 are each amended to read as follows:

~~(1) ((The terms "record" and "recorded" as used in this chapter, shall include the appropriate registration proceedings, in the instance of registered land:~~

~~—(2)))~~ The trustee of a deed of trust under this chapter shall be:

(a) Any domestic corporation incorporated under Title 23B, 30, 31, 32, or 33 RCW of which at least one officer is a Washington resident; or

(b) Any title insurance company authorized to insure title to real property under the laws of this state, or its agents; or

(c) Any attorney who is an active member of the Washington state bar association at the time ~~((he))~~ the attorney is named trustee; or

~~(d) Any professional corporation incorporated under chapter 18.100 RCW, ((all of whose shareholders are licensed attorneys))~~ any professional limited liability company formed under chapter 25.15 RCW, any general partnership, including limited liability partnerships, formed under chapter 25.04 RCW, all of whose shareholders, members, or partners, respectively, are either licensed attorneys or entities, provided all of the owners of those entities are licensed attorneys, or any domestic corporation wholly owned by any of the entities under this subsection (1)(d); or

(e) Any agency or instrumentality of the United States government; or

(f) Any national bank, savings bank, or savings and loan association chartered under the laws of the United States.

~~(((3)))~~ (2) The trustee ((shall)) may resign ((at the request of the beneficiary and may resign)) at its own election((-)) or be replaced by the beneficiary. The trustee shall give prompt written notice of its resignation to the beneficiary. The resignation of the trustee shall become effective upon the recording of the notice of resignation in each county in which the deed of trust is recorded. If a trustee is not appointed in the deed of trust, or upon the resignation, incapacity, disability, absence, or death of the trustee, or the election of the beneficiary to replace the trustee, the beneficiary shall ((nominate in writing)) appoint a trustee or a successor trustee. Upon recording ((in the mortgage records of the county or counties)) the appointment of a successor trustee in each county in which the

~~((trust)) deed of trust is recorded, ((of the appointment of a successor trustee,)) the successor trustee shall be vested with all powers of ((the)) an original trustee.~~

Sec. 3. RCW 61.24.020 and 1985 c 193 s 2 are each amended to read as follows:

Except as provided in this chapter, a deed of trust is subject to all laws relating to mortgages on real property. A deed conveying real property to a trustee in trust to secure the performance of an obligation of the grantor or another to the beneficiary may be foreclosed ~~((as in this chapter provided))~~ by trustee's sale. The county auditor shall record ~~((such))~~ the deed as a mortgage and shall index the name of the grantor as mortgagor and the names of the trustee and beneficiary as mortgagee. No person, corporation or association may be both trustee and beneficiary under the same deed of trust: PROVIDED, That any agency of the United States government may be both trustee and beneficiary under the same deed of trust. A deed of trust conveying real property that is used principally for agricultural purposes may be foreclosed as a mortgage. Pursuant to RCW 62A.9-501(4), when a deed of trust encumbers both real and personal property, the trustee is authorized to sell all or any portion of the grantor's interest in that real and personal property at a trustee's sale.

Sec. 4. RCW 61.24.030 and 1990 c 111 s 1 are each amended to read as follows:

It shall be requisite ~~((to foreclosure under this chapter))~~ to a trustee's sale:

(1) That the deed of trust contains a power of sale;

(2) That the deed of trust ~~((provides in its terms))~~ contains a statement that the real property conveyed is not used principally for agricultural ((or farming)) 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 ~~((or the beneficiary's successor))~~ 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 ~~((not))~~ granted to secure ~~((an obligation incurred primarily for personal, family, or household purposes))~~ 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; ~~((and))~~

(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 have a street address in this state where personal service of process may be made; and

(7) 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 ~~((or any successor in interest))~~ at ~~((his))~~ their last known ~~((address))~~ 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 ~~((said))~~ the premises, a copy of ~~((said))~~ the notice, or personally served on the borrower and grantor ~~((or his successor in interest))~~. This notice shall contain the following information:

(a) A description of the property which is then subject to the deed of trust;

(b) ~~((The book and the page of the book of records wherein the deed of trust is recorded))~~ 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) That the beneficiary has declared the borrower or grantor ~~((or any successor in interest))~~ 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) The total of ~~((subparagraphs))~~ (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) That failure to cure ~~((said))~~ 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 ~~((subparagraph))~~ (a) of this subsection may be sold at public auction at a date no less than one hundred twenty days in the future;

(h) 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) That the effect of the sale of the grantor's property by the trustee will be to deprive the grantor ~~((or his successor in interest and all those who hold by, through or under him))~~ of all their interest in the property described in ~~((subsection))~~ (a) of this subsection; and

(j) That the borrower, grantor (~~(or any successor in interest)~~), and any guarantor has recourse to the courts pursuant to RCW 61.24.130 to contest the alleged default on any proper ground.

Sec. 5. RCW 61.24.040 and 1989 c 361 s 1 are each amended to read as follows:

A deed of trust foreclosed under this chapter shall be foreclosed as follows:

(1) At least ninety days before the sale, the trustee shall:

(a) Record a notice in the form described in RCW 61.24.040(1)(f) in the office of the auditor in each county in which the deed of trust is recorded;

(b) To the extent the trustee elects to foreclose its lien or interest, or the beneficiary elects to preserve its right to seek a deficiency judgment against a borrower or grantor under RCW 61.24.100(3)(a), and if their addresses are stated in a recorded instrument evidencing their interest, lien, or claim of lien, or an amendment thereto, or are otherwise known to the trustee, cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the following persons or their legal representatives, if any, at such address:

(i) The borrower and grantor (~~(or the grantor's successor in interest)~~);

(ii) The beneficiary of any deed of trust or mortgagee of any mortgage, or any person who has a lien or claim of lien against the property, that was recorded subsequent to the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iii) The vendee in any real estate contract, the lessee in any lease, or the holder of any conveyances of any interest or estate in any portion or all of the property described in such notice, if that contract, lease, or conveyance of such interest or estate, or a memorandum or other notice thereof, was recorded after the recordation of the deed of trust being foreclosed and before the recordation of the notice of sale;

(iv) The last holder of record of any other lien against or interest in the property that is subject to a subordination to the deed of trust being foreclosed that was recorded before the recordation of the notice of sale; (~~and~~)

(v) The last holder of record of the lien of any judgment subordinate to the deed of trust being foreclosed; and

(vi) The occupants of property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, whether or not the occupant's rental agreement is recorded, which notice may be a single notice addressed to "occupants" for each unit known to the trustee or beneficiary;

(c) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to the plaintiff or the plaintiff's attorney of record, in any court action to foreclose a lien or other encumbrance on all or any part of the property, provided a court action is pending and a lis pendens in connection therewith is

recorded in the office of the auditor of any county in which all or part of the property is located on the date the notice is recorded;

(d) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be transmitted by both first class and either certified or registered mail, return receipt requested, to any person who has recorded a request for notice in accordance with RCW 61.24.045, at the address specified in such person's most recently recorded request for notice;

(e) Cause a copy of the notice of sale described in RCW 61.24.040(1)(f) to be posted in a conspicuous place on the property, or in lieu of posting, cause a copy of said notice to be served upon any occupant of the property;

(f) The notice shall be in substantially the following form:

NOTICE OF TRUSTEE'S SALE

I.

NOTICE IS HEREBY GIVEN that the undersigned Trustee will on the . . . day of, ((19)). . . , at the hour of . . . o'clock . . . M. at [street address and location if inside a building] in the City of, State of Washington, sell at public auction to the highest and best bidder, payable at the time of sale, the following described real property, situated in the County(ies) of, State of Washington, to-wit:

If any personal property is to be included in the trustee's sale, include a description that reasonably identifies such personal property]

which is subject to that certain Deed of Trust dated, ((19)). . . , recorded, ((19)). . . , under Auditor's File No., records of County, Washington, from, as Grantor, to, as Trustee, to secure an obligation in favor of, as Beneficiary, the beneficial interest in which was assigned by, under an Assignment recorded under Auditor's File No. [Include recording information for all counties if the Deed of Trust is recorded in more than one county.]

II.

No action commenced by the Beneficiary of the Deed of Trust (~~or the Beneficiary's successor~~) is now pending to seek satisfaction of the obligation in any Court by reason of the Borrower's or Grantor's default on the obligation secured by the Deed of Trust.

If there is another action pending to foreclose other security for all or part of the same debt, qualify the statement and identify the action.]

III.

The default(s) for which this foreclosure is made is/are as follows:

[If default is for other than payment of money, set forth the particulars]

Failure to pay when due the following amounts which are now in arrears:

IV.

The sum owing on the obligation secured by the Deed of Trust is: Principal \$, together with interest as provided in the note or other instrument secured from the day of, ((+9)). . ., and such other costs and fees as are due under the note or other instrument secured, and as are provided by statute.

V.

The above-described real property will be sold to satisfy the expense of sale and the obligation secured by the Deed of Trust as provided by statute. The sale will be made without warranty, express or implied, regarding title, possession, or encumbrances on the day of, ((+9)). . . The default(s) referred to in paragraph III must be cured by the day of, ((+9)). . . (11 days before the sale date), to cause a discontinuance of the sale. The sale will be discontinued and terminated if at any time on or before the day of, ((+9)). . . (11 days before the sale date), the default(s) as set forth in paragraph III is/are cured and the Trustee's fees and costs are paid. The sale may be terminated any time after the day of, ((+9)). . . (11 days before the sale date), and before the sale by the Borrower, Grantor (~~or the Grantor's successor in interest~~), any Guarantor, or the holder of any recorded junior lien or encumbrance paying the entire principal and interest secured by the Deed of Trust, plus costs, fees, and advances, if any, made pursuant to the terms of the obligation and/or Deed of Trust, and curing all other defaults.

VI.

A written notice of default was transmitted by the Beneficiary or Trustee to the Borrower and Grantor (~~or the Grantor's successor in interest~~) at the following (address) addresses:

.....
.....
.....

by both first class and certified mail on the day of, ((+9)). . ., proof of which is in the possession of the Trustee; and the Borrower and Grantor (~~or the Grantor's successor in interest was~~) were personally served on the day of, ((+9)). . ., with said written notice of default or the written notice of

default was posted in a conspicuous place on the real property described in paragraph I above, and the Trustee has possession of proof of such service or posting.

VII.

The Trustee whose name and address are set forth below will provide in writing to anyone requesting it, a statement of all costs and fees due at any time prior to the sale.

VIII.

The effect of the sale will be to deprive the Grantor and all those who hold by, through or under the Grantor of all their interest in the above-described property.

IX.

Anyone having any objection to the sale on any grounds whatsoever will be afforded an opportunity to be heard as to those objections if they bring a lawsuit to restrain the sale pursuant to RCW 61.24.130. Failure to bring such a lawsuit may result in a waiver of any proper grounds for invalidating the Trustee's sale.

[Add Part X to this notice if applicable under RCW 61.24.040(9)]

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.....
....., Trustee
..... }
..... } Address
..... }
..... } Phone

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~~(((Individual or corporate))~~ Acknowledgment]

(2) In addition to providing the borrower and grantor (~~(or the grantor's successor in interest)~~) the notice of sale described in RCW 61.24.040(1)(f), the trustee shall include with the copy of the notice which is mailed to the grantor (~~(or the grantor's successor in interest)~~), a statement to the grantor (~~(or the grantor's successor in interest)~~) in substantially the following form:

NOTICE OF FORECLOSURE
Pursuant to the Revised Code of Washington,
Chapter 61.24 RCW

The attached Notice of Trustee's Sale is a consequence of default(s) in the obligation to, the Beneficiary of your Deed of Trust and owner of the obligation secured thereby. Unless the default(s) is/are cured, your property will be sold at auction on the . . . day of, ((49)). . .

To cure the default(s), you must bring the payments current, cure any other defaults, and pay accrued late charges and other costs, advances, and attorneys' fees as set forth below by the . . . day of, ((49)). . . ((f))[11 days before the sale date((s))]. To date, these arrears and costs are as follows:

	Currently due to reinstate on.	Estimated amount that will be due to reinstate on. (11 days before the date set for sale)
Delinquent payments from, ((\$)). . ., in the amount of \$. . . /mo.:	\$	\$
Late charges in the total amount of:	\$	\$
		Estimated Amounts
Attorneys' fees:	\$	\$
Trustee's fee:	\$	\$
Trustee's expenses: (Itemization)		
Title report	\$	\$
Recording fees	\$	\$
Service/Posting of Notices	\$	\$
Postage/Copying expense	\$	\$
Publication	\$	\$
Telephone charges	\$	\$
Inspection fees	\$	\$
.	\$	\$
.	\$	\$
TOTALS	\$	\$

As to the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust, you must cure each such default. Listed below are the defaults which do not involve payment of money to the Beneficiary of your Deed of Trust. Opposite each such listed default is a brief description of the action necessary to cure the default and a description of the documentation necessary to show that the default has been cured.

Default	Description of Action Required to Cure and Documentation Necessary to Show Cure
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.....
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You may reinstate your Deed of Trust and the obligation secured thereby at any time up to and including the . . . day of, ((+9)). . . ((-)) [11 days before the sale date((+))], by paying the amount set forth or estimated above and by curing any other defaults described above. Of course, as time passes other payments may become due, and any further payments coming due and any additional late charges must be added to your reinstating payment. Any new defaults not involving payment of money that occur after the date of this notice must also be cured in order to effect reinstatement. In addition, because some of the charges can only be estimated at this time, and because the amount necessary to reinstate may include presently unknown expenditures required to preserve the property or to comply with state or local law, it will be necessary for you to contact the Trustee before the time you tender reinstatement so that you may be advised of the exact amount you will be required to pay. Tender of payment or performance must be made to:, whose address is, telephone () AFTER THE DAY OF, ((+9)). . ., YOU MAY NOT REINSTATE YOUR DEED OF TRUST BY PAYING THE BACK PAYMENTS AND COSTS AND FEES AND CURING THE OTHER DEFAULTS AS OUTLINED ABOVE. In such a case, you will only be able to stop the sale by paying, before the sale, the total principal balance (\$) plus accrued interest, costs and advances, if any, made pursuant to the terms of the documents and by curing the other defaults as outlined above.

You may contest this default by initiating court action in the Superior Court of the county in which the sale is to be held. In such action, you may raise any legitimate defenses you have to this default. A copy of your Deed of Trust and documents evidencing the obligation secured thereby are enclosed. You may wish to consult a lawyer. Legal action on your part may prevent or restrain the sale, but only if you persuade the court of the merits of your defense.

The court may grant a restraining order or injunction to restrain a trustee's sale pursuant to RCW 61.24.130 upon five days notice to the trustee of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. Notice and other process may be served on the trustee at;

NAME: _____

ADDRESS: _____

TELEPHONE NUMBER: _____

If you do not reinstate the secured obligation and your Deed of Trust in the manner set forth above, or if you do not succeed in restraining the sale by court action, your property will be sold ~~((to satisfy the obligations secured by your Deed of Trust))~~. The effect of such sale will be to deprive you and all those who hold by, through or under you of all interest in the property;

(3) In addition, the trustee shall cause a copy of the notice of sale described in RCW 61.24.040(1)(f) (excluding the acknowledgment) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once on or between the ~~((thirty-second))~~ thirty-fifth and twenty-eighth day before the date of sale, and once on or between the ~~((eleventh))~~ fourteenth and seventh day before the date of sale;

(4) On the date and at the time designated in the notice of sale, the trustee or its authorized agent shall sell the property at public auction to the highest bidder. The trustee may sell the property in gross or in parcels as the trustee shall deem most advantageous;

(5) The place of sale shall be at any designated public place within the county where the property is located and if the property is in more than one county, the sale may be in any of the counties where the property is located. The sale shall be on Friday, or if Friday is a legal holiday on the following Monday, and during the hours set by statute for the conduct of sales of real estate at execution;

(6) The trustee may for any cause the trustee deems advantageous, continue the sale for a period or periods not exceeding a total of one hundred twenty days by a public proclamation at the time and place fixed for sale in the notice of sale or, alternatively, by giving notice of the time and place of the postponed sale in the manner and to the persons specified in RCW 61.24.040(1) (b), (c), (d), and (e) and publishing a copy of such notice once in the newspaper(s) described in RCW 61.24.040(3), more than seven days before the date fixed for sale in the notice of sale. No other notice of the postponed sale need be given;

(7) The purchaser shall forthwith pay the price bid and on payment the trustee shall execute to the purchaser its deed; the deed shall recite the facts showing that the sale was conducted in compliance with all of the requirements of this chapter and of the deed of trust, which recital shall be prima facie evidence of such compliance and conclusive evidence thereof in favor of bona fide purchasers and encumbrancers for value, except that these recitals shall not affect the lien or interest of any person entitled to notice under RCW 61.24.040(1), if the trustee fails to give the required notice to such person. In such case, the lien or interest of such omitted person shall not be affected by the sale and such omitted person shall be treated as if such person was the holder of the same lien or interest and was omitted as a party defendant in a judicial foreclosure proceeding;

(8) The sale as authorized under this chapter shall not take place less than one hundred ninety days from the date of default in any of the obligations secured.

(9) If the trustee elects to foreclose the interest of any occupant or tenant of property comprised solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, the following notice shall be included as Part X of the Notice of Trustee's Sale:

X.

NOTICE TO OCCUPANTS OR TENANTS

The purchaser at the trustee's sale is entitled to possession of the property on the 20th day following the sale, as against the grantor under the deed of trust (the owner) and anyone having an interest junior to the deed of trust, including occupants and tenants. After the 20th day following the sale the purchaser has the right to evict occupants and tenants by summary proceedings under the unlawful detainer act, chapter 59.12 RCW.

(10) Only one copy of all notices required by this chapter need be given to a person who is both the borrower and the grantor. All notices required by this chapter that are given to a general partnership are deemed given to each of its general partners, unless otherwise agreed by the parties.

NEW SECTION. Sec. 6. A new section is added to chapter 61.24 RCW to read as follows:

The beneficiary may give the notices of default, trustee's sale, and foreclosure referred to in RCW 61.24.030(7) and 61.24.040 to any one or more of the guarantors of a commercial loan at the time they are given to the grantor. In addition to the information contained in the notices provided to the grantor, these notices shall state that (1) the guarantor may be liable for a deficiency judgment to the extent the sale price obtained at the trustee's sale is less than the debt secured by the deed of trust; (2) the guarantor has the same rights to reinstate the debt, cure the default, or repay the debt as is given to the grantor in order to avoid the trustee's sale; (3) the guarantor will have no right to redeem the property after the trustee's sale; (4) subject to such longer periods as are provided in the Washington deed of trust act, chapter 61.24 RCW, any action brought to enforce a guaranty must be commenced within one year after the trustee's sale, or the last trustee's sale under any deed of trust granted to secure the same debt; and (5) in any action for a deficiency, the guarantor will have the right to establish the fair value of the property as of the date of the trustee's sale, less prior liens and encumbrances, and to limit its liability for a deficiency to the difference between the debt and the greater of such fair value or the sale price paid at the trustee's sale, plus interest and costs. The failure of the beneficiary to provide any guarantor the notice referred to in this section does not invalidate either the notices given to the borrower or the grantor, or the trustee's sale.

Sec. 7. RCW 61.24.050 and 1965 c 74 s 5 are each amended to read as follows:

~~((The deed of the trustee, executed to the purchaser,))~~ When delivered to the purchaser, the trustee's deed shall convey all of the right, title, and interest in the

real and personal property sold at the trustee's sale which the grantor had or had the power to convey at the time of the execution ~~((by him))~~ of the deed of trust, and such as ~~((he))~~ the grantor may have thereafter acquired. If the trustee accepts a bid, then the trustee's sale is final as of the date and time of such acceptance if the trustee's deed is recorded within fifteen days thereafter. After a trustee's sale, ~~((as in this chapter provided;))~~ no person shall have any right, by statute or otherwise, to redeem ~~((from the deed of trust or from))~~ the property sold at the trustee's sale.

Sec. 8. RCW 61.24.060 and 1967 c 30 s 2 are each amended to read as follows:

The purchaser at the trustee's sale shall be entitled to possession of the property on the twentieth day following the sale, as against the grantor under the deed of trust ~~((or anyone claiming through him;))~~ and anyone having an interest junior to the deed of trust, including occupants and tenants, who were given all of the notices to which they were entitled under this chapter. The purchaser shall also have a right to the summary proceedings to obtain possession of real property provided in chapter 59.12 RCW.

Sec. 9. RCW 61.24.070 and 1965 c 74 s 7 are each amended to read as follows:

(1) The trustee may not bid at the trustee's sale. Any other person, including the beneficiary ~~((under the deed of trust)),~~ may bid at the trustee's sale.

(2) The trustee shall, at the request of the beneficiary, credit toward the beneficiary's bid all or any part of the monetary obligations secured by the deed of trust. If the beneficiary is the purchaser, any amount bid by the beneficiary in excess of the amount so credited shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof. If the purchaser is not the beneficiary, the entire bid shall be paid to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof.

Sec. 10. RCW 61.24.080 and 1981 c 161 s 5 are each amended to read as follows:

The trustee shall apply the proceeds of the sale as follows:

(1) To the expense of sale, including a reasonable charge by the trustee and by his or her attorney: PROVIDED, That the aggregate of the charges by the trustee and his or her attorney, for their services in the sale, shall not exceed the amount which would, by the superior court of the county in which the trustee's sale occurred, have been deemed a reasonable attorney fee, had the trust deed been foreclosed as a mortgage in a noncontested action in ~~((the said))~~ that court;

(2) To the obligation secured by the deed of trust; and

(3) The surplus, if any, less the clerk's filing fee, shall be deposited, together with written notice of the amount of the surplus, a copy of the ~~((recorded))~~ notice of trustee's sale, and an affidavit of mailing as provided in this subsection, with

the clerk of the superior court of the county in which the sale took place. The trustee shall mail copies of the notice of the surplus, the notice of trustee's sale, and the affidavit of mailing to each party to whom the notice of trustee's sale was sent pursuant to RCW 61.24.040(1). The clerk shall index such funds under the name of the grantor as set out in the recorded notice. Upon ~~((depositing such surplus))~~ compliance with this subsection, the trustee shall be discharged from all further responsibilities ~~((therefor))~~ for the surplus. Interests in, or liens or claims of liens against the property eliminated by sale under this section shall attach to ~~((such))~~ the surplus in the order of priority that it had attached to the property. A party seeking disbursement of the surplus funds shall file a motion requesting disbursement in the superior court for the county in which the surplus funds are deposited. Notice of the motion shall be personally served upon, or mailed in the manner specified in RCW 61.24.040(1)(b), to all parties to whom the trustee mailed notice of the surplus, and any other party who has entered an appearance in the proceeding, not less than twenty days prior to the hearing of the motion. The clerk shall not disburse such surplus except upon order of the superior court of such county.

Sec. 11. RCW 61.24.090 and 1987 c 352 s 4 are each amended to read as follows:

(1) At any time prior to the eleventh day before the date set by the trustee for the sale in the recorded notice of sale, or in the event the trustee continues the sale pursuant to RCW 61.24.040(6), at any time prior to the eleventh day before the actual sale, the borrower, grantor ((or his successor in interest)), any guarantor, any beneficiary under a subordinate deed of trust, or any person having a subordinate lien or encumbrance of record on the trust property or any part thereof, shall be entitled to cause a discontinuance of the sale proceedings by curing the default or defaults set forth in the notice, which in the case of a default by failure to pay, shall be by paying to the trustee:

(a) The entire amount then due under the terms of the deed of trust and the obligation secured thereby, other than such portion of the principal as would not then be due had no default occurred, and

(b) The expenses actually incurred by the trustee enforcing the terms of the note and deed of trust, including a reasonable trustee's fee, together with the trustee's reasonable attorney's fees, together with costs of recording the notice of discontinuance of notice of trustee's sale.

(2) Any person entitled to cause a discontinuance of the sale proceedings shall have the right, before or after reinstatement, to request any court, excluding a small claims court, for disputes within the jurisdictional limits of that court, to determine the reasonableness of any fees demanded or paid as a condition to reinstatement. The court shall make such determination as it deems appropriate, which may include an award to the prevailing party of its costs and reasonable attorneys' fees, and render judgment accordingly. An action to determine fees shall not forestall any sale or affect its validity.

(3) Upon receipt of such payment the proceedings shall be discontinued, the deed of trust shall be reinstated and the obligation shall remain as though no acceleration had taken place.

(4) In the case of a default which is occasioned by other than failure to make payments, the person or persons causing the said default shall pay the expenses incurred by the trustee and the trustee's fees as set forth in subsection (1)(b) of this section.

(5) Any person having a subordinate lien of record on the trust property and who has cured the default or defaults pursuant to this section shall thereafter have included in his lien all payments made to cure any defaults, including interest thereon at eight percent per annum, payments made for trustees' costs and fees incurred as authorized ((herein)), and ((his)) reasonable attorney's fees and costs incurred resulting from any judicial action commenced to enforce his or her rights to advances under this section.

(6) If the default is cured and the obligation and the deed of trust reinstated in the manner ((hereinabove)) provided, the trustee shall properly execute, acknowledge, and cause to be recorded a notice of discontinuance of trustee's sale under ((such)) that deed of trust. A notice of discontinuance of trustee's sale when so executed and acknowledged is entitled to be recorded and shall be sufficient if it sets forth a record of the deed of trust and the auditor's file number under which the deed of trust is recorded, and a reference to the notice of sale and the auditor's file number under which the notice of sale is recorded, and a notice that ((such)) the sale is discontinued.

(7) Any payments required under this section as a condition precedent to reinstatement of the deed of trust shall be tendered to the trustee in the form of cash, certified check, cashier's check, money order, or funds received by verified electronic transfer, or any combination thereof.

Sec. 12. RCW 61.24.100 and 1990 c 111 s 2 are each amended to read as follows:

~~((Foreclosure, as in this chapter provided, shall satisfy the obligation secured by the deed of trust foreclosed, regardless of the sale price or fair value, and no deficiency decree or other judgment shall thereafter be obtained on such obligation, except that if such obligation was not incurred primarily for personal, family, or household purposes, such foreclosure shall not preclude any judicial or nonjudicial foreclosure of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure such obligation. Where foreclosure is not made under this chapter, the beneficiary shall not be precluded from enforcing the security as a mortgage nor from enforcing the obligation by any means provided by law.))~~ (1) Except to the extent permitted in this section for deeds of trust securing commercial loans, a deficiency judgment shall not be obtained on the obligations secured by a deed of trust against any borrower, grantor, or guarantor after a trustee's sale under that deed of trust.

(2)(a) Nothing in this chapter precludes an action against any person liable on the obligations secured by a deed of trust or any guarantor prior to a notice of trustee's sale being given pursuant to this chapter or after the discontinuance of the trustee's sale.

(b) No action under (a) of this subsection precludes the beneficiary from commencing a judicial foreclosure or trustee's sale under the deed of trust after the completion or dismissal of that action.

(3) This chapter does not preclude any one or more of the following after a trustee's sale under a deed of trust securing a commercial loan executed after the effective date of this section:

(a)(i) To the extent the fair value of the property sold at the trustee's sale to the beneficiary or an affiliate of the beneficiary is less than the unpaid obligation secured by the deed of trust immediately prior to the trustee's sale, an action for a deficiency judgment against the borrower or grantor, if such person or persons was timely given the notices under RCW 61.24.040, for (A) any decrease in the fair value of the property caused by waste to the property committed by the borrower or grantor, respectively, after the deed of trust is granted, and (B) the wrongful retention of any rents, insurance proceeds, or condemnation awards by the borrower or grantor, respectively, that are otherwise owed to the beneficiary.

(ii) This subsection (3)(a) does not apply to any property that is occupied by the borrower as its principal residence as of the date of the trustee's sale;

(b) Any judicial or nonjudicial foreclosures of any other deeds of trust, mortgages, security agreements, or other security interests or liens covering any real or personal property granted to secure the obligation that was secured by the deed of trust foreclosed; or

(c) Subject to this section, an action for a deficiency judgment against a guarantor if the guarantor is timely given the notices under section 6 of this act.

(4) Any action referred to in subsection (3)(a) and (c) of this section shall be commenced within one year after the date of the trustee's sale, or a later date to which the liable party otherwise agrees in writing with the beneficiary after the notice of foreclosure is given, plus any period during which the action is prohibited by a bankruptcy, insolvency, moratorium, or other similar debtor protection statute. If there occurs more than one trustee's sale under a deed of trust securing a commercial loan or if trustee's sales are made pursuant to two or more deeds of trust securing the same commercial loan, the one-year limitation in this section begins on the date of the last of those trustee's sales.

(5) In any action against a guarantor following a trustee's sale under a deed of trust securing a commercial loan, the guarantor may request the court or other appropriate adjudicator to determine, or the court or other appropriate adjudicator may in its discretion determine, the fair value of the property sold at the sale and the deficiency judgment against the guarantor shall be for an amount equal to the sum of the total amount owed to the beneficiary by the guarantor as of the date of the trustee's sale, less the fair value of the property sold at the trustee's sale or the sale price paid at the trustee's sale, whichever is greater, plus interest on the

amount of the deficiency from the date of the trustee's sale at the rate provided in the guaranty, the deed of trust, or in any other contracts evidencing the debt secured by the deed of trust, as applicable, and any costs, expenses, and fees that are provided for in any contract evidencing the guarantor's liability for such a judgment. If any other security is sold to satisfy the same debt prior to the entry of a deficiency judgment against the guarantor, the fair value of that security, as calculated in the manner applicable to the property sold at the trustee's sale, shall be added to the fair value of the property sold at the trustee's sale as of the date that additional security is foreclosed. This section is in lieu of any right any guarantor would otherwise have to establish an upset price pursuant to RCW 61.12.060 prior to a trustee's sale.

(6) A guarantor granting a deed of trust to secure its guaranty of a commercial loan shall be subject to a deficiency judgment following a trustee's sale under that deed of trust only to the extent stated in subsection (3)(a)(i) of this section. If the deed of trust encumbers the guarantor's principal residence, the guarantor shall be entitled to receive an amount up to the homestead exemption set forth in RCW 6.13.030, without regard to the effect of RCW 6.13.080(2), from the bid at the foreclosure or trustee's sale accepted by the sheriff or trustee prior to the application of the bid to the guarantor's obligation.

(7) A beneficiary's acceptance of a deed in lieu of a trustee's sale under a deed of trust securing a commercial loan exonerates the guarantor from any liability for the debt secured thereby except to the extent the guarantor otherwise agrees as part of the deed in lieu transaction.

(8) This chapter does not preclude a beneficiary from foreclosing a deed of trust in the same manner as a real property mortgage and this section does not apply to such a foreclosure.

(9) Any contract, note, deed of trust, or guaranty may, by its express language, prohibit the recovery of any portion or all of a deficiency after the property encumbered by the deed of trust securing a commercial loan is sold at a trustee's sale.

(10) A trustee's sale under a deed of trust securing a commercial loan does not preclude an action to collect or enforce any obligation of a borrower or guarantor if that obligation, or the substantial equivalent of that obligation, was not secured by the deed of trust.

(11) Unless the guarantor otherwise agrees, a trustee's sale shall not impair any right or agreement of a guarantor to be reimbursed by a borrower or grantor for a deficiency judgment against the guarantor.

(12) Notwithstanding anything in this section to the contrary, the rights and obligations of any borrower, grantor, and guarantor following a trustee's sale under a deed of trust securing a commercial loan or any guaranty of such a loan executed prior to the effective date of this section shall be determined in accordance with the laws existing prior to the effective date of this section.

Sec. 13, RCW 61.24.110 and 1981 c 161 s 7 are each amended to read as follows:

The trustee shall reconvey all or any part of the property (~~covered~~) encumbered by the deed of trust to the person entitled thereto on written request of the beneficiary, or upon satisfaction of the obligation secured and written request for reconveyance made by the beneficiary or the person entitled thereto.

Sec. 14. RCW 61.24.130 and 1987 c 352 s 5 are each amended to read as follows:

(1) Nothing contained in this chapter shall prejudice the right of the borrower, grantor, ((the grantor's successor in interest)) any guarantor, or any person who has an interest in, lien, or claim of lien against the property or some part thereof, to restrain, on any proper ground, a trustee's sale. The court shall require as a condition of granting the restraining order or injunction that the applicant pay to the clerk of the court the sums that would be due on the obligation secured by the deed of trust if the deed of trust was not being foreclosed:

(a) In the case of default in making the periodic payment of principal, interest, and reserves, such sums shall be the periodic payment of principal, interest, and reserves paid to the clerk of the court every thirty days.

(b) In the case of default in making payment of an obligation then fully payable by its terms, such sums shall be the amount of interest accruing monthly on said obligation at the nondefault rate, paid to the clerk of the court every thirty days.

In the case of default in performance of any nonmonetary obligation secured by the deed of trust, the court shall impose such conditions as it deems just.

In addition, the court may condition granting the restraining order or injunction upon the giving of security by the applicant, in such form and amount as the court deems proper, for the payment of such costs and damages, including attorneys' fees, as may be later found by the court to have been incurred or suffered by any party by reason of the restraining order or injunction. The court may consider, upon proper showing, the grantor's equity in the property in determining the amount of said security.

(2) No court may grant a restraining order or injunction to restrain a trustee's sale unless the person seeking the restraint gives five days notice to the trustee (~~and the beneficiary~~) of the time when, place where, and the judge before whom the application for the restraining order or injunction is to be made. This notice shall include copies of all pleadings and related documents to be given to the judge. No judge may act upon such application unless it is accompanied by proof, evidenced by return of a sheriff, the sheriff's deputy, or by any person eighteen years of age or over who is competent to be a witness, that the notice has been served on the trustee.

(3) If the restraining order or injunction is dissolved after the date of the trustee's sale set forth in the notice as provided in RCW 61.24.040(1)(f) (~~and after the period for continuing sale as allowed by RCW 61.24.040(6)~~), the court granting such restraining order or injunction, or before whom the order or injunction is returnable, (~~has the right to~~) shall, at the request of the trustee, set

a new sale date which shall be not less than forty-five days from the date of the order dissolving the restraining order. ~~((At least thirty days before the new sale date;))~~ The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published ~~((once weekly during the three weeks preceding the time of sale))~~ in a legal newspaper in each county in which the property or any part thereof is situated once between the thirty-fifth and twenty-eighth day before the sale and once between the fourteenth and seventh day before the sale.

(4) If a trustee's sale has been stayed as a result of the filing of a petition in federal bankruptcy court and ~~((, after the period for continuing sale as allowed by RCW 61.24.040(6);))~~ an order is entered in federal bankruptcy court granting relief from the stay or closing or dismissing the case, or discharging the debtor with the effect of removing the stay, the trustee may set a new sale date which shall not be less than forty-five days after the date of the bankruptcy court's order. The trustee shall:

(a) Comply with the requirements of RCW 61.24.040(1) (a) through (f) at least thirty days before the new sale date; and

(b) Cause a copy of the notice of trustee's sale as provided in RCW 61.24.040(1)(f) to be published in a legal newspaper in each county in which the property or any part thereof is situated, once between the ~~((thirty-second))~~ thirty-fifth and twenty-eighth day before the sale and once between the ~~((eleventh))~~ fourteenth and seventh day before the sale.

(5) Subsections (3) and (4) of this section are permissive only and do not prohibit the trustee from proceeding with a trustee's sale following termination of any injunction or stay on any date to which such sale has been properly continued in accordance with RCW 61.24.040(6).

NEW SECTION. Sec. 15. A new section is added to chapter 61.24 RCW to read as follows:

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. 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.

NEW SECTION. Sec. 16. A new section is added to chapter 61.24 RCW to read as follows:

The beneficiary shall not enforce or attempt to enforce an assignment of rents by demanding or collecting rent from a tenant occupying property consisting solely of a single-family residence, or a condominium, cooperative, or other dwelling unit in a multiplex or other building containing fewer than five residential units, without first giving the tenant either a court order authorizing payment of rent to the beneficiary or a written consent by the tenant's landlord to the payment. It is a defense to an eviction based on nonpayment of rent that the tenant paid the rent due to the beneficiary pursuant to a court order or a landlord's written consent.

Sec. 17. RCW 7.28.300 and 1937 c 124 s 1 are each amended to read as follows:

The record owner of real estate may maintain an action to quiet title against the lien of a mortgage or deed of trust on the real estate where an action to foreclose such mortgage or deed of trust would be barred by the statute of limitations, and, upon proof sufficient to satisfy the court, may have judgment quieting title against such ~~((mortgage))~~ a lien.

Sec. 18. RCW 7.60.020 and 1937 c 47 s 1 are each amended to read as follows:

A receiver may be appointed by the court in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to his or her claim;

(2) In an action between partners, or other persons jointly interested in any property or fund;

(3) In all actions where it is shown that the property, fund, or rents and profits in controversy are in danger of being lost, removed, or materially injured;

(4) In an action or proceeding by a mortgagee or beneficiary for the foreclosure of a mortgage or deed of trust and the sale of the mortgaged property; when the mortgagee or beneficiary has a perfected assignment of rents pursuant to RCW 7.28.230(3)((-)); or when it appears that such property is in danger of being lost, removed, or materially injured; (or when such property is insufficient to discharge the debt, to secure the application of the rents and profits accruing, before a sale can be had);

(5) When a corporation has been dissolved, or is in the process of dissolution or is insolvent, or is in imminent danger of insolvency, or has forfeited its corporate rights, and when the court in its sound discretion deems that the appointment of a receiver is necessary to secure ample justice to the parties((-)); and

(6) ~~((And))~~ In such other cases as may be provided by law, or when, in the discretion of the court, it may be necessary to secure ample justice to the parties: PROVIDED, That no party or attorney or other person interested in an action shall be appointed receiver therein.

Passed the Senate March 7, 1998.
Passed the House March 3, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 296

[Substitute Senate Bill 6208]

AT-RISK YOUTH

AN ACT Relating to at-risk youth; amending RCW 74.13.032, 71.34.010, 71.34.020, 71.34.025, 71.34.030, 70.96A.095, 70.96A.097, 7.21.030, 13.32A.250, 13.34.165, 28A.225.090, 13.32A.080, and 13.32A.082; reenacting and amending RCW 74.13.031 and 70.96A.020; adding new sections to chapter 71.34 RCW; adding new sections to chapter 74.13 RCW; adding new sections to chapter 70.96A RCW; creating new sections; and providing an expiration date.

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

PART I - CRISIS RESIDENTIAL CENTERS AND STAFF-SECURE TREATMENT CENTERS

NEW SECTION. Sec. 1. A new section is added to chapter 74.13 RCW to read as follows:

Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department to administer and provide the services established under RCW 13.32A.197. Any such application must include a plan or plans for providing such services to at-risk youth.

***NEW SECTION.** Sec. 2. A new section is added to chapter 74.13 RCW to read as follows:

No county may receive any state funds provided by section 1 of this act until its application and plan are received by the department.

(1) The distribution of funds to a county or a group of counties shall be based on criteria including but not limited to the county's per capita income, regional or county at-risk populations, rates of poverty, and the presence of existing programs serving at-risk children.

(2) The secretary of social and health services shall reimburse a county upon presentation and approval of a valid claim pursuant to this chapter based on actual performance in meeting the terms and conditions of the approved plan and contract. Funds received by participating counties under this chapter shall not be used to replace local funds for existing programs.

(3) Funds available for county-operated staff-secure facilities and services under RCW 13.32A.197 shall not exceed the appropriation for these services specified in the biennial operating budget.

*Sec. 2 was vetoed. See message at end of chapter.

**Sec. 3. RCW 74.13.031 and 1997 c 386 s 32 and 1997 c 272 s 1 are each reenacted and amended to read as follows:*

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of alleged neglect, abuse, or abandonment of children, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the

actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

(12) Provide funding for counties to operate treatment facilities and provide treatment services to children who have been ordered placed in a staff secure facility under RCW 13.32A.197.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, or counties under subsection (12) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

**Sec. 3 was vetoed. See message at end of chapter.*

Sec. 4. RCW 74.13.032 and 1995 c 312 s 60 are each amended to read as follows:

(1) The department shall establish, by contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to contract with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no ~~((more))~~ less than ~~((three))~~ one adult staff member~~((s))~~ to every ~~((eight))~~ ten children. The staffing ratio shall continue to ensure the safety of the children.

~~(6) ((A center with secure facilities created under this section may not be located within, or on the same grounds as, other secure structures including jails, juvenile detention facilities operated by the state, or units of local government. However, the secretary may, following consultation with the appropriate county legislative authority, make a written finding that location of a center with secure facilities on the same grounds as another secure structure is the only practical location for a secure facility. Upon the written finding a secure facility may be located on the same grounds as the secure structure. Where))~~ If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility.

****NEW SECTION. Sec. 5. A new section is added to chapter 74.13 RCW to read as follows:***

(1) A county or group of counties operating a staff-secure facility under sections 1 and 2 of this act shall establish, by contracts with private or public vendors, treatment centers with staff secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department.

(2) The staff at the facilities established under RCW 13.32A.197 shall be trained so that they may effectively counsel, supervise, provide treatment for behavioral difficulties or needs, and provide structure to the juveniles admitted to treatment facilities. The treatment, supervision, and counseling must recognize the need for support and the varying circumstances that cause children to leave their families.

(3) Juveniles shall be admitted to the facilities based on a court order for placement at a staff secure facility to receive treatment under RCW 13.32A.197. Juveniles shall not be denied admission based on their county of residence.

****Sec. 5 was vetoed. See message at end of chapter.***

PART II - MENTAL HEALTH AND CHEMICAL DEPENDENCY TREATMENT

NEW SECTION. Sec. 6. The legislature finds it is often necessary for parents to obtain mental health or chemical dependency treatment for their minor children prior to the time the child's condition presents a likelihood of serious harm or the child becomes gravely disabled. The legislature finds that treatment of such conditions is not the equivalent of incarceration or detention, but is a legitimate act of parental discretion, when supported by decisions of credentialed professionals. The legislature finds that, consistent with *Parham v. J.R.*, 442 U.S. 584 (1979), state action is not involved in the determination of a parent and professional person to admit a minor child to treatment and finds this act provides sufficient independent review by the department of social and health services, as a neutral fact-finder, to protect the interests of all parties. The legislature intends and recognizes that children affected by the provisions of this act are not children whose mental or substance abuse problems are adequately addressed by chapters 70.96A and 71.34 RCW. Therefore, the legislature finds it is necessary to provide parents a statutory process, other than the petition process provided in chapters 70.96A and 71.34 RCW, to obtain treatment for their minor children without the consent of the children.

The legislature finds that differing standards of admission and review in parent-initiated mental health and chemical dependency treatment for their minor children are necessary and the admission standards and procedures under state involuntary treatment procedures are not adequate to provide safeguards for the safety and well-being of all children. The legislature finds the timeline for admission and reviews under existing law do not provide sufficient opportunities for assessment of the mental health and chemically dependent status of every minor child and that additional time and different standards will facilitate the likelihood of successful treatment of children who are in need of assistance but unwilling to obtain it voluntarily. The legislature finds there are children whose behavior presents a clear need of medical treatment but is not so extreme as to require immediate state intervention under the state involuntary treatment procedures.

PART II-A - MENTAL HEALTH

Sec. 7. RCW 71.34.010 and 1992 c 205 s 302 are each amended to read as follows:

It is the purpose of this chapter to ~~((ensure))~~ assure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, ~~((from))~~ including prevention and early intervention ~~((to))~~, self-directed care, parent-directed care, and involuntary treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide mental health services to minors shall jointly plan and deliver those services.

It is also the purpose of this chapter to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment. The mental health care and treatment providers shall encourage the use of voluntary services and, whenever clinically appropriate, the providers shall offer less restrictive alternatives to inpatient treatment. Additionally, all mental health care and treatment providers shall ~~((ensure))~~ assure that minors' parents are given an opportunity to participate in the treatment decisions for their minor children. The mental health care and treatment providers shall, to the extent possible, offer services that involve minors' parents or family.

It is also the purpose of this chapter to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under this chapter.

Sec. 8. RCW 71.34.020 and 1985 c 354 s 2 are each amended to read as follows:

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

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "County-designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a county-designated mental health professional described in this chapter.

(5) "Department" means the department of social and health services.

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility

which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

~~((13))~~ (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.

~~((14))~~ (15) "Minor" means any person under the age of eighteen years.

~~((15))~~ (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(3).

~~((16))~~ (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.

~~((17))~~ (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.

~~((18))~~ (19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, 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.

~~((19))~~ (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.

~~((20))~~ (21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

~~((21))~~ (22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

~~((22))~~ (23) "Secretary" means the secretary of the department or secretary's designee.

~~((23))~~ (24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involuntarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter.

Sec. 9. RCW 71.34.025 and 1995 c 312 s 56 are each amended to read as follows:

(1) ~~((The admission of any child under RCW 71.34.030 may be reviewed by the county-designated mental health professional between fifteen and thirty days following admission. The county-designated mental health professional may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.~~

~~—(2))~~ The department shall ~~((ensure))~~ assure that, for any minor admitted to inpatient treatment under section 17 of this act, a review is conducted ~~((no later than sixty days))~~ by a physician or other mental health professional who is employed by the department, or an agency under contract with the department.

and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven nor more than fourteen days following ((admission)) the date the minor was brought to the facility under section 17 of this act to determine whether it is ((medically appropriate)) a medical necessity to continue the ((child's)) minor's treatment on an inpatient basis. ((The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

— If the county-designated mental health professional determines that continued inpatient treatment of the child is no longer medically appropriate, the professional shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.

— (3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.)

(2) In making a determination under subsection (1) of this section, the department shall consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. The department shall consult with the parent in advance of making its determination.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the facility. The facility shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) If the evaluation conducted under section 17 of this act is done by the department, the reviews required by subsection (1) of this section shall be done by contract with an independent agency.

(5) The department may, subject to available funds, contract with other governmental agencies to conduct the reviews under this section. The department may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(6) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds.

***NEW SECTION.** *Sec. 10. A new section is added to chapter 71.34 RCW to read as follows:*

For the purpose of gathering information related to parent-initiated mental health treatment, the department shall report to the appropriate committees of the legislature by December 1 of each year the following information:

(1) The total number of parent-initiated admissions of minors to evaluation and treatment facilities under section 17 of this act for the prior year;

(2) The number of minors in the prior year admitted to evaluation or treatment facilities under section 17 of this act who are released from treatment, pursuant to RCW 71.34.025(3), because the department determined that it was not a medical necessity to continue the minor's treatment on an inpatient basis;

(3) The lengths of time in treatment for minors admitted in the prior year to evaluation and treatment facilities under section 17 of this act.

*Sec. 10 was vetoed. See message at end of chapter.

NEW SECTION. *Sec. 11. A new section is added to chapter 71.34 RCW to read as follows:*

For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient mental health treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.

PART II-B - VOLUNTARY MENTAL HEALTH OUTPATIENT TREATMENT

Sec. 12. *RCW 71.34.030 and 1995 c 312 s 52 are each amended to read as follows:*

~~((+))~~ *Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen.*

~~((2))~~ *When in the judgment of the professional person in charge of an evaluation and treatment facility there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to*

~~treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility in accordance with the following requirements:~~

~~— (a) A minor may be voluntarily admitted by application of the parent. The consent of the minor is not required for the minor to be evaluated and admitted as appropriate.~~

~~— (b) A minor thirteen years or older may, with the concurrence of the professional person in charge of an evaluation and treatment facility, admit himself or herself without parental consent to the evaluation and treatment facility, provided that notice is given by the facility to the minor's parent in accordance with the following requirements:~~

~~— (i) Notice of the minor's admission shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent that the minor has been admitted to inpatient treatment; the location and telephone number of the facility providing such treatment; and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent.~~

~~— (ii) The minor shall be released to the parent at the parent's request for release unless the facility files a petition with the superior court of the county in which treatment is being provided setting forth the basis for the facility's belief that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety.~~

~~— (iii) The petition shall be signed by the professional person in charge of the facility or that person's designee.~~

~~— (iv) The parent may apply to the court for separate counsel to represent the parent if the parent cannot afford counsel.~~

~~— (v) There shall be a hearing on the petition, which shall be held within three judicial days from the filing of the petition.~~

~~— (vi) The hearing shall be conducted by a judge, court commissioner, or licensed attorney designated by the superior court as a hearing officer for such hearing. The hearing may be held at the treatment facility.~~

~~— (vii) At such hearing, the facility must demonstrate by a preponderance of the evidence presented at the hearing that the minor is in need of inpatient treatment and that release would constitute a threat to the minor's health or safety. The hearing shall not be conducted using the rules of evidence, and the admission or exclusion of evidence sought to be presented shall be within the exercise of sound discretion by the judicial officer conducting the hearing.~~

~~— (c) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months.~~

~~— (d) The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.~~

~~(3) A notice of intent to leave shall result in the following:~~

~~— (a) Any minor under the age of thirteen must be discharged immediately upon written request of the parent.~~

~~— (b) Any minor thirteen years or older voluntarily admitted may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.~~

~~— (c) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.~~

~~— (d) The professional person in charge of the evaluation and treatment facility shall discharge the minor, thirteen years or older, from the facility within twenty-four hours after receipt of the minor's notice of intent to leave, unless the county-designated mental health professional or a parent or legal guardian files a petition or an application for initial detention within the time prescribed by this chapter.~~

~~(4) The ability of a parent to apply to a certified evaluation and treatment program for the involuntary admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.)~~

NEW SECTION. Sec. 13. For the purpose of gathering information related to parental notification of outpatient mental health treatment of minors, the department of health shall conduct a survey of providers of outpatient treatment, as defined in chapter 71.34 RCW. The survey shall gather information from a statistically valid sample of providers. In accordance with confidentiality statutes and the physician-patient privilege, the survey shall secure information from the providers related to:

- (1) The number of minors receiving outpatient treatment;
 - (2) The number of parents of minors in treatment notified of the minor's treatment;
 - (3) The average number of outpatient visits prior to parental notification;
 - (4) The average number of treatments with parental notification;
 - (5) The average number of treatments without parental notification;
 - (6) The percentage of minors in treatment who are prescribed medication;
 - (7) The medication prescribed;
 - (8) The number of patients terminating treatment due to parental notification;
- and
- (9) Any other pertinent information.

The department shall submit the survey results to the governor and the appropriate committees of the legislature by December 1, 1998.

This section expires June 1, 1999.

**PART II-C - VOLUNTARY MENTAL HEALTH
INPATIENT TREATMENT**

NEW SECTION. Sec. 14. A new section is added to chapter 71.34 RCW to read as follows:

(1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days.

NEW SECTION. Sec. 15. A new section is added to chapter 71.34 RCW to read as follows:

The administrator of the treatment facility shall provide notice to the parents of a minor when the minor is voluntarily admitted to inpatient treatment under section 14 of this act. The notice shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent: (1) That the minor has been admitted to inpatient treatment; (2) of the location and telephone number of the facility providing such treatment; (3) of the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent; and (4) of the medical necessity for admission.

NEW SECTION. Sec. 16. A new section is added to chapter 71.34 RCW to read as follows:

(1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under section 14 of this act may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility upon receipt of the minor's notice of intent to leave.

PART II-D - PARENT-INITIATED MENTAL HEALTH TREATMENT

NEW SECTION. Sec. 17. A new section is added to chapter 71.34 RCW to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.025, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" does not include a social worker, unless the social worker is certified under RCW 18.19.110 and appropriately trained and qualified by education and experience, as defined by the department, in psychiatric social work.

NEW SECTION. Sec. 18. A new section is added to chapter 71.34 RCW to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under section 14 or 17 of this act shall be discharged immediately from inpatient treatment upon written request of the parent.

NEW SECTION. Sec. 19. A new section is added to chapter 71.34 RCW to read as follows:

Following the review conducted under RCW 71.34.025, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility.

NEW SECTION. Sec. 20. A new section is added to chapter 71.34 RCW to read as follows:

If the minor is not released as a result of the petition filed under section 19 of this act, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 71.34.025(2); or (2) the filing of a petition for judicial review under section 19 of this act, unless a professional person or the county designated mental health professional initiates proceedings under this chapter.

NEW SECTION. Sec. 21. A new section is added to chapter 71.34 RCW to read as follows:

The ability of a parent to bring his or her minor child to a certified evaluation and treatment program for evaluation and treatment does not create a right to obtain or benefit from any funds or resources of the state. The state may provide services for indigent minors to the extent that funds are available.

PART II-E - CHEMICAL DEPENDENCY

Sec. 22. RCW 70.96A.020 and 1996 c 178 s 23 and 1996 c 133 s 33 are each reenacted and amended to read as follows:

For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.
 (2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means alcoholism or drug addiction, or dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

(6) "Department" means the department of social and health services.

(7) "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 RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other drugs" means that a person, as a result of the use of alcohol or other drugs: (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 a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, has his or her judgment so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment and presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(14) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(15) "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.

(16) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(17) "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 one's self; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (c) a substantial risk that 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.

(18) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency 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.

(19) "Minor" means a person less than eighteen years of age.

~~((19))~~ (20) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

~~((20))~~ (21) "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.

~~((21))~~ (22) "Person" means an individual, including a minor.

~~((22))~~ (23) "Professional person in charge" or "professional person" 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.

(24) "Secretary" means the secretary of the department of social and health services.

~~((23))~~ (25) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

~~((24))~~ (26) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

**PART 11-F - VOLUNTARY CHEMICAL DEPENDENCY
OUTPATIENT TREATMENT**

Sec. 23. RCW 70.96A.095 and 1996 c 133 s 34 are each amended to read as follows:

~~((+)) Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a chemical dependency treatment program certified by the department. ((Consent of the parent of a person less than eighteen years of age for inpatient treatment is necessary to authorize the care unless the child meets the definition of a child in need of services in RCW 13.32A.030(4)(c), as determined by the department.)) Parental authorization is required for any treatment of a minor under the age of thirteen. ((The parent of a minor is not liable for payment of care for such persons pursuant to this chapter, unless they have joined in the consent to the treatment.~~

~~—(2) The parent of any minor child may apply to a certified treatment program for the admission of his or her minor child for purposes authorized in this chapter. The consent of the minor child shall not be required for the application or admission. The certified treatment program shall accept the application and evaluate the child for admission. The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.~~

~~—(3) Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (a) The minor signs a written consent authorizing the disclosure; or (b) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent.))~~

NEW SECTION. **Sec. 24.** A new section is added to chapter 70.96A RCW to read as follows:

Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (1) The minor signs a written consent authorizing the disclosure; or (2) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the

name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent.

PART II-G - VOLUNTARY CHEMICAL DEPENDENCY INPATIENT TREATMENT

NEW SECTION. Sec. 25. A new section is added to chapter 70.96A RCW to read as follows:

Parental consent is required for inpatient chemical dependency treatment of a minor, unless the child meets the definition of a child in need of services in RCW 13.32A.030(4)(c) as determined by the department: PROVIDED, That parental consent is required for any treatment of a minor under the age of thirteen.

This section does not apply to petitions filed under this chapter.

NEW SECTION. Sec. 26. A new section is added to chapter 70.96A RCW to read as follows:

(1) The parent of a minor is not liable for payment of inpatient or outpatient chemical dependency treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor.

PART II-H - PARENT-INITIATED CHEMICAL DEPENDENCY TREATMENT

NEW SECTION. Sec. 27. A new section is added to chapter 70.96A RCW to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a certified treatment program and request that a chemical dependency assessment be conducted by a professional person to determine whether the minor is chemically dependent and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor is chemically dependent. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall

notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request.

Sec. 28. RCW 70.96A.097 and 1995 c 312 s 48 are each amended to read as follows:

~~(1) ((The admission of any child under RCW 70.96A.095 may be reviewed by the county-designated chemical dependency specialist between fifteen and thirty days following admission. The county-designated chemical dependency specialist may undertake the review on his or her own initiative and may seek reimbursement from the parents, their insurance, or medicaid for the expense of the review.~~

~~—(2)) The department shall ensure that, for any minor admitted to inpatient treatment under section 27 of this act, a review is conducted ~~((no later than sixty days))~~ by a physician or chemical dependency counselor, as defined in rule by the department, who is employed by the department or an agency under contract with the department and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the program providing the treatment. The physician or chemical dependency counselor shall conduct the review not less than seven nor more than fourteen days following ((admission)) the date the minor was brought to the facility under section 27(1) of this act to determine whether it is ((medically appropriate)) a medical necessity to continue the ((child's)) minor's treatment on an inpatient basis. ((The department may, subject to available funds, contract with a county for the conduct of the review conducted under this subsection and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.~~

~~— If the county-designated chemical dependency specialist determines that continued inpatient treatment of the child is no longer medically appropriate, the specialist shall notify the facility, the child, the child's parents, and the department of the finding within twenty-four hours of the determination.~~

~~—(3) For purposes of eligibility for medical assistance under chapter 74.09 RCW, children in inpatient mental health or chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the child has been assessed by the department of social and health services or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the child's parents are found to not be exercising responsibility for care and control of the child. Payment for such care by the department of social and health services shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.)~~

(2) In making a determination under subsection (1) of this section whether it is a medical necessity to release the minor from inpatient treatment, the department shall consider the opinion of the treatment provider, the safety of the minor, the likelihood the minor's chemical dependency recovery will deteriorate if released from inpatient treatment, and the wishes of the parent.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the professional person in charge. The professional person in charge shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) The department may, subject to available funds, contract with other governmental agencies for the conduct of the reviews conducted under this section and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(5) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds.

NEW SECTION. Sec. 29. A new section is added to chapter 70.96A RCW to read as follows:

(1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient chemical dependency treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a chemical dependency and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person in charge of the program may evaluate whether the minor has a chemical dependency and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under section 27 of this act shall be discharged immediately from inpatient treatment upon written request of the parent.

NEW SECTION. Sec. 30. A new section is added to chapter 70.96A RCW to read as follows:

Following the review conducted under RCW 70.96A.097, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall

release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility.

NEW SECTION. **Sec. 31.** A new section is added to chapter 70.96A RCW to read as follows:

If the minor is not released as a result of the petition filed under section 30 of this act, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 70.96A.097(2); or (2) the filing of a petition for judicial review under section 30 of this act, unless a professional person or the designated chemical dependency specialist initiates proceedings under this chapter.

NEW SECTION. **Sec. 32.** A new section is added to chapter 70.96A RCW to read as follows:

For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department.

NEW SECTION. **Sec. 33.** It is the purpose of sections 27 and 29 of this act to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under chapter 70.96A RCW.

NEW SECTION. **Sec. 34.** The department of social and health services shall adopt rules defining "appropriately trained professional person" for the purposes of conducting mental health and chemical dependency evaluations under sections 17(3), 18(1), 27(3), and 29(1) of this act.

PART III - MISCELLANEOUS

NEW SECTION. **Sec. 35.** The legislature finds that an essential component of the children in need of services, dependency, and truancy laws is the use of juvenile detention. As chapter 7.21 RCW is currently written, courts may not order detention time without a criminal charge being filed. It is the intent of the legislature to avoid the bringing of criminal charges against youth who need the guidance of the court rather than its punishment. The legislature further finds that ordering a child placed in detention is a remedial action, not a punitive one. Since the legislature finds that the state is required to provide instruction to children in detention, use of the courts' contempt powers is an effective means for furthering the education and protection of these children. Thus, it is the intent of the legislature to authorize a limited sanction of time in juvenile detention independent of chapter 7.21 RCW for failure to comply with court orders in

truancy, child in need of services, at-risk youth, and dependency cases for the sole purpose of providing the courts with the tools necessary to enforce orders in these limited types of cases because other statutory contempt remedies are inadequate.

Sec. 36. RCW 7.21.030 and 1989 c 373 s 3 are each amended to read as follows:

(1) The court may initiate a proceeding to impose a remedial sanction on its own motion or on the motion of a person aggrieved by a contempt of court in the proceeding to which the contempt is related. Except as provided in RCW 7.21.050, the court, after notice and hearing, may impose a remedial sanction authorized by this chapter.

(2) If the court finds that the person has failed or refused to perform an act that is yet within the person's power to perform, the court may find the person in contempt of court and impose one or more of the following remedial sanctions:

(a) Imprisonment if the contempt of court is of a type defined in RCW 7.21.010(1) (b) through (d). The imprisonment may extend only so long as it serves a coercive purpose.

(b) A forfeiture not to exceed two thousand dollars for each day the contempt of court continues.

(c) An order designed to ensure compliance with a prior order of the court.

(d) Any other remedial sanction other than the sanctions specified in (a) through (c) of this subsection if the court expressly finds that those sanctions would be ineffectual to terminate a continuing contempt of court.

(e) In cases under chapters 13.32A, 13.34, and 28A.225 RCW, commitment to juvenile detention for a period of time not to exceed seven days. This sanction may be imposed in addition to, or as an alternative to, any other remedial sanction authorized by this chapter. This remedy is specifically determined to be a remedial sanction.

(3) The court may, in addition to the remedial sanctions set forth in subsection (2) of this section, order a person found in contempt of court to pay a party for any losses suffered by the party as a result of the contempt and any costs incurred in connection with the contempt proceeding, including reasonable attorney's fees.

Sec. 37. RCW 13.32A.250 and 1996 c 133 s 28 are each amended to read as follows:

(1) In all child in need of services proceedings and at-risk youth proceedings, the court shall verbally notify the parents and the child of the possibility of a finding of contempt for failure to comply with the terms of a court order entered pursuant to this chapter. Except as otherwise provided in this section, the court shall treat the parents and the child equally for the purposes of applying contempt of court processes and penalties under this section.

(2) Failure by a party to comply with an order entered under this chapter is a civil contempt of court as provided in (~~chapter 7.21~~) RCW 7.21.030(2)(e), subject to the limitations of subsection (3) of this section.

(3) The court may impose remedial sanctions including a fine of up to one hundred dollars and confinement for up to seven days, or both for contempt of court under this section.

(4) A child placed in confinement for contempt under this section shall be placed in confinement only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(5) A motion for contempt may be made by a parent, a child, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order adopted pursuant to this chapter.

(6) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

Sec. 38. RCW 13.34.165 and 1996 c 133 s 29 are each amended to read as follows:

(1) Failure by a party to comply with an order entered under this chapter is civil contempt of court as provided in (~~chapter 7.21~~) RCW 7.21.030(2)(e).

(2) The maximum term of imprisonment that may be imposed as a (~~punitive~~) remedial sanction for contempt of court under this section is confinement for up to seven days.

(3) A child imprisoned for contempt under this section shall be confined only in a secure juvenile detention facility operated by or pursuant to a contract with a county.

(4) A motion for contempt may be made by a parent, juvenile court personnel, or by any public agency, organization, or person having custody of the child under a court order entered pursuant to this chapter.

(5) Whenever the court finds probable cause to believe, based upon consideration of a motion for contempt and the information set forth in a supporting declaration, that a child has violated a placement order entered under this chapter, the court may issue an order directing law enforcement to pick up and take the child to detention. The order may be entered ex parte without prior notice to the child or other parties. Following the child's admission to detention, a detention review hearing must be held in accordance with RCW 13.32A.065.

Sec. 39. RCW 28A.225.090 and 1997 c 68 s 2 are each amended to read as follows:

(1) A court may order a child subject to a petition under RCW 28A.225.035 to:

(a) Attend the child's current school;

(b) If there is space available and the program can provide educational services appropriate for the child, order the child to attend another public school,

an alternative education program, center, a skill center, dropout prevention program, or another public educational program;

(c) Attend a private nonsectarian school or program including an education center. Before ordering a child to attend an approved or certified private nonsectarian school or program, the court shall: (i) Consider the public and private programs available; (ii) find that placement is in the best interest of the child; and (iii) find that the private school or program is willing to accept the child and will not charge any fees in addition to those established by contract with the student's school district. If the court orders the child to enroll in a private school or program, the child's school district shall contract with the school or program to provide educational services for the child. The school district shall not be required to contract for a weekly rate that exceeds the state general apportionment dollars calculated on a weekly basis generated by the child and received by the district. A school district shall not be required to enter into a contract that is longer than the remainder of the school year. A school district shall not be required to enter into or continue a contract if the child is no longer enrolled in the district;

(d) Be referred to a community truancy board, if available; or

(e) Submit to testing for the use of controlled substances or alcohol based on a determination that such testing is appropriate to the circumstances and behavior of the child and will facilitate the child's compliance with the mandatory attendance law.

(2) If the child fails to comply with the court order, the court may order the child to be punished by detention, as provided in RCW 7.21.030(2)(e), or may impose alternatives to detention such as community service. Failure by a child to comply with an order issued under this subsection shall not be punishable by detention for a period greater than that permitted pursuant to a civil contempt proceeding against a child under chapter 13.32A RCW.

(3) Any parent violating any of the provisions of either RCW 28A.225.010 or 28A.225.080 shall be fined not more than twenty-five dollars for each day of unexcused absence from school. It shall be a defense for a parent charged with violating RCW 28A.225.010 to show that he or she exercised reasonable diligence in attempting to cause a child in his or her custody to attend school or that the child's school did not perform its duties as required in RCW 28A.225.020. The court may order the parent to provide community service instead of imposing a fine. Any fine imposed pursuant to this section may be suspended upon the condition that a parent charged with violating RCW 28A.225.010 shall participate with the school and the child in a supervised plan for the child's attendance at school or upon condition that the parent attend a conference or conferences scheduled by a school for the purpose of analyzing the causes of a child's absence.

NEW SECTION. Sec. 40. The legislature finds that predatory individuals, such as drug dealers, sexual marauders, and panderers, provide shelter to at-risk youth as a means of preying upon them. The legislature further finds that at-risk youth are vulnerable to the influence of these individuals. Thus, the legislature

finds that it is important to the safety of Washington's youth that they be prevented from coming in contact with these predatory individuals. The legislature further finds that locating runaway children is the first step to preventing individuals from preying on these youth and to achieving family reconciliation. Therefore, the legislature intends to use punitive measures to create a clear disincentive for predatory individuals intending to take advantage of at-risk youth. The legislature further intends that all persons be required to report the location of a runaway minor, but that those individuals who fail to make such a report because they wish to have the minor remain unlocated as a means of preying upon them be punished for their failure to report the child's location.

**Sec. 41. RCW 13.32A.080 and 1994 sp.s. c 7 s 507 are each amended to read as follows:*

(1)(a) A person commits the crime of unlawful harboring of a minor if the person provides shelter to a minor without the consent of a parent of the minor and after the person knows that the minor is away from the home of the parent, without the parent's permission, and if the person intentionally:

(i) Fails to release the minor to a law enforcement officer after being requested to do so by the officer; or

(ii) Fails to disclose the location of the minor to a law enforcement officer after being requested to do so by the officer, if the person knows the location of the minor and had either taken the minor to that location or had assisted the minor in reaching that location; or

(iii) Obstructs a law enforcement officer from taking the minor into custody; or

(iv) Assists the minor in avoiding or attempting to avoid the custody of the law enforcement officer; or

(v) Engages the child in a crime; or

(iv) Engages in a clear course of conduct that demonstrates an intent to contribute to the delinquency of a minor or the involvement of a minor in a sex offense as defined in RCW 9.94A.030.

(b) It is a defense to a prosecution under this section that the defendant had custody of the minor pursuant to a court order.

(2) Harboring a minor is punishable as a gross misdemeanor.

(3) Any person who provides shelter to a child, absent from home, may notify the department's local community service office of the child's presence.

(4) An adult responsible for involving a child in the commission of an offense may be prosecuted under existing criminal statutes including, but not limited to:

(a) Distribution of a controlled substance to a minor, as defined in RCW 69.50.406;

(b) Promoting prostitution as defined in chapter 9A.88 RCW; and

(c) Complicity of the adult in the crime of a minor, under RCW 9A.08.020.

**Sec. 41 was vetoed. See message at end of chapter.*

**Sec. 42. RCW 13.32A.082 and 1996 c 133 s 14 are each amended to read as follows:*

(1) Any person who, without legal authorization, provides shelter to a minor and who knows at the time of providing the shelter that the minor is away from the parent's home, or other lawfully prescribed residence, without the permission of the parent, shall promptly report the location of the child to the parent, the law enforcement agency of the jurisdiction in which the person lives, or the department. The report may be made by telephone or any other reasonable means.

(2) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Shelter" means the person's home or any structure over which the person has any control.

(b) "Promptly report" means to report within eight hours after the person has knowledge that the minor is away from home without parental permission.

(3) When the department receives a report under subsection (1) of this section, it shall make a good faith attempt to notify the parent that a report has been received and offer services designed to resolve the conflict and accomplish a reunification of the family.

(4) A person who does not report a child's location in violation of subsection (1) of this section with the intent to contribute to the delinquency of a minor or engage the child in a crime is guilty of a misdemeanor.

*Sec. 42 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 43. Part headings used in this act do not constitute any part of the law.

NEW SECTION. Sec. 44. This act may be known and cited as "the Becca act of 1998."

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 2, 3, 5, 10, 41 and 42, Substitute Senate Bill 6208 entitled:

"AN ACT Relating to at-risk youth;"

This bill clarifies the processes for the admission of a child for mental health or chemical dependency treatment. It clearly separates the procedures for voluntary outpatient and inpatient treatment, parent-initiated treatment and court-authorized involuntary treatment. Safeguards are provided for inpatient mental health and chemical dependency treatment, including an independent review by a mental health or chemical dependency professional, the opportunity for a child to petition the court for review, and automatic release from a facility unless a court allows the child to be retained for further treatment.

Sections 2, 3 and 5 relate to the Department of Social and Health Services contracting with counties for the operation of staff secure group homes. Section 2 would require DSHS to transfer funds to counties to operate these homes based on a formula that is inconsistent

with other formulae related to at-risk youth. Section 3 would incorrectly change state child welfare duties to include providing funding to counties to staff these homes. Section 5 apparently would require counties, which would be subcontracting with the state, to in turn subcontract with private vendors to provide staff secure group homes for certain youth. DSHS already contracts for such services, so that section is unnecessary.

Section 10 would require DSHS to report to the Legislature annually on the number of parent-initiated admissions of minors to evaluation and treatment facilities. A costly hospital record review would be needed to gather such information, but no funding was provided.

Sections 41 and 42 would amend the law relating to unlawful harboring of a minor child. The language is redundant with existing law and may lump together effective shelters for youth with those individuals who prey upon them.

For these reasons, I have vetoed sections 2, 3, 5, 10, 41 and 42 of Substitute Senate Bill No. 6208.

With the exception of sections 2, 3, 5, 10, 41 and 42, Substitute Senate Bill No. 6208 is approved."

CHAPTER 297

[Second Substitute Senate Bill 6214]

COMMITMENT OF MENTALLY ILL PERSONS

AN ACT Relating to mental illness; amending RCW 71.05.010, 71.05.020, 71.05.030, 71.05.035, 71.05.050, 71.05.130, 71.05.150, 71.05.160, 71.05.170, 71.05.200, 71.05.210, 71.05.230, 71.05.280, 71.05.290, 71.05.300, 71.05.330, 71.05.340, 71.05.390, 71.05.530, 71.05.560, 10.77.005, 10.77.010, 10.77.020, 10.77.030, 10.77.040, 10.77.060, 10.77.070, 10.77.080, 10.77.090, 10.77.110, 10.77.140, 10.77.150, 10.77.180, 10.77.190, 10.77.200, 10.77.210, and 10.97.030; adding new sections to chapter 71.05 RCW; adding new sections to chapter 10.77 RCW; adding a new section to chapter 72.10 RCW; creating new sections; recodifying RCW 10.77.005; repealing RCW 71.05.015 and 71.05.080; providing effective dates; and providing an expiration date.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to: (1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; (2) improve and clarify the sharing of information between the mental health and criminal justice systems; and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system.

The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment.

Sec. 2. RCW 71.05.010 and 1997 c 112 s 2 are each amended to read as follows:

The provisions of this chapter are intended by the legislature:

- (1) To ~~((end))~~ prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;
- (2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;
- (3) To safeguard individual rights;
- (4) To provide continuity of care for persons with serious mental disorders;
- (5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;
- (6) To encourage, whenever appropriate, that services be provided within the community;
- (7) To protect the public safety.

Sec. 3. RCW 71.05.020 and 1997 c 112 s 3 are each amended to read as follows:

For the purposes of this chapter:

(1) "Antipsychotic medications(~~((," also referred to as "neuroleptics;"))~~)" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders (~~((and currently includes phenothiazines, thioxanthenes, butyrophenone, dihydroindolone, and dibenzoxazine))~~), 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) "County designated mental health professional" means a mental health professional appointed by the county to perform the duties specified in this chapter;

(4) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from a facility providing involuntary care and treatment;

~~((4))~~ (5) "Department" means the department of social and health services;

~~((5))~~ (6) "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, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary;

~~((6))~~ (7) "Developmental disability" means that condition defined in RCW 71A.10.020(2);

~~((7))~~ (8) "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;

~~((8))~~ (9) "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;

~~((9))~~ (10) "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 individual being assisted as manifested by prior charged criminal conduct;

~~((10))~~ (11) "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;

(12) "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 discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

~~((11))~~ (13) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

~~((12))~~ (14) "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~~((, (b) a substantial risk that))~~; (ii) 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))~~; or (iii)

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; or

~~((13))~~ (b) The individual has threatened the physical safety of another and has a history of one or more violent acts;

~~(15)~~ "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

~~((14))~~ (16) "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 this chapter;

~~((15))~~ (17) "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;

~~((16))~~ (18) "Private agency" means any person, partnership, corporation, or association not defined as 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, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for the care and treatment of persons who are mentally ill;

~~((17))~~ (19) "Professional person" ~~((staff))~~ means a mental health professional ~~(, as above defined,)~~ 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;

~~((18))~~ (20) "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;

~~((19))~~ (21) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

~~((20))~~ (22) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged, if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

~~((21))~~ (23) "Resource management services" has the meaning given in chapter 71.24 RCW;

~~((22))~~ (24) "Secretary" means the secretary of the department of social and health services, or his or her designee;

~~((23))~~ (25) "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;

(26) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property.

Sec. 4. RCW 71.05.030 and 1985 c 354 s 31 are each amended to read as follows:

Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW (~~or its successor~~), chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing.

Sec. 5. RCW 71.05.035 and 1989 c 420 s 2 are each amended to read as follows:

~~(With respect to chapter 420, Laws of 1989,)~~ The legislature finds that among those persons who endanger the safety of others by committing ~~((felony))~~ crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with ~~((felony))~~ crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with ~~((felony))~~ crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety.

Sec. 6. RCW 71.05.050 and 1997 c 112 s 5 are each amended to read as follows:

Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall

be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate release and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment and/or possible release, at which time they shall again be advised of their right to release upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests release as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the ~~((designated))~~ county designated mental health professional of such person's condition to enable ~~((such))~~ the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the ~~((designated))~~ county designated mental health professional of such person's condition to enable ~~((such))~~ the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary.

Sec. 7. RCW 71.05.130 and 1991 c 105 s 3 are each amended to read as follows:

In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment or detention: PROVIDED, That ~~((after January 1, 1980,))~~ the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention.

Sec. 8. RCW 71.05.150 and 1997 c 112 s 8 are each amended to read as follows:

(1)(a) When a county designated mental health professional (~~((designated by the county))~~) 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; (~~((such mental health professional))~~) the county designated mental health professional may, after investigation and evaluation of the specific facts alleged~~((;))~~ and of the reliability and credibility of ~~((the))~~ any person (~~((or persons; if any;))~~) providing information to initiate detention, (~~((may;))~~) 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 county 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.

(b) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents, as a result of a mental disorder, a likelihood of serious harm, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treatment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period. The order shall state the address of the evaluation and treatment facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the evaluation and treatment facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment. The order shall also 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.

(c) The county 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 to appear together with a notice of rights and a petition for initial detention. After service on such person the county 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 county 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 remain in his or her home or other place of his or her choosing prior to the time of evaluation and 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.

(d) If the person ordered to appear does appear on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person ordered to appear fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the county designated mental health professional (~~((designated by the county))~~) who 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. Should the county designated mental health professional notify a peace officer authorizing him or her to take a person into custody under the provisions of this subsection, he or she shall file with the court a copy of such authorization and a notice of detention. 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 detention, a notice of rights, and a petition for initial detention.

(2) When a county designated mental health professional (~~((designated by the county))~~) 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 county 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.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility or the emergency department of a local hospital:

(a) Only pursuant to subsections (1)(d) and (2) 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.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) 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 within three hours of their arrival. Within twelve hours of their arrival, the (~~((designated))~~) county designated mental health professional must

file a supplemental petition for detention, and commence service on the designated attorney for the detained person.

Sec. 9. RCW 71.05.160 and 1997 c 112 s 10 are each amended to read as follows:

Any facility receiving a person pursuant to RCW 71.05.150 shall require a petition for initial detention stating the circumstances under which the person's condition was made known and stating that such officer or person has evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150, on the next judicial day following the initial detention, the county designated mental health professional (~~designated by the county~~) shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention.

Sec. 10. RCW 71.05.170 and 1997 c 112 s 11 are each amended to read as follows:

Whenever the (~~designated~~) county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit or release such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the (~~designated~~) county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW.

Sec. 11. RCW 71.05.200 and 1997 c 112 s 14 are each amended to read as follows:

(1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional fourteen days without further automatic hearing for the reason that the person is a mentally ill person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) That the person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That the person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the county designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court.

Sec. 12. RCW 71.05.210 and 1997 c 112 s 15 are each amended to read as follows:

Each person involuntarily admitted to an evaluation and treatment facility shall, within twenty-four hours of his or her admission, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional (~~as defined in this chapter~~), and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a (~~court proceeding~~) trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the individual may refuse (~~all but emergency life-saving treatment~~) psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the individual shall be informed at an

appropriate time of his or her right ~~((to))~~ of such refusal ~~((of treatment))~~. ~~((Such))~~ The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled. A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for treatment. Notice of such fact shall be given to the court, the designated attorney, and the ~~((designated))~~ county designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days.

Sec. 13. RCW 71.05.230 and 1997 c 112 s 18 are each amended to read as follows:

A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the county designated mental health professional ~~((designated by the county))~~ has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered

and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The court has ordered a fourteen day involuntary intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the county designated mental health professional (~~designated by the county~~) may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility.

NEW SECTION. **Sec. 14.** A new section is added to chapter 71.05 RCW to read as follows:

In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current bearing.

Sec. 15. RCW 71.05.280 and 1997 c 112 s 22 are each amended to read as follows:

At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090(~~(3)~~) (4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the (~~(felony)~~) crime; or

(4) Such person is gravely disabled.

Sec. 16. RCW 71.05.290 and 1997 c 112 s 24 are each amended to read as follows:

(1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the (~~(designated)~~) county designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(~~(3)~~) (4), then the professional person in charge of the treatment facility or his or her professional designee or the county designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed.

Sec. 17. RCW 71.05.300 and 1997 c 112 s 25 are each amended to read as follows:

The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the (~~(designated)~~) county designated mental health professional. The (~~(designated)~~) county designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or

conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney and of his or her right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a developmentally disabled person who has been determined to be incompetent pursuant to RCW 10.77.090(~~((3))~~) (4), then the appointed professional person under this section shall be a developmental disabilities professional.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310.

NEW SECTION. Sec. 18. A new section is added to chapter 71.05 RCW to read as follows:

(1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Immediately following completion of the evaluation, the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the court. The superior court shall review the recommendation not later than the next judicial day. For an individual subject to this subsection, the professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

(3) If a county designated mental health professional or the professional person and prosecuting attorney or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.250.

NEW SECTION. Sec. 19. A new section is added to chapter 71.05 RCW to read as follows:

Whenever a county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

Sec. 20. RCW 71.05.330 and 1997 c 112 s 27 are each amended to read as follows:

(1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there

shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

Sec. 21. RCW 71.05.340 and 1997 c 112 s 28 are each amended to read as follows:

(1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the ~~((designated))~~ county designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the conditions for early release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding,

except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the ~~((designated))~~ county designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release~~((that))~~;

(ii) Substantial deterioration in ~~((the))~~ a conditionally released person's functioning has occurred~~((;))~~;

(iii) There is evidence of substantial decompensation with a ~~((high))~~ reasonable probability that the decompensation can be reversed by further inpatient treatment~~((;))~~; or ~~((there is))~~

(iv) The person poses a likelihood of serious harm~~((then))~~;

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the ~~((designated))~~ county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

~~((The))~~ (b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person ~~((shall be))~~ detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The ~~((designated))~~ county designated

mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

~~((b))~~ (d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the ~~((designated))~~ county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a ~~((high))~~ reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)~~((b))~~ (d) have occurred, whether the conditions of release should be modified or the person should be returned to the facility.

~~((e))~~ (e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the ~~((designated))~~ county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order.

Sec. 22. RCW 71.05.390 and 1993 c 448 s 6 are each amended to read as follows:

Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person ~~((not))~~; (a) Employed by the facility ~~((who does not have the))~~; (b) who has medical responsibility for the patient's care ~~((or who is not))~~; (c) who is a ~~((designated))~~ county designated mental health professional ~~((or who is not involved in))~~; (d) who is providing services under ~~((the community mental health services act))~~ chapter 71.24 RCW; or (e) who is employed by a state or local correctional facility where the person is confined.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary of social and health services adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6) To the courts as necessary to the administration of this chapter.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary admission, the fact and date of discharge, and the last known address shall be disclosed upon request; and

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter; and

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission,

discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(12) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(13) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(14) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained.

Sec. 23. RCW 71.05.530 and 1973 1st ex.s. c 142 s 58 are each amended to read as follows:

Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to ~~((the Community Mental Health Services Act,))~~ chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof.

Sec. 24. RCW 71.05.560 and 1973 1st ex.s. c 142 s 61 are each amended to read as follows:

The department ~~((of social and health services))~~ shall adopt such rules ~~((and regulations))~~ as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and

procedures and standards for certification and other action relevant to evaluation and treatment facilities.

NEW SECTION. Sec. 25. A new section is added to chapter 71.05 RCW to read as follows:

In any judicial proceeding in which a professional person has made a recommendation regarding whether an individual should be committed for treatment under this chapter, and the court does not follow the recommendation, the court shall enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm.

NEW SECTION. Sec. 26. A new section is added to chapter 71.05 RCW to read as follows:

The department shall develop state-wide protocols to be utilized by professional persons and county designated mental health professionals in administration of this chapter and chapter 10.77 RCW. The protocols shall be updated at least every three years. The protocols shall provide uniform development and application of criteria in evaluation and commitment recommendations, of persons who have, or are alleged to have, mental disorders and are subject to this chapter.

The initial protocols shall be developed not later than September 1, 1999. The department shall develop and update the protocols in consultation with representatives of county designated mental health professionals, local government, law enforcement, county and city prosecutors, public defenders, and groups concerned with mental illness. The protocols shall be submitted to the governor and legislature upon adoption by the department.

NEW SECTION. Sec. 27. A new section is added to chapter 71.05 RCW to read as follows:

Where appropriate, and under the prescription of an authorized professional person, atypical antipsychotic medications may be accessed for use by a regional support network through the fund established in section 57 of this act.

Sec. 28. RCW 10.77.005 and 1989 c 420 s 1 are each amended to read as follows:

~~((With respect to this act,))~~ The legislature finds that among those persons who endanger the safety of others by committing ~~((felony))~~ crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with ~~((felony))~~ crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity. The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their

commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities. Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with ~~((felony))~~ crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety.

Sec. 29. RCW 10.77.010 and 1993 c 31 s 4 are each amended to read as follows:

As used in this chapter:

(1) 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 ~~((felonious))~~ criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions.

(2) "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.

(3) "Secretary" means the secretary of the department of social and health services or his or her designee.

(4) "Department" means the state department of social and health services.

(5) "Treatment" means any currently standardized medical or mental health procedure including medication.

(6) "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.

(7) ~~((No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute "insanity".~~

~~—((8))~~ "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.

~~((9))~~ ~~(8)~~ "Developmental disability" means the condition defined in RCW 71A.10.020(2).

~~((10))~~ ~~(9)~~ "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.

~~((H))~~ (10) "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 individual being assisted as manifested by prior charged criminal conduct.

~~((12) "Psychiatrist" means a person having a license)~~ (11) "Expert or 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(~~(:~~

~~(13) "Psychologist" means a person who has been);~~

(b) A psychologist licensed as a psychologist pursuant to chapter 18.83 RCW(~~(:~~

~~(14) "Social worker" means a person); 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.

~~((H))~~ (12) "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 discharge from involuntary confinement, and a projected possible date for discharge from involuntary confinement; and

(g) The type of residence immediately anticipated for the person and possible future types of residences.

(13) "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.

(14) "County designated mental health professional" has the same meaning as provided in RCW 71.05.020.

(15) "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.

Sec. 30. RCW 10.77.020 and 1993 c 31 s 5 are each amended to read as follows:

(1) At any and all stages of the proceedings pursuant to this chapter, any person subject to the provisions of this chapter shall be entitled to the assistance of counsel, and if the person is indigent the court shall appoint counsel to assist him or her. A person may waive his or her right to counsel; but such waiver shall only be effective if a court makes a specific finding that he or she is or was competent to so waive. In making such findings, the court shall be guided but not limited by the following standards: Whether the person attempting to waive the assistance of counsel, does so understanding:

- (a) The nature of the charges;
- (b) The statutory offense included within them;
- (c) The range of allowable punishments thereunder;
- (d) Possible defenses to the charges and circumstances in mitigation thereof;

and

(e) All other facts essential to a broad understanding of the whole matter.

(2) Whenever any person is subjected to an examination pursuant to any provision of this chapter, he or she may retain an expert or professional person to perform an examination in his or her behalf. In the case of a person who is indigent, the court shall upon his or her request assist the person in obtaining an expert or professional person to perform an examination or participate in the hearing on his or her behalf. An expert or professional person obtained by an indigent person pursuant to the provisions of this chapter shall be compensated for his or her services out of funds of the department, in an amount determined by ((it)) the secretary to be fair and reasonable.

~~(3) (Whenever any person has been committed under any provision of this chapter, or ordered to undergo alternative treatment following his or her acquittal of a crime charged by reason of insanity, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was acquitted by reason of insanity. If at the end of that period the person has not been finally discharged and is still in need of commitment or treatment, civil commitment proceedings may be instituted, if appropriate.~~

—(4)) Any time the defendant is being examined by court appointed experts or professional persons pursuant to the provisions of this chapter, the defendant shall be entitled to have his or her attorney present. The defendant may refuse to

answer any question if he or she believes his or her answers may tend to incriminate him or her or form links leading to evidence of an incriminating nature.

NEW SECTION. Sec. 31. A new section is added to chapter 10.77 RCW to read as follows:

(1) Whenever any person has been: (a) Committed to a correctional facility or inpatient treatment under any provision of this chapter; or (b) ordered to undergo alternative treatment following his or her acquittal by reason of insanity of a crime charged, such commitment or treatment cannot exceed the maximum possible penal sentence for any offense charged for which the person was committed, or was acquitted by reason of insanity.

(2) Whenever any person committed under any provision of this chapter has not been finally discharged within seven days of the maximum possible penal sentence under subsection (1) of this section, and the professional person in charge of the facility believes it more likely than not that the person will not be finally discharged, the professional person shall, prior to the person's release from the facility, notify the appropriate county designated mental health professional of the impending release and provide a copy of all relevant information regarding the person, including the likely release date and shall indicate why final discharge was not made.

(3) A county designated mental health professional who receives notice and records under subsection (2) of this section shall, prior to the date of probable release, determine whether to initiate proceedings under chapter 71.05 RCW.

Sec. 32. RCW 10.77.030 and 1974 ex.s. c 198 s 3 are each amended to read as follows:

(1) Evidence of insanity is not admissible unless the defendant, at the time of arraignment or within ten days thereafter or at such later time as the court may for good cause permit, files a written notice of his or her intent to rely on such a defense.

(2) Insanity is a defense which the defendant must establish by a preponderance of the evidence.

(3) No condition of mind proximately induced by the voluntary act of a person charged with a crime shall constitute insanity.

Sec. 33. RCW 10.77.040 and 1974 ex.s. c 198 s 4 are each amended to read as follows:

Whenever the issue of insanity is submitted to the jury, the court shall instruct the jury to return a special verdict in substantially the following form:

- | | |
|---|-----------|
| | answer |
| | yes or no |
| 1. Did the defendant commit the act charged? | |
| 2. If your answer to number 1 is yes, do you acquit him | |
| <u>or her</u> because of insanity existing at the time of the | |
| act charged? | |

- 3. If your answer to number 2 is yes, is the defendant a substantial danger to other persons unless kept under further control by the court or other persons or institutions?
- 4. If your answer to number 2 is yes, does the defendant present a substantial likelihood of committing ((felonious)) criminal acts jeopardizing public safety or security unless kept under further control by the court or other persons or institutions?
- 5. If your answers to either number 3 or number 4 is yes, is it in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital?

Sec. 34. RCW 10.77.060 and 1989 c 420 s 4 are each amended to read as follows:

(1)(a) Whenever a defendant has pleaded not guilty by reason of insanity, or there is reason to doubt his or her competency, the court on its own motion or on the motion of any party shall either appoint or request the secretary to designate at least two qualified experts or professional persons, one of whom shall be approved by the prosecuting attorney, to examine and report upon the mental condition of the defendant. At least one of the experts or professional persons appointed shall be a developmental disabilities professional if the court is advised by any party that the defendant may be developmentally disabled. For purposes of the examination, the court may order the defendant committed to a hospital or other ((suitable)) suitably secure public or private mental health facility for a period of time necessary to complete the examination, but not to exceed fifteen days from the time of admission to the facility.

(b) When a defendant is ordered to be committed for inpatient examination under this subsection (1), the court may delay granting bail until the defendant has been evaluated for competency or sanity and appears before the court. Following the evaluation, in determining bail the court shall consider: (i) Recommendations of the expert or professional persons regarding the defendant's competency, sanity, or diminished capacity; (ii) whether the defendant has a recent history of one or more violent acts; (iii) whether the defendant has previously been acquitted by reason of insanity or found incompetent; (iv) whether it is reasonably likely the defendant will fail to appear for a future court hearing; and (v) whether the defendant is a threat to public safety.

(2) The court may direct that a qualified expert or professional person retained by or appointed for the defendant be permitted to witness the examination authorized by subsection (1) of this section, and that the defendant shall have access to all information obtained by the court appointed experts or professional persons. The defendant's expert or professional person shall have the right to file his or her own report following the guidelines of subsection (3) of this

section. If the defendant is indigent, the court shall upon the request of the defendant assist him or her in obtaining an expert or professional person.

(3) The report of the examination shall include the following:

(a) A description of the nature of the examination;

(b) A diagnosis of the mental condition of the defendant;

(c) If the defendant suffers from a mental disease or defect, or is developmentally disabled, an opinion as to competency;

(d) If the defendant has indicated his or her intention to rely on the defense of insanity pursuant to RCW 10.77.030, an opinion as to the defendant's sanity at the time of the act;

(e) When directed by the court, an opinion as to the capacity of the defendant to have a particular state of mind which is an element of the offense charged;

(f) An opinion as to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing (~~felonious~~) criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(4) The secretary may execute such agreements as appropriate and necessary to implement this section.

NEW SECTION. Sec. 35. A new section is added to chapter 10.77 RCW to read as follows:

(1) Whenever a defendant is evaluated under this chapter, a copy of the order requiring the evaluation shall be transmitted to the county designated mental health professional of the county in which the defendant was charged.

(2)(a) When a defendant is evaluated under RCW 10.77.060, the professional person shall make a recommendation to the court whether the defendant should be examined by a county designated mental health professional for purposes of filing a petition under chapter 71.05 RCW whenever the court determines, and enters a finding that, the defendant is charged with: (i) A felony; or (ii) a nonfelony crime and: (A) Is charged with, or has a history of, one or more violent acts; (B) is a threat to public safety; (C) has previously been acquitted by reason of insanity; or (D) has previously been found incompetent pursuant to this chapter.

(b) The facility conducting the evaluation shall provide its report and recommendation to the court in which the criminal proceeding is pending. A copy of the report and recommendation shall be provided to the county designated mental health professional, the prosecuting attorney, the defense attorney, and the professional person at the local correctional facility where the defendant is being held. Upon request, the facility shall also provide copies of any source documents relevant to the evaluation to the county designated mental health professional. The report and recommendation shall be provided not less than twenty-four hours preceding the transfer of the defendant to the correctional facility in the county in which the criminal proceeding is pending.

(c) If the facility concludes, under RCW 10.77.060(3)(f), the person should be kept under further control, an evaluation shall be conducted of such person

under chapter 71.05 RCW. The court shall order an evaluation be conducted by the appropriate county designated mental health professional: (i) Prior to release from confinement for such person who is convicted, if sentenced to confinement for twenty-four months or less; (ii) for any person who is acquitted; or (iii) for any person whose charges are dismissed pursuant to RCW 10.77.090(4).

(3) The county designated mental health professional shall provide written notification within twenty-four hours of the results of the determination whether to commence proceedings under chapter 71.05 RCW. The notification shall be provided to the persons identified in subsection (2)(b) of this section.

(4) The prosecuting attorney shall provide a copy of the results of any proceedings commenced by the county designated mental health professional under subsection (3) of this section to the facility conducting the evaluation under this chapter.

Sec. 36. RCW 10.77.070 and 1973 1st ex.s. c 117 s 7 are each amended to read as follows:

When the defendant wishes to be examined by a qualified expert or professional person of his or her own choice such examiner shall be permitted to have reasonable access to the defendant for the purpose of such examination, as well as to all relevant medical and psychological records and reports.

Sec. 37. RCW 10.77.080 and 1974 ex.s. c 198 s 7 are each amended to read as follows:

The defendant may move the court for a judgment of acquittal on the grounds of insanity: PROVIDED, That a defendant so acquitted may not later contest the validity of his or her detention on the grounds that he or she did not commit the acts charged. At the hearing upon ~~((said))~~ the motion the defendant shall have the burden of proving by a preponderance of the evidence that he or she was insane at the time of the offense or offenses with which he or she is charged. If the court finds that the defendant should be acquitted by reason of insanity, it shall enter specific findings in substantially the same form as set forth in RCW 10.77.040 ~~((as now or hereafter amended))~~. If the motion is denied, the question may be submitted to the trier of fact in the same manner as other issues of fact.

Sec. 38. RCW 10.77.090 and 1989 c 420 s 5 are each amended to read as follows:

(1)(a) If at any time during the pendency of an action and prior to judgment~~(;)~~ the court finds, following a report as provided in RCW 10.77.060, ~~((as now or hereafter amended, that the))~~ a defendant is incompetent~~(;)~~ the court shall order the proceedings against the defendant be stayed~~(;)~~ except as provided in subsection ~~((5))~~ (7) of this section~~(-and-)~~.

(b) If the defendant is charged with a felony and determined to be incompetent, ~~((may))~~ the court shall commit the defendant to the custody of the secretary, who shall place such defendant in an appropriate facility of the department for evaluation and treatment, or the court may alternatively order the defendant to undergo evaluation and treatment at some other facility as

determined by the department, or under the guidance and control of ((~~some other~~)) a professional person, until he or she has regained the competency necessary to understand the proceedings against him or her and assist in his or her own defense, but in any event, for no longer than a period of ninety days.

(c) A defendant found incompetent shall be evaluated at the direction of the secretary and a determination made whether the defendant is developmentally disabled. Such evaluation and determination shall be accomplished as soon as possible following the court's placement of the defendant in the custody of the secretary. When appropriate, and subject to available funds, if the defendant is determined to be developmentally disabled, he or she may be placed in a program specifically reserved for the treatment and training of persons with developmental disabilities where the defendant shall have the right to habilitation according to an individualized service plan specifically developed for the particular needs of the defendant. The program shall be separate from programs serving persons involved in any other treatment or habilitation program. The program shall be appropriately secure under the circumstances and shall be administered by developmental disabilities professionals who shall direct the habilitation efforts. The program shall provide an environment affording security appropriate with the charged criminal behavior and necessary to protect the public safety. The department may limit admissions of such persons to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. A copy of the report shall be sent to the facility.

(d)(i) If the defendant is:

(A) Charged with a nonfelony crime and has: (I) A history of one or more violent acts, or a pending charge of one or more violent acts; or (II) been previously acquitted by reason of insanity or been previously found incompetent under this chapter with regard to an alleged offense involving actual, threatened, or attempted physical harm to a person; and

(B) Found by the court to be not competent; then

(C) The court shall order the secretary to place the defendant: (I) At a secure mental health facility in the custody of the department or an agency designated by the department for mental health treatment and restoration of competency. The placement shall not exceed fourteen days in addition to any unused time of the evaluation under RCW 10.77.060. The fourteen-day period shall be considered to include only the time the defendant is actually at the facility and shall be in addition to reasonable time for transport to or from the facility; (II) on conditional release for up to ninety days for mental health treatment and restoration of competency; or (III) any combination of (d)(i)(C)(I) and (II) of this subsection.

(ii) At the end of the mental health treatment and restoration period in (d)(i) of this subsection, or at any time a professional person determines competency

has been, or is unlikely to be, restored the defendant shall be returned to court for a hearing. If, after notice and hearing, competency has been restored, the stay entered under (a) of this subsection shall be lifted. If competency has not been restored, the proceedings shall be dismissed. If the court concludes that competency has not been restored, but that further treatment within the time limits established by (d)(i) of this subsection is likely to restore competency, the court may order that treatment for purposes of competency restoration be continued. Such treatment may not extend beyond the combination of time provided for in (d)(i)(C)(I) and (II) of this subsection.

(iii)(A) If the proceedings are dismissed under (d)(ii) of this subsection and the defendant was on conditional release at the time of dismissal, the court shall order the county designated mental health professional within that county to evaluate the defendant pursuant to chapter 71.05 RCW. The evaluation may be conducted in any location chosen by the professional.

(B) If the defendant was in custody and not on conditional release at the time of dismissal, the defendant shall be detained and sent to an evaluation and treatment facility for up to seventy-two hours for evaluation for purposes of filing a petition under chapter 71.05 RCW.

(iv) If at any time during the proceeding the court finds, following notice and hearing, a defendant is not likely to regain competency, the proceedings shall be dismissed and the defendant shall be evaluated as provided in (d)(iii) of this subsection.

(e) If the defendant is charged with a crime that is not a felony and the defendant does not meet the criteria under (d) of this subsection, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county designated mental health professional to evaluate the defendant and consider initial detention proceedings under chapter 71.05 RCW. The court must give notice to all parties at least twenty-four hours before the dismissal of any proceeding under this subsection (1)(e), and provide an opportunity for a hearing on whether to dismiss the proceedings.

(2) On or before expiration of the initial ninety-day period of commitment under subsection (1)(b) of this section the court shall conduct a hearing, at which it shall determine whether or not the defendant is incompetent. ((If the defendant is charged with a crime which is not a felony, the court may stay or dismiss proceedings and detain the defendant for sufficient time to allow the county mental health professional to evaluate the defendant and commence proceedings under chapter 71.05 RCW if appropriate; and subsections (2) and (3) of this section shall not be applicable: PROVIDED, That, upon order of the court, the prosecutor may directly petition for fourteen days of involuntary treatment under chapter 71.05 RCW:

—(2)) (3) If the court finds by a preponderance of the evidence that ((the)) a defendant charged with a felony is incompetent, the court shall have the option of extending the order of commitment or alternative treatment for an additional ninety-day period, but it must at the time of extension set a date for a prompt

hearing to determine the defendant's competency before the expiration of the second ninety-day period. The defendant, the defendant's attorney, or the prosecutor ~~(-or the judge)~~ shall have the right to demand that the hearing ~~((on or before the expiration of the second ninety-day period))~~ be before a jury. No extension shall be ordered for a second ninety-day period, nor for any subsequent period as provided in subsection ~~((3))~~ (4) of this section if the defendant's incompetence has been determined by the secretary to be solely the result of a developmental disability which is such that competence is not reasonably likely to be regained during an extension. ~~((If no demand is made, the hearing shall be before the court. The court or jury shall determine whether or not the defendant has become competent.~~

~~---~~ ~~(3))~~ (4) For persons charged with a felony, at the hearing upon the expiration of the second ninety-day period or at the end of the first ninety-day period, in the case of a developmentally disabled defendant, if the jury or court ~~((as the case may be,))~~ finds that the defendant is incompetent, the charges shall be dismissed without prejudice, and either civil commitment proceedings shall be instituted ~~((if appropriate,))~~ or the court shall order the release of the defendant: PROVIDED, That the criminal charges shall not be dismissed if ~~((at the end of the second ninety-day period, or at the end of the first ninety-day period, in the case of a developmentally disabled defendant,))~~ the court or jury finds that: (a) The defendant (i) is a substantial danger to other persons ~~((;))~~; or (ii) presents a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security ~~((;))~~; and ~~((that))~~ (b) there is a substantial probability that the defendant will regain competency within a reasonable period of time. In the event that the court or jury makes such a finding, the court may extend the period of commitment for an additional six months. At the end of ~~((said))~~ the six-month period, if the defendant remains incompetent, the charges shall be dismissed without prejudice and either civil commitment proceedings shall be instituted ~~((if appropriate,))~~ or the court shall order release of the defendant.

~~((4))~~ (5) If the defendant is referred to the county designated mental health professional for consideration of initial detention proceedings under chapter 71.05 RCW pursuant to this chapter, the county designated mental health professional shall provide prompt written notification of the results of the determination whether to commence initial detention proceedings under chapter 71.05 RCW, and whether the person was detained. The notification shall be provided to the court in which the criminal action was pending, the prosecutor, the defense attorney in the criminal action, and the facility that evaluated the defendant for competency.

(6) The fact that the defendant is unfit to proceed does not preclude any pretrial proceedings which do not require the personal participation of the defendant.

~~((5))~~ (7) A defendant receiving medication for either physical or mental problems shall not be prohibited from standing trial, if the medication either enables the defendant to understand the proceedings against him or her and to

assist in his or her own defense, or does not disable him or her from so understanding and assisting in his or her own defense.

~~((6))~~ (8) At or before the conclusion of any commitment period provided for by this section, the facility providing evaluation and treatment shall provide to the court a written report of examination which meets the requirements of RCW 10.77.060(3).

Sec. 39. RCW 10.77.110 and 1989 c 420 s 6 are each amended to read as follows:

(1) If a defendant is acquitted of a ~~((felony))~~ crime by reason of insanity, and it is found that he or she is not a substantial danger to other persons, and does not present a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall direct the defendant's final discharge. If it is found that such defendant is a substantial danger to other persons, or presents a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions, the court shall order his or her hospitalization, or any appropriate alternative treatment less restrictive than detention in a state mental hospital, pursuant to the terms of this chapter.

(2) If the defendant has been found not guilty by reason of insanity and a substantial danger, or presents a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, so as to require treatment then the secretary shall immediately cause the defendant to be evaluated to ascertain if the defendant is developmentally disabled. When appropriate, and subject to available funds, the defendant may be committed to a program specifically reserved for the treatment and training of developmentally disabled persons. A person so committed shall receive habilitation services according to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The treatment program shall provide physical security to a degree consistent with the finding that the defendant is dangerous and may incorporate varying conditions of security and alternative sites when the dangerousness of any particular defendant makes this necessary. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department.

(3) If it is found that such defendant is not a substantial danger to other persons, and does not present a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, but that he or she is in need of control by the court or other persons or institutions, the court shall direct the defendant's conditional release. ~~((If the defendant is acquitted by reason of~~

~~insanity of a crime which is not a felony, the court shall order the defendant's release or order the defendant's continued custody only for a reasonable time to allow the county-designated mental health professional to evaluate the individual and to proceed with civil commitment pursuant to chapter 71.05 RCW, if considered appropriate:))~~

Sec. 40. RCW 10.77.140 and 1989 c 420 s 8 are each amended to read as follows:

Each person committed to a hospital or other facility or conditionally released pursuant to this chapter shall have a current examination of his or her mental condition made by one or more experts or professional persons at least once every six months. ~~((Said))~~ The person may retain, or if the person is indigent and so requests, the court may appoint a qualified expert or professional person to examine him or her, and such expert or professional person shall have access to all hospital records concerning the person. In the case of a committed or conditionally released person who is developmentally disabled, the expert shall be a developmental disabilities professional. The secretary, upon receipt of the periodic report, shall provide written notice to the court of commitment of compliance with the requirements of this section.

Sec. 41. RCW 10.77.150 and 1993 c 31 s 6 are each amended to read as follows:

(1) Persons examined pursuant to RCW 10.77.140~~((as now or hereafter amended;))~~ may make application to the secretary for conditional release. The secretary shall, after considering the reports of experts or professional persons conducting the examination pursuant to RCW 10.77.140, forward to the court of the county which ordered the person's commitment the person's application for conditional release as well as the secretary's recommendations concerning the application and any proposed terms and conditions upon which the secretary reasonably believes the person can be conditionally released. Conditional release may also contemplate partial release for work, training, or educational purposes.

(2) The court of the county which ordered the person's commitment, upon receipt of an application for conditional release with the secretary's recommendation for conditional release, shall within thirty days schedule a hearing. The court may schedule a hearing on applications recommended for disapproval by the secretary. The prosecuting attorney shall represent the state at such hearings and shall have the right to have the patient examined by an expert or professional person of the prosecuting attorney's choice. If the committed person is indigent, and he or she so requests, the court shall appoint a qualified expert or professional person to examine the person on his or her behalf. The issue to be determined at such a hearing is whether or not the person may be released conditionally without substantial danger to other persons, or substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security. The court, after the hearing, shall rule on the secretary's recommendations, and if it disapproves of conditional release, may do so only on

the basis of substantial evidence. The court may modify the suggested terms and conditions on which the person is to be conditionally released. Pursuant to the determination of the court after hearing, the committed person shall thereupon be released on such conditions as the court determines to be necessary, or shall be remitted to the custody of the secretary. If the order of conditional release includes a requirement for the committed person to report to a community corrections officer, the order shall also specify that the conditionally released person shall be under the supervision of the secretary of corrections or such person as the secretary of corrections may designate and shall follow explicitly the instructions of the secretary of corrections including reporting as directed to a community corrections officer, remaining within prescribed geographical boundaries, and notifying the community corrections officer prior to making any change in the offender's address or employment.

(3) If the court determines that receiving regular or periodic medication or other medical treatment shall be a condition of the committed person's release, then the court shall require him or her to report to a physician or other medical or mental health practitioner for the medication or treatment. In addition to submitting any report required by RCW 10.77.160, the physician or other medical or mental health practitioner shall immediately upon the released person's failure to appear for the medication or treatment report the failure to the court, to the prosecuting attorney of the county in which the released person was committed, and to the supervising community corrections officer.

(4) Any person, whose application for conditional release has been denied, may reapply after a period of six months from the date of denial.

Sec. 42. RCW 10.77.180 and 1993 c 31 s 9 are each amended to read as follows:

Each person conditionally released pursuant to RCW 10.77.150(~~(-as now or hereafter amended;)~~) shall have his or her case reviewed by the court which conditionally released him or her no later than one year after such release and no later than every two years thereafter, such time to be scheduled by the court. Review may occur in a shorter time or more frequently, if the court, in its discretion, on its own motion, or on motion of the person, the secretary of social and health services, the secretary of corrections, medical or mental health practitioner, or the prosecuting attorney, so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released. The court in making its determination shall be aided by the periodic reports filed pursuant to RCW 10.77.140(~~(-as now or hereafter amended;)~~) and ((RCW)) 10.77.160, and the opinions of the secretary ((of social and health services)) and other experts or professional persons.

Sec. 43. RCW 10.77.190 and 1993 c 31 s 10 are each amended to read as follows:

(1) Any person submitting reports pursuant to RCW 10.77.160, the secretary, or the prosecuting attorney may petition the court to, or the court on its own

motion may schedule an immediate hearing for the purpose of modifying the terms of conditional release if the petitioner or the court believes the released person is failing to adhere to the terms and conditions of his or her conditional release or is in need of additional care and treatment.

(2) If the prosecuting attorney, the secretary of social and health services, the secretary of corrections, or the court, after examining the report filed with them pursuant to RCW 10.77.160, or based on other information received by them, reasonably believes that a conditionally released person is failing to adhere to the terms and conditions of his or her conditional release the court or secretary of social and health services or the secretary of corrections may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court or secretary of social and health services or the secretary of corrections or their designees shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) If the hospital or facility designated to provide outpatient care determines that a conditionally released person presents a threat to public safety, the hospital or facility shall immediately notify the secretary of social and health services or the secretary of corrections or their designees. The secretary shall order that the conditionally released person be apprehended and taken into custody.

(4) The court, upon receiving notification of the apprehension, shall promptly schedule a hearing. The issue to be determined is whether the conditionally released person did or did not adhere to the terms and conditions of his or her release, or whether the person presents a threat to public safety. Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or his or her conditional release shall be revoked and he or she shall be committed subject to release only in accordance with provisions of this chapter.

Sec. 44. RCW 10.77.200 and 1993 c 31 s 11 are each amended to read as follows:

(1) Upon application by the committed or conditionally released person, the secretary shall determine whether or not reasonable grounds exist for final discharge. In making this determination, the secretary may consider the reports filed under RCW 10.77.060, 10.77.110, 10.77.140, and 10.77.160, and other reports and evaluations provided by professionals familiar with the case. If the secretary approves the final discharge he or she then shall authorize ~~((said))~~ the person to petition the court.

(2) The petition shall be served upon the court and the prosecuting attorney. The court, upon receipt of the petition for final discharge, shall within forty-five days order a hearing. Continuance of the hearing date shall only be allowed for good cause shown. The prosecuting attorney shall represent the state, and shall have the right to have the petitioner examined by an expert or professional person of the prosecuting attorney's choice. If the petitioner is indigent, and the person so requests, the court shall appoint a qualified expert or professional person to examine him or her. If the petitioner is developmentally disabled, the examination shall be performed by a developmental disabilities professional. The hearing shall be before a jury if demanded by either the petitioner or the prosecuting attorney. The burden of proof shall be upon the petitioner to show by a preponderance of the evidence that the petitioner no longer presents, as a result of a mental disease or defect, a substantial danger to other persons, or a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

(3) Nothing contained in this chapter shall prohibit the patient from petitioning the court for final discharge or conditional release from the institution in which he or she is committed. The issue to be determined on such proceeding is whether the petitioner, as a result of a mental disease or defect, is a substantial danger to other persons, or presents a substantial likelihood of committing ~~((felonious))~~ criminal acts jeopardizing public safety or security, unless kept under further control by the court or other persons or institutions.

Nothing contained in this chapter shall prohibit the committed person from petitioning for release by writ of habeas corpus.

Sec. 45. RCW 10.77.210 and 1993 c 31 s 12 are each amended to read as follows:

(1) Any person involuntarily detained, hospitalized, or committed pursuant to the provisions of this chapter shall have the right to adequate care and individualized treatment. The person who has custody of the patient or is in charge of treatment shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations of the patient that have been filed with the secretary pursuant to this chapter. Except as provided in RCW 10.77.205 and 4.24.550 regarding the release of information concerning insane offenders who are acquitted of sex offenses and subsequently committed pursuant to this chapter, all records and reports made pursuant to this chapter, shall be made available only upon request, to the committed person, to his or her attorney, to his or her personal physician, to the supervising community corrections officer, to the prosecuting attorney, to the court, to the protection and advocacy agency, or other expert or professional persons who, upon proper showing, demonstrates a need for access to such records. All records and reports made pursuant to this chapter shall also be made available, upon request, to the department of corrections or the indeterminate sentence review board if the person was on parole, probation, or

community supervision at the time of detention, hospitalization, or commitment or the person is subsequently convicted for the crime for which he or she was detained, hospitalized, or committed pursuant to this chapter.

(2) All relevant records and reports as defined by the department in rule shall be made available, upon request, to criminal justice agencies as defined in RCW 10.97.030.

NEW SECTION. Sec. 46. In developing rules under RCW 10.77.210(2), the department shall implement the following legislative intent: Increasing public safety; and making decisions based on a person's current conduct and mental condition rather than the classification of the charges.

NEW SECTION. Sec. 47. A new section is added to chapter 10.77 RCW to read as follows:

A copy of relevant records and reports as defined by the department, in consultation with the department of corrections, made pursuant to this chapter, and including relevant information necessary to meet the requirements of section 35(2) of this act and RCW 10.77.090, shall accompany the defendant upon transfer to a mental health facility or a correctional institution or facility.

NEW SECTION. Sec. 48. A new section is added to chapter 72.10 RCW to read as follows:

The secretary shall, for any person committed to a state correctional facility after the effective date of this section, inquire at the time of commitment whether the person had received outpatient mental health treatment within the two years preceding confinement and the name of the person providing the treatment.

The secretary shall inquire of the treatment provider if he or she wishes to be notified of the release of the person from confinement, for purposes of offering treatment upon the inmate's release. If the treatment provider wishes to be notified of the inmate's release, the secretary shall attempt to provide such notice at least seven days prior to release.

At the time of an inmate's release if the secretary is unable to locate the treatment provider, the secretary shall notify the regional support network in the county the inmate will most likely reside following release.

If the secretary has, prior to the release from the facility, evaluated the inmate and determined he or she requires postrelease mental health treatment, a copy of relevant records and reports relating to the inmate's mental health treatment or status shall be promptly made available to the offender's present or future treatment provider. The secretary shall determine which records and reports are relevant and may provide a summary in lieu of copies of the records.

Sec. 49. RCW 10.97.030 and 1990 c 3 s 128 are each amended to read as follows:

For purposes of this chapter, the definitions of terms in this section shall apply.

(1) "Criminal history record information" means information contained in records collected by criminal justice agencies, other than courts, on individuals,

consisting of identifiable descriptions and notations of arrests, detentions, indictments, informations, or other formal criminal charges, and any disposition arising therefrom, including acquittals by reason of insanity, dismissals based on lack of competency, sentences, correctional supervision, and release.

The term includes information contained in records maintained by or obtained from criminal justice agencies, other than courts, which records provide individual identification of a person together with any portion of the individual's record of involvement in the criminal justice system as an alleged or convicted offender, except:

(a) Posters, announcements, or lists for identifying or apprehending fugitives or wanted persons;

(h) Original records of entry maintained by criminal justice agencies to the extent that such records are compiled and maintained chronologically and are accessible only on a chronological basis;

(c) Court indices and records of public judicial proceedings, court decisions, and opinions, and information disclosed during public judicial proceedings;

(d) Records of traffic violations which are not punishable by a maximum term of imprisonment of more than ninety days;

(e) Records of any traffic offenses as maintained by the department of licensing for the purpose of regulating the issuance, suspension, revocation, or renewal of drivers' or other operators' licenses and pursuant to RCW 46.52.130 ~~((as now existing or hereafter amended))~~;

(f) Records of any aviation violations or offenses as maintained by the department of transportation for the purpose of regulating pilots or other aviation operators, and pursuant to RCW 47.68.330 ~~((as now existing or hereafter amended))~~;

(g) Announcements of executive clemency.

(2) "Nonconviction data" consists of all criminal history record information relating to an incident which has not led to a conviction or other disposition adverse to the subject, and for which proceedings are no longer actively pending. There shall be a rebuttable presumption that proceedings are no longer actively pending if more than one year has elapsed since arrest, citation, or service of warrant and no disposition has been entered.

(3) "Conviction record" means criminal history record information relating to an incident which has led to a conviction or other disposition adverse to the subject.

(4) "Conviction or other disposition adverse to the subject" means any disposition of charges ~~((except))~~ other than: (a) A decision not to prosecute((:)); (b) a dismissal((:)); or (c) acquittal ((except when the)); with the following exceptions, which shall be considered dispositions adverse to the subject: An acquittal ((is)) due to a finding of not guilty by reason of insanity and a dismissal by reason of incompetency, pursuant to chapter 10.77 RCW((and the person was committed pursuant to chapter 10.77 RCW: PROVIDED, HOWEVER, That));

and a dismissal entered after a period of probation, suspension, or deferral of sentence (~~shall be considered a disposition adverse to the subject~~).

(5) "Criminal justice agency" means: (a) A court; or (b) a government agency which performs the administration of criminal justice pursuant to a statute or executive order and which allocates a substantial part of its annual budget to the administration of criminal justice.

(6) "The administration of criminal justice" means performance of any of the following activities: Detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of accused persons or criminal offenders. The term also includes criminal identification activities and the collection, storage, dissemination of criminal history record information, and the compensation of victims of crime.

(7) "Disposition" means the formal conclusion of a criminal proceeding at whatever stage it occurs in the criminal justice system.

(8) "Dissemination" means disclosing criminal history record information or disclosing the absence of criminal history record information to any person or agency outside the agency possessing the information, subject to the following exceptions:

(a) When criminal justice agencies jointly participate in the maintenance of a single record keeping department as an alternative to maintaining separate records, the furnishing of information by that department to personnel of any participating agency is not a dissemination;

(b) The furnishing of information by any criminal justice agency to another for the purpose of processing a matter through the criminal justice system, such as a police department providing information to a prosecutor for use in preparing a charge, is not a dissemination;

(c) The reporting of an event to a record keeping agency for the purpose of maintaining the record is not a dissemination.

NEW SECTION. Sec. 50. A new section is added to chapter 10.77 RCW to read as follows:

Where appropriate, and under the prescription of an authorized professional person, atypical antipsychotic medications may be accessed for use by a regional support network through the fund established in section 57 of this act.

NEW SECTION. Sec. 51. The code reviser shall alphabetize the definitions in RCW 10.77.010 and correct any references.

NEW SECTION. Sec. 52. The following acts or parts of acts are each repealed:

(1) RCW 71.05.015 and 1979 ex.s. c 215 s 1; and

(2) RCW 71.05.080 and 1973 1st ex.s. c 142 s 13.

NEW SECTION. Sec. 53. This act takes effect July 1, 1998, except for sections 18, 35, 38, and 39 of this act, which take effect March 1, 1999.

NEW SECTION. Sec. 54. (1) The Washington state institute for public policy shall conduct an evaluation of this act to determine:

(a) Whether there has been a reduction in recidivism for mentally ill offenders who are felons or who meet the criteria specified in RCW 10.77.090(1)(d) and received mental health services as a result of the provisions of chapters 10.77 and 71.05 RCW.

(b) The number of nonfelony offenders who have been referred to competency restoration under RCW 10.77.090(1)(d)(i)(C) and the percentage of such offenders who have been restored to competency within the allotted time for felons, nonfelony offenders meeting the criteria under RCW 10.77.090(1)(d), and the nonfelony offenders who do not meet this criteria.

(c) Whether the information-sharing provisions of this act are adequate to provide necessary information to the affected parties. The analysis shall include findings as to whether the flow of information is resulting in the efficient usage of the information and whether there are revisions in the flow which would better allow the courts, professional persons, and parties to proceedings to make better use of the information.

(2) The evaluation shall be presented to the legislature on or before November 15, 2003.

***NEW SECTION. Sec. 55.** *The department of corrections shall report to the fiscal committees of the legislature on the efficacy of the regional support networks in implementing the provisions of this act. Such report shall be submitted annually on or before September 30th and shall include information about the administrative expenses of the regional support networks.*

*Sec. 55 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 56. RCW 10.77.005 is recodified within chapter 10.77 RCW after RCW 10.77.090.

NEW SECTION. Sec. 57. \$210,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the establishment of a fund to reimburse regional support networks for the cost of atypical antipsychotic medications. This amount is not subject to the provisions of RCW 71.24.035(17)(d).

NEW SECTION. Sec. 58. 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. 59. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

***NEW SECTION. Sec. 60.** *This act shall expire on June 30, 2001.*

*Sec. 60 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 61. The joint legislative audit and review committee shall conduct an evaluation of the efficiency and effectiveness of this act in meeting its stated goals. Such an evaluation shall include the operation of the

state mental hospitals and the regional support networks, as well as any other appropriate entity. The joint legislative audit and review committee shall prepare an interim report of its findings which shall be delivered to the appropriate legislative committees of the house of representatives and the senate no later than September 1, 2000. In addition, the joint legislative audit and review committee shall prepare a final report of its findings which shall be delivered to the appropriate legislative committees of the house of representatives and the senate no later than January 1, 2001.

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 55 and 60, Second Substitute Senate Bill No. 6214 entitled:

"AN ACT Relating to mental illness;"

2SSB 6214 broadens the Involuntary Treatment Act (ITA) commitment standards to take greater account of a history of violence. Among other things, it requires greater information sharing between treatment providers and criminal justice agencies, and creates mechanisms to protect public safety in the context of ITA treatment.

Section 55 of 2SSB 6214 would require the Department of Corrections to report annually to legislative fiscal committees on the efficacy of the regional support networks in implementing this legislation, including information on their administrative costs. While such reporting has value, DOC has neither the audit authority, the specialized expertise, nor the funding to perform this task. The bill already requires evaluations and reports by the Joint Legislative Audit and Review Committee and the Washington State Institute for Public Policy.

Section 60 would cause the entire act to expire on June 30, 2001. "Sunset" provisions can be valuable, but this would be too soon. This complex new law will be difficult to implement and may well require revision in the years to come. The studies required by the Institute for Public Policy and the Joint Legislative Audit and Review Committee can help identify problems and opportunities for improvement.

For these reasons, I have vetoed sections 55 and 60 of Second Substitute Senate Bill No. 6214.

With the exception of sections 55 and 60, Second Substitute Senate Bill No. 6214 is approved."

CHAPTER 298

[Senate Bill 6301]

FRANCHISE AGREEMENTS BETWEEN MOTOR VEHICLE MANUFACTURERS AND DEALERS—WARRANTY WORK

AN ACT Relating to franchise agreements between motor vehicle manufacturers and dealers; amending RCW 19.118.021, 19.118.031, 19.118.041, 19.118.061, and 19.118.090; adding a new section to chapter 46.96 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 46.96 RCW to read as follows:

(1) Each manufacturer shall specify in its franchise agreement, or in a separate written agreement, with each of its dealers licensed in this state, the dealer's obligation to perform warranty work or service on the manufacturer's products. Each manufacturer shall provide each of its dealers with a schedule of compensation to be paid to the dealer for any warranty work or service, including parts, labor, and diagnostic work, required of the dealer by the manufacturer in connection with the manufacturer's products.

(2) All claims for warranty work for parts and labor made by dealers under this section shall be paid by the manufacturer within thirty days following receipt, provided the claim has been approved by the manufacturer. The manufacturer has the right to audit claims for warranty work and to charge the dealer for any unsubstantiated, incorrect, or false claims for a period of one year following payment. However, the manufacturer may audit and charge the dealer for any fraudulent claims during any period for which an action for fraud may be commenced under applicable state law.

(3) All claims submitted by dealers on the forms and in the manner specified by the manufacturer shall be either approved or disapproved within thirty days following their receipt. The manufacturer shall notify the dealer in writing of any disapproved claim, and shall set forth the reasons why the claim was not approved. Any claim not specifically disapproved in writing within thirty days following receipt is approved, and the manufacturer is required to pay that claim within thirty days of receipt of the claim.

Sec. 2. RCW 19.118.021 and 1995 c 254 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 new motor vehicle arbitration board.

(2) "Collateral charges" means any sales or lease related charges including but not limited to sales tax, use tax, arbitration service fees, unused license fees, unused registration fees, unused title fees, finance charges, prepayment penalties, credit disability and credit life insurance costs not otherwise refundable, any other insurance costs prorated for time out of service, transportation charges, dealer preparation charges, or any other charges for service contracts, undercoating, rustproofing, or factory or dealer installed options.

(3) "Condition" means a general problem that results from a defect or malfunction of one or more parts, or their improper installation by the manufacturer, its agents, or the new motor vehicle dealer.

(4) "Consumer" means any person who has entered into an agreement or contract for the transfer, lease, or purchase of a new motor vehicle, other than for purposes of resale or sublease, during the duration of the warranty period defined under this section.

(5) "Court" means the superior court in the county where the consumer resides, except if the consumer does not reside in this state, then the superior court

in the county where an arbitration hearing or determination was conducted or made pursuant to this chapter.

(6) "Incidental costs" means any reasonable expenses incurred by the consumer in connection with the repair of the new motor vehicle, including any towing charges and the costs of obtaining alternative transportation.

(7) "Manufacturer" means any person engaged in the business of constructing or assembling new motor vehicles or engaged in the business of importing new motor vehicles into the United States for the purpose of selling or distributing new motor vehicles to new motor vehicle dealers. "Manufacturer" does not include any person engaged in the business of set-up of motorcycles as an agent of a new motor vehicle dealer if the person does not otherwise construct or assemble motorcycles.

(8) "Motorcycle" means any motorcycle as defined in RCW 46.04.330 which has an engine displacement of at least seven hundred fifty cubic centimeters.

(9) "Motor home" means a vehicular unit designed to provide temporary living quarters for recreational, camping, or travel use, built on or permanently attached to a self-propelled motor vehicle chassis or on a chassis cab or van that is an integral part of the completed vehicle.

(10) "Motor home manufacturer" means the first stage manufacturer, the component manufacturer, and the final stage manufacturer.

(a) "First stage manufacturer" means a person who manufactures incomplete new motor vehicles such as chassis, chassis cabs, or vans, that are directly warranted by the first stage manufacturer to the consumer, and are completed by a final stage manufacturer into a motor home.

(b) "Component manufacturer" means a person who manufactures components used in the manufacture or assembly of a chassis, chassis cab, or van that is completed into a motor home and whose components are directly warranted by the component manufacturer to the consumer.

(c) "Final stage manufacturer" means a person who assembles, installs, or permanently affixes a body, cab, or equipment to an incomplete new motor vehicle such as a chassis, chassis cab, or van provided by a first stage manufacturer, to complete the vehicle into a motor home.

(11) "New motor vehicle" means any new self-propelled vehicle, including a new motorcycle, primarily designed for the transportation of persons or property over the public highways that was originally purchased or leased at retail from a new motor vehicle dealer or leasing company in this state, and that was initially registered in this state or for which a temporary motor vehicle license was issued pursuant to RCW 46.16.460, but does not include vehicles purchased or leased by a business as part of a fleet of ten or more vehicles at one time or under a single purchase or lease agreement. If the motor vehicle is a motor home, this chapter shall apply to the self-propelled vehicle and chassis, but does not include those portions of the vehicle designated, used, or maintained primarily as a mobile dwelling, office, or commercial space. The term "new motor vehicle" does not include trucks with nineteen thousand pounds or more gross vehicle weight rating.

The term "new motor vehicle" includes a demonstrator or lease-purchase vehicle as long as a manufacturer's warranty was issued as a condition of sale.

~~((10))~~ (12) "New motor vehicle dealer" means a person who holds a dealer agreement with a manufacturer for the sale of new motor vehicles, who is engaged in the business of purchasing, selling, servicing, exchanging, or dealing in new motor vehicles, and who is licensed or required to be licensed as a vehicle dealer by the state of Washington.

~~((11))~~ (13) "Nonconformity" means a defect, serious safety defect, or condition that substantially impairs the use, value, or safety of a new motor vehicle, but does not include a defect or condition that is the result of abuse, neglect, or unauthorized modification or alteration of the new motor vehicle.

~~((12))~~ (14) "Purchase price" means the cash price of the new motor vehicle appearing in the sales agreement or contract.

(a) "Purchase price" in the instance of a lease means the actual written capitalized cost disclosed to the consumer contained in the lease agreement. If there is no disclosed capitalized cost in the lease agreement the "purchase price" is the manufacturer's suggested retail price including manufacturer installed accessories or items of optional equipment displayed on the manufacturer label, required by 15 U.S.C. Sec. 1232.

(b) "Purchase price" in the instance of both a vehicle purchase or lease agreement includes any allowance for a trade-in vehicle but does not include any manufacturer-to-consumer rebate appearing in the agreement or contract that the consumer received or that was applied to reduce the purchase or lease cost.

Where the consumer is a subsequent transferee and the consumer selects repurchase of the motor vehicle, "purchase price" means the consumer's subsequent purchase price. Where the consumer is a subsequent transferee and the consumer selects replacement of the motor vehicle, "purchase price" means the original purchase price.

~~((13))~~ (15) "Reasonable offset for use" means the definition provided in RCW 19.118.041(1)(c) for a new motor vehicle other than a new motorcycle. The reasonable offset for use for a new motorcycle shall be computed by the number of miles that the vehicle traveled before the manufacturer's acceptance of the vehicle upon repurchase or replacement multiplied by the purchase price, and divided by twenty-five thousand.

~~((14))~~ (16) "Reasonable number of attempts" means the definition provided in RCW 19.118.041.

~~((15))~~ (17) "Replacement motor vehicle" means a new motor vehicle that is identical or reasonably equivalent to the motor vehicle to be replaced, as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options.

~~((16))~~ (18) "Serious safety defect" means a life-threatening malfunction or nonconformity that impedes the consumer's ability to control or operate the new

motor vehicle for ordinary use or reasonable intended purposes or creates a risk of fire or explosion.

~~((+7))~~ (19) "Subsequent transferee" means a consumer who acquires a motor vehicle, within the warranty period, as defined in this section, with an applicable manufacturer's written warranty and where the vehicle otherwise met the definition of a new motor vehicle at the time of original retail sale or lease.

~~((+8))~~ (20) "Substantially impair" means to render the new motor vehicle unreliable, or unsafe for ordinary use, or to diminish the resale value of the new motor vehicle below the average resale value for comparable motor vehicles.

~~((+9))~~ (21) "Warranty" means any implied warranty, any written warranty of the manufacturer, or any affirmation of fact or promise made by the manufacturer in connection with the sale of a new motor vehicle that becomes part of the basis of the bargain. The term "warranty" pertains to the obligations of the manufacturer in relation to materials, workmanship, and fitness of a new motor vehicle for ordinary use or reasonably intended purposes throughout the duration of the warranty period as defined under this section.

~~((20))~~ (22) "Warranty period" means the period ending two years after the date of the original delivery to the consumer of a new motor vehicle, or the first twenty-four thousand miles of operation, whichever occurs first.

Sec. 3. RCW 19.118.031 and 1995 c 254 s 2 are each amended to read as follows:

(1) The manufacturer shall publish an owner's manual and provide it to the new motor vehicle dealer or leasing company. The owner's manual shall include a list of the addresses and phone numbers for the manufacturer's customer assistance division, or zone or regional offices. A manufacturer shall provide to the new motor vehicle dealer or leasing company all applicable manufacturer's written warranties. The dealer or leasing company shall transfer to the consumer, at the time of original retail sale or lease, the owner's manual and applicable written warranties as provided by a manufacturer.

(2) At the time of purchase, the new motor vehicle dealer shall provide the consumer with a written statement that explains the consumer's rights under this chapter. The written statement shall be prepared and supplied by the attorney general and shall contain a toll-free number that the consumer can contact for information regarding the procedures and remedies under this chapter.

(3) For the purposes of this chapter, if a new motor vehicle does not conform to the warranty and the consumer reports the nonconformity during the term of the warranty period or the period of coverage of the applicable manufacturer's written warranty, whichever is less, to the manufacturer, its agent, or the new motor vehicle dealer who sold the new motor vehicle, the manufacturer, its agent, or the new motor vehicle dealer shall make repairs as are necessary to conform the vehicle to the warranty, regardless of whether such repairs are made after the expiration of the warranty period. Any corrections or attempted repairs undertaken by a new motor vehicle dealer under this chapter shall be treated as warranty work and billed by the dealer to the manufacturer in the same manner

as other work under the manufacturer's written warranty is billed. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(4) Upon request from the consumer, the manufacturer or new motor vehicle dealer shall provide a copy of any report or computer reading compiled by the manufacturer's field or zone representative regarding inspection, diagnosis, or test-drive of the consumer's new motor vehicle, or shall provide a copy of any technical service bulletin issued by the manufacturer regarding the year and model of the consumer's new motor vehicle as it pertains to any material, feature, component, or the performance thereof.

(5) The new motor vehicle dealer shall provide to the consumer each time the consumer's vehicle is returned from being diagnosed or repaired under the warranty, a fully itemized, legible statement or repair order indicating any diagnosis made, and all work performed on the vehicle including but not limited to, a general description of the problem reported by the consumer or an identification of the defect or condition, parts and labor, the date and the odometer reading when the vehicle was submitted for repair, and the date when the vehicle was made available to the consumer.

(6) No manufacturer, its agent, or the new motor vehicle dealer may refuse to diagnose or repair any nonconformity covered by the warranty for the purpose of avoiding liability under this chapter.

(7) For purposes of this chapter, consumers shall have the rights and remedies, including a cause of action, against manufacturers as provided in this chapter.

(8) The warranty period and thirty-day out-of-service period, and sixty-day out-of-service period in the case of a motor home, shall be extended by any time that repair services are not available to the consumer as a direct result of a strike, war, invasion, fire, flood, or other natural disaster.

Sec. 4. RCW 19.118.041 and 1995 c 254 s 3 are each amended to read as follows:

(1) If the manufacturer, its agent, or the new motor vehicle dealer is unable to conform the new motor vehicle to the warranty by repairing or correcting any nonconformity after a reasonable number of attempts, the manufacturer, within forty calendar days of a consumer's written request to the manufacturer's corporate, dispute resolution, zone, or regional office address shall, at the option of the consumer, replace or repurchase the new motor vehicle.

(a) The replacement motor vehicle shall be identical or reasonably equivalent to the motor vehicle to be replaced as the motor vehicle to be replaced existed at the time of original purchase or lease, including any service contract, undercoating, rustproofing, and factory or dealer installed options. Where the manufacturer supplies a replacement motor vehicle, the manufacturer shall be responsible for sales tax, license, registration fees, and refund of any incidental costs. Compensation for a reasonable offset for use shall be paid by the consumer

to the manufacturer in the event that the consumer accepts a replacement motor vehicle.

(b) When repurchasing the new motor vehicle, the manufacturer shall refund to the consumer the purchase price, all collateral charges, and incidental costs, less a reasonable offset for use. When repurchasing the new motor vehicle, in the instance of a lease, the manufacturer shall refund to the consumer all payments made by the consumer under the lease including but not limited to all lease payments, trade-in value or inception payment, security deposit, all collateral charges and incidental costs less a reasonable offset for use. The manufacturer shall make such payment to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle and upon the lessor's and/or lienholder's receipt of that payment and payment by the consumer of any late payment charges, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

(c) The reasonable offset for use shall be computed by multiplying the number of miles that the vehicle traveled directly attributable to use by the consumer times the purchase price, and dividing the product by one hundred twenty thousand, except in the case of a motor home, in which event it shall be divided by ninety thousand. However, the reasonable offset for use calculation total for a motor home is subject to modification by the board by decreasing or increasing the offset total up to a maximum of one-third of the offset total. The board may modify the offset total in those circumstances where the board determines that the wear and tear on those portions of the motor home designated, used, or maintained primarily as a mobile dwelling, office, or commercial space are significantly greater or significantly less than that which could be reasonably expected based on the mileage attributable to the consumer's use of the motor home. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects repurchase of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the date of purchase or lease by the consumer. Where the consumer is a second or subsequent purchaser, lessee, or transferee of the motor vehicle and the consumer selects replacement of the motor vehicle, "the number of miles that the vehicle traveled" shall be calculated from the original purchase, lease, or in-service date.

(2) Reasonable number of attempts, except in the case of a new motor vehicle that is a motor home acquired after June 30, 1998, shall be deemed to have been undertaken by the manufacturer, its agent, or the new motor vehicle dealer to conform the new motor vehicle to the warranty within the warranty period, if: (a) The same serious safety defect has been subject to diagnosis or repair two or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the serious safety defect continues to exist; (b) the same nonconformity has been subject to diagnosis or repair four or more times, at least one of which is during the period of coverage of the applicable manufacturer's written warranty, and the nonconformity continues to exist; or (c)

the vehicle is out-of-service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of thirty calendar days, at least fifteen of them during the period of the applicable manufacturer's written warranty. For purposes of this subsection, the manufacturer's written warranty shall be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(3)(a) In the case of a new motor vehicle that is a motor home acquired after June 30, 1998, a reasonable number of attempts shall be deemed to have been undertaken by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers to conform the new motor vehicle to the warranty within the warranty period, if: (i) The same serious safety defect has been subject to diagnosis or repair one or more times during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the serious safety defect continues to exist; (ii) the same nonconformity has been subject to repair three or more times, at least one of which is during the period of coverage of the applicable motor home manufacturer's written warranty, plus a final attempt to repair the vehicle as provided for in (b) of this subsection, and the nonconformity continues to exist; or (iii) the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for a cumulative total of sixty calendar days aggregating all motor home manufacturer days out-of-service, and the motor home manufacturers have had at least one opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities after receipt of notification from the consumer as provided for in (c) of this subsection. For purposes of this subsection, each motor home manufacturer's written warranty must be at least one year after the date of the original delivery to the consumer of the vehicle or the first twelve thousand miles of operation, whichever occurs first.

(b) In the case of a new motor vehicle that is a motor home, after one attempt has been made to repair a serious safety defect, or after three attempts have been made to repair the same nonconformity, the consumer shall give written notification of the need to repair the nonconformity to each of the motor home manufacturers at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers to coordinate and complete a final attempt to cure the nonconformity. The motor home manufacturers each have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. The motor home manufacturers have a cumulative total of thirty days, commencing upon delivery of the vehicle to the designated repair facility by the consumer, to conform the vehicle to the applicable motor home manufacturer's written warranty. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the

consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to a final attempt to cure the nonconformity.

(c) In the case of a new motor vehicle that is a motor home, if the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities by the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers for a cumulative total of thirty or more days aggregating all motor home manufacturer days out of service, the consumer shall so notify each motor home manufacturer in writing at their respective corporate, zone, or regional office addresses to allow the motor home manufacturers, their respective agents, or their respective new motor vehicle dealers an opportunity to coordinate and complete an inspection and any repairs of the vehicle's nonconformities. The motor home manufacturers have fifteen days, commencing upon receipt of the notification, to respond and inform the consumer of the location of the facility where the vehicle will be repaired. If the vehicle is unsafe to drive due to a serious safety defect, or to the extent the repair facility is more than one hundred miles from the motor home location, the motor home manufacturers are responsible for the cost of transporting the vehicle to and from the repair facility. Once the buyer delivers the vehicle to the designated repair facility, the inspection and repairs must be completed by the motor home manufacturers either (i) within ten days or (ii) before the vehicle is out of service by reason of diagnosis or repair of one or more nonconformities for sixty days, whichever time period is longer. This time period may be extended if the consumer agrees in writing. If a motor home manufacturer fails to respond to the consumer or perform the repairs within the time period prescribed, that motor home manufacturer is not entitled to at least one opportunity to inspect and repair the vehicle's nonconformities after receipt of notification from the buyer as provided for in this subsection (3)(c).

(4) No new motor vehicle dealer may be held liable by the manufacturer for any collateral charges, incidental costs, purchase price refunds, or vehicle replacements. Manufacturers shall not have a cause of action against dealers under this chapter. Consumers shall not have a cause of action against dealers under this chapter, but a violation of any responsibilities imposed upon dealers under this chapter is a per se violation of chapter 19.86 RCW. Consumers may pursue rights and remedies against dealers under any other law, including chapters 46.70 and 46.71 RCW. Manufacturers and consumers may not make dealers parties to arbitration board proceedings under this chapter.

Sec. 5. RCW 19.118.061 and 1995 c 254 s 4 are each amended to read as follows:

(1) A manufacturer shall be prohibited from reselling any motor vehicle determined or adjudicated as having a serious safety defect unless the serious safety defect has been corrected and the manufacturer warrants upon the first subsequent resale that the defect has been corrected.

(2) Before any sale or transfer of a vehicle that has been replaced or repurchased by the manufacturer that was determined or adjudicated as having a nonconformity or to have been out of service for thirty or more calendar days, or

sixty or more calendar days in the case of a motor home, under this chapter, the manufacturer shall:

(a) Notify the attorney general and the department of licensing, by certified mail or by personal service, upon receipt of the motor vehicle;

(b) Attach a resale disclosure notice to the vehicle in a manner and form to be specified by the attorney general. Only the retail purchaser may remove the resale disclosure notice after execution of the disclosure form required under subsection (3) of this section; and

(c) Notify the attorney general and the department of licensing if the nonconformity in the motor vehicle is corrected.

(3) Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle and which was previously returned after a final determination, adjudication, or settlement under this chapter or under a similar statute of any other state, the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of said final determination, adjudication or settlement, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity in a manner to be specified by the attorney general, and the department of licensing shall place on the certificate of title information indicating the vehicle was returned under this chapter.

(4) Upon receipt of the manufacturer's notification under subsection (2) of this section that the nonconformity has been corrected and upon the manufacturer's request and payment of any fees, the department of licensing shall issue a new title with information indicating the vehicle was returned under this chapter and that the nonconformity has been corrected. Upon the first subsequent resale, either at wholesale or retail, or transfer of title of a motor vehicle, as provided under subsection (2)(c) of this section, the manufacturer shall warrant upon the resale that the nonconformity has been corrected, and the manufacturer, its agent, or the new motor vehicle dealer who has actual knowledge of the corrected nonconformity, shall execute and deliver to the buyer before sale an instrument in writing setting forth information identifying the nonconformity and indicating that it has been corrected in a manner to be specified by the attorney general.

(5) After repurchase or replacement and following a manufacturer's receipt of a vehicle under this section and prior to a vehicle's first subsequent retail transfer by resale or lease, any intervening transferor of a vehicle subject to the requirements of this section who has received the disclosure, correction and warranty documents, as specified by the attorney general and required under this chapter, shall deliver the documents with the vehicle to the next transferor, purchaser or lessee to ensure proper and timely notice and disclosure. Any intervening transferor who fails to comply with this subsection shall, at the option of the subsequent transferor or first subsequent retail purchaser or lessee: (a) Indemnify (~~and~~ ~~any~~) any subsequent transferor or first subsequent retail purchaser for all damages caused by such violation; or (b) repurchase the vehicle

at the full purchase price including all fees, taxes and costs incurred for goods and services which were included in the subsequent transaction.

Sec. 6. RCW 19.118.090 and 1995 c 254 s 6 are each amended to read as follows:

(1) A consumer may request arbitration under this chapter by submitting the request to the attorney general. Within ten days after receipt of an arbitration request, the attorney general shall make a reasonable determination of the cause of the request for arbitration and provide necessary information to the consumer regarding the consumer's rights and remedies under this chapter. The attorney general shall assign the dispute to a board, except that if it clearly appears from the materials submitted by the consumer that the dispute is not eligible for arbitration, the attorney general may refuse to assign the dispute and shall explain any required procedures to the consumer.

(2) Manufacturers shall submit to arbitration if such arbitration is requested by the consumer within thirty months from the date of the original delivery of the new motor vehicle to a consumer at retail and if the consumer's dispute is deemed eligible for arbitration by the board. In the case of a motor home, the thirty-month period will be extended by the amount of time it takes the motor home manufacturers to complete the final repair attempt at the designated repair facility as provided for in RCW 19.118.041(3)(b).

(3) The new motor vehicle arbitration board may reject for arbitration any dispute that it determines to be frivolous, fraudulent, filed in bad faith, res judicata or beyond its authority. Any dispute deemed by the board to be ineligible for arbitration due to insufficient evidence may be reconsidered by the board upon the submission of other information or documents regarding the dispute that would allegedly qualify for relief under this chapter. Following a second review, the board may reject the dispute for arbitration if evidence is still clearly insufficient to qualify the dispute for relief under this chapter. A rejection by the board is subject to review by the attorney general or may be appealed under RCW 19.118.100.

A decision to reject any dispute for arbitration shall be sent by certified mail to the consumer and the manufacturer, and shall contain a brief explanation as to the reason therefor.

(4) The manufacturer shall complete a written manufacturer response to the consumer's request for arbitration. The manufacturer shall provide a response to the consumer and the board within ten calendar days from the date of the manufacturer's receipt of the board's notice of acceptance of a dispute for arbitration. The manufacturer response shall include all issues and affirmative defenses related to the nonconformities identified in the consumer's request for arbitration that the manufacturer intends to raise at the arbitration hearing.

(5) The arbitration board shall award the remedies under RCW 19.118.041 if it finds a nonconformity and that a reasonable number of attempts have been undertaken to correct the nonconformity. The board shall award reasonable costs and attorneys' fees incurred by the consumer where the manufacturer has been

directly represented by counsel: (a) In dealings with the consumer in response to a request to repurchase or replace under RCW 19.118.041; (b) in settlement negotiations; (c) in preparation of the manufacturer's statement; or (d) at an arbitration board hearing or other board proceeding.

In the case of an arbitration involving a motor home, the board may allocate liability among the motor home manufacturers.

(6) It is an affirmative defense to any claim under this chapter that: (a) The alleged nonconformity does not substantially impair the use, value, or safety of the new motor vehicle; or (b) the alleged nonconformity is the result of abuse, neglect, or unauthorized modifications or alterations of the new motor vehicle.

(7) The board shall have forty-five calendar days from the date the board receives the consumer's request for arbitration to hear the dispute. If the board determines that additional information is necessary, the board may continue the arbitration proceeding on a subsequent date within ten calendar days of the initial hearing. The board shall decide the dispute within sixty calendar days from the date the board receives the consumer's request for arbitration.

The decision of the board shall be delivered by certified mail or personal service to the consumer and the manufacturer, and shall contain a written finding of whether the new motor vehicle meets the standards set forth under this chapter.

(8) The consumer may accept the arbitration board decision or appeal to superior court, pursuant to RCW 19.118.100. Upon acceptance by the consumer, the arbitration board decision shall become final. The consumer shall send written notification of acceptance or rejection to the arbitration board within sixty days of receiving the decision and the arbitration board shall immediately deliver a copy of the consumer's acceptance to the manufacturer by certified mail, return receipt requested, or by personal service. Failure of the consumer to respond to the arbitration board within sixty calendar days of receiving the decision shall be considered a rejection of the decision by the consumer. The consumer shall have one hundred twenty calendar days from the date of rejection to file a petition of appeal in superior court. At the time the petition of appeal is filed, the consumer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general.

(9) Upon receipt of the consumer's acceptance, the manufacturer shall have forty calendar days to comply with the arbitration board decision or thirty calendar days to file a petition of appeal in superior court. At the time the petition of appeal is filed, the manufacturer shall deliver, by certified mail or personal service, a conformed copy of such petition to the attorney general. If the attorney general receives no notice of petition of appeal after forty calendar days, the attorney general shall contact the consumer to verify compliance.

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.

Passed the Senate March 7, 1998.
Passed the House March 4, 1998.
Approved by the Governor April 2, 1998.
Filed in Office of Secretary of State April 2, 1998.

CHAPTER 299

[Senate Bill 6541]

**TOURISM DEVELOPMENT—TOURISM DEVELOPMENT ADVISORY COMMITTEE—
BUDGET DEVELOPMENT**

AN ACT Relating to funding for tourism development; adding new sections to chapter 43.330 RCW; adding new sections to chapter 43.88 RCW; creating a new section; providing an effective date; and providing expiration dates.

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

NEW SECTION. Sec. 1. It is the intent of this act to provide for predictable and stable funding for tourism development activities of the state of Washington by establishing funding levels based on proven performance and return on state funds invested in tourism development and to establish a tourism development advisory committee.

NEW SECTION. Sec. 2. A new section is added to chapter 43.330 RCW to read as follows:

(1) The tourism development advisory committee is created within the department. The committee shall have a total of fifteen members. There shall be one member from each of the two largest political caucuses in the house of representatives and senate appointed by the speaker of the house of representatives and the president of the senate, respectively. The remaining eleven members shall be appointed by the director and shall represent the travel industry. When making appointments, the director shall ensure to the greatest extent possible that the industry representatives include all sectors of the travel industry in Washington state and are diverse with respect to region of the state, gender, and ethnicity.

(2) The tourism development advisory committee shall meet at such times designated by the director but not less than twice per calendar year. The committee shall review and comment on the tourism development plan presented by the department and advise the director concerning tourism activities the department should undertake.

(3) This section expires June 30, 2008.

NEW SECTION. Sec. 3. A new section is added to chapter 43.88 RCW to read as follows:

(1) When developing a biennial budget for the tourism development division of the department of community, trade, and economic development, the request for funding submitted to the office of financial management shall be calculated according to the formula in section 4 of this act. The request shall be a specific

designated amount in the budget request for the department of community, trade, and economic development.

(2) This section expires June 30, 2008.

NEW SECTION. Sec. 4. A new section is added to chapter 43.88 RCW to read as follows:

(1) The budget amount designated in section 3(1) of this act is the sum of the base amount and the growth component as calculated under subsection (2) of this section.

(2) The director of the department of community, trade, and economic development shall calculate the tourism development division budget in consultation with the appropriate agencies in the following manner:

(a) The base amount, beginning in the budget for the hiennium ending June 30, 2001, and for each subsequent biennium thereafter, equals the previous biennial budget, including any supplemental allocations and any growth component amounts from previous biennia.

(b) For the growth component, beginning in the budget for the hiennium ending June 30, 2001: (i) Compute the state retail sales tax revenues for the target business categories for the calendar year two years prior to the beginning of the biennium for which the budget request will be made; (ii) compute the state retail sales tax revenues for the target business categories for the calendar year four years prior to the beginning of the hiennium for which the budget request will be made; (iii) calculate the percentage change in these two sales tax revenue amounts; (iv) if the percentage exceeds eight percent growth, calculate the amount of sales tax revenue that represents the excess in revenue growth greater than six percent; and (v) calculate the growth component by dividing the excess revenue growth by two. The amount of the growth component for any biennium shall not exceed two million dollars per fiscal year for the biennium.

(3) As used in this section:

(a) "Target business categories" means businesses in standard industrial classification codes 58 (eating and drinking), 70 (lodging), 7514 (auto rental), and 79 (recreation). If at any time the United States office of management and budget or a successor agency should change or replace the present standard industrial classification code system, the department of community, trade, and economic development shall use the code system issued by the office of management and budget or its successor agency to determine codes corresponding to those listed in this definition.

(b) "Retail sales" means the gross sales subject to the tax imposed in chapter 82.08 RCW received by businesses identified in department of revenue records by standard industrial classification codes 58, 70, 7514, and 79.

(4) This section expires June 30, 2008.

NEW SECTION. Sec. 5. A new section is added to chapter 43.330 RCW to read as follows:

(1) On or before June 30th of each fiscal year, the department shall submit a report to the appropriate policy and fiscal committees of the house of representatives and senate that describes the tourism development program for the previous fiscal year and quantifies the financial benefits to the state. The report must contain information concerning targeted markets, benefits to different areas of the state, return on the state's investment, and other relevant information related to tourism development.

(2) This section expires June 30, 2008.

NEW SECTION. Sec. 6. This act takes effect July 1, 1998.

Passed the Senate March 12, 1998.

Passed the House March 12, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 300

[Engrossed Substitute Senate Bill 6560]

RETAIL ELECTRICAL CUSTOMER PROTECTION

AN ACT Relating to retail electrical customers; amending RCW 74.38.070; adding a new chapter to Title 19 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Electricity is a basic and fundamental need of all residents; and
 (b) Currently Washington's consumer-owned and investor-owned utilities offer consumers a high degree of reliability and service quality while providing some of the lowest rates in the country.

(2) The legislature intends to:

(a) Preserve the benefits of consumer and environmental protection, system reliability, high service quality, and low-cost rates;
 (b) Ensure that all retail electrical customers have the same level of rights and protections; and
 (c) Require the adequate disclosure of the rights afforded to retail electric customers.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the utilities and transportation commission.

(2) "Conservation" means an increase in efficiency in the use of energy use that yields a decrease in energy consumption while providing the same or higher levels of service. Conservation includes low-income weatherization programs.

(3) "Consumer-owned utility" means a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, or a mutual corporation or association formed under chapter

24.06 RCW, that is engaged in the business of distributing electricity to more than one retail electric customer in the state.

(4) "Department" means the department of community, trade, and economic development.

(5) "Electric meters in service" means those meters that record in at least nine of twelve calendar months in any calendar year not less than two hundred fifty kilowatt hours per month.

(6) "Electric utility" means a consumer-owned or investor-owned utility as defined in this section.

(7) "Electricity" means electric energy measured in kilowatt hours, or electric capacity measured in kilowatts, or both.

(8) "Governing body" means the council of a city or town, the commissioners of an irrigation district, municipal electric utility, or public utility district, or the board of directors of an electric cooperative or mutual association that has the authority to set and approve rates.

(9) "Investor-owned utility" means a company owned by investors that meets the definition of RCW 80.04.010 and is engaged in distributing electricity to more than one retail electric customer in the state.

(10) "Proprietary customer information" means: (a) Information that relates to the source and amount of electricity used by a retail electric customer, a retail electric customer's payment history, and household data that is made available by the customer solely by virtue of the utility-customer relationship; and (b) information contained in a retail electric customer's bill.

(11) "Renewable resources" means electricity generation facilities fueled by: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) landfill gas; or (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic.

(12) "Resale" means the purchase and subsequent sale of electricity for profit, but does not include the purchase and the subsequent sale of electricity at the same rate at which the electricity was purchased.

(13) "Retail electric customer" means a person or entity that purchases electricity for ultimate consumption and not for resale.

(14) "Small utility" means any consumer-owned utility with twenty-five thousand or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

(15) "State" means the state of Washington.

NEW SECTION. Sec. 3. Except as otherwise provided in section 6 of this act, each electric utility must provide its retail electric customers with the following disclosures in accordance with section 4 of this act:

(1) An explanation of any applicable credit and deposit requirements, including the means by which credit may be established, the conditions under which a deposit may be required, the amount of any deposit, interest paid on the

deposit, and the circumstances under which the deposit will be returned or forfeited.

(2) A complete, itemized listing of all rates and charges for which the customer is responsible, including charges, if any, to terminate service, the identity of the entity responsible for setting rates, and an explanation of how to receive notice of public hearings where changes in rates will be considered or approved.

(3) An explanation of the metering or measurement policies and procedures, including the process for verifying the reliability of the meters or measurements and adjusting bills upon discovery of errors in the meters or measurements.

(4) An explanation of bill payment policies and procedures, including due dates, applicable late fees, and the interest rate charged, if any, on unpaid balances.

(5) An explanation of the payment arrangement options available to customers, including budget payment plans and the availability of home heating assistance from government and private sector organizations.

(6) An explanation of the method by which customers must give notice of their intent to discontinue service, the circumstances under which service may be discontinued by the utility, the conditions that must be met by the utility prior to discontinuing service, and how to avoid disconnection.

(7) An explanation of the utility's policies governing the confidentiality of proprietary customer information, including the circumstances under which the information may be disclosed and ways in which customers can control access to the information.

(8) An explanation of the methods by which customers may make inquiries to and file complaints with the utility, and the utility's procedures for responding to and resolving complaints and disputes, including a customer's right to complain about an investor-owned utility to the commission and appeal a decision by a consumer-owned utility to the governing body of the consumer-owned utility.

(9) An annual report containing the following information for the previous calendar year:

(a) A general description of the electric utility's customers, including the number of residential, commercial, and industrial customers served by the electric utility, and the amount of electricity consumed by each customer class in which there are at least three customers, stated as a percentage of the total utility load;

(b) A summary of the average electricity rates for each customer class in which there are at least three customers, stated in cents per kilowatt hour, the date of the electric utility's last general rate increase or decrease, the identity of the entity responsible for setting rates, and an explanation of how to receive notice of public hearings where changes in rates will be considered or approved;

(c) An explanation of the amount invested by the electric utility in conservation, nonhydrorenewable resources, and low-income energy assistance programs, and the source of funding for the investments; and

(d) An explanation of the amount of federal, state, and local taxes collected and paid by the electric utility, including the amounts collected by the electric utility but paid directly by retail electric customers.

NEW SECTION. Sec. 4. Except as otherwise provided in section 6 of this act, an electric utility shall:

(1) Provide notice to all of its retail electric customers that the disclosures required in section 3 of this act are available without charge upon request. Such notice shall be provided at the time service is established and either included as a prominent part of each customer's bill or in a written notice mailed to each customer at least once a year thereafter. Required disclosures shall be provided without charge, in writing using plain language that is understandable to an ordinary customer, and presented in a form that is clear and conspicuous.

(2) Disclose the following information in a prominent manner on all billing statements sent to retail electric customers, or by a separate written notice mailed to all retail electric customers at least quarterly and at the same time as a billing statement: "YOUR BILL INCLUDES CHARGES FOR ELECTRICITY, DELIVERY SERVICES, GENERAL ADMINISTRATION AND OVERHEAD, METERING, TAXES, CONSERVATION EXPENSES, AND OTHER ITEMS."

NEW SECTION. Sec. 5. (1) The utilities and transportation commission and the department of community, trade, and economic development shall jointly study the following issues:

(a) Variations in retail electricity rates within the state and in comparison with national averages, trends affecting the electric service costs for all customers in the state, and strategies available to minimize those costs in the future;

(b) Demographics of retail electric customers in the state to include the distribution of customers by size of load;

(c) The potential for cost-shifting among customer classes and among customers within the same class, and strategies available to minimize inappropriate cost shifts;

(d) The consumer protection policies and procedures of electric utilities, including areas of consistency and inconsistency among the utilities in those policies and procedures;

(e) The status, number, and primary characteristics of service territory agreements between electric utilities;

(f) The current level of service quality and reliability as measured by available statistics, trends affecting quality of service and the integrity and reliability of the distribution system, and ways to ensure high service quality and reliability in the future; and

(g) Current levels of investment in conservation, nonhydrorenewable resources, and low-income energy assistance programs, trends affecting such investment, and ways to fairly, efficiently, and effectively foster future achievement of the purposes of such investment.

(2) The utilities and transportation commission and the department of community, trade, and economic development shall consult with the chair and ranking minority member of the senate and house of representatives energy and utilities committees, electric utilities, retail electric customers, and other interested parties throughout the course of the study and shall report the results of this study to the legislature and the governor no later than December 31, 1998.

(3) Except as otherwise provided in section 6 of this act, each electric utility shall cooperate with the commission and the department in the preparation of the study and report required by this section, and shall provide all information requested by the commission or the department in a timely manner so that the study and report will be as thorough as possible and completed on schedule. The commission and department shall coordinate and cooperate with each other in preparing the study and report, particularly in requesting information from, or the assistance of, electric utilities, to minimize the potential for redundant requests.

NEW SECTION. Sec. 6. The provisions of sections 3 through 5 of this act do not apply to a small utility. However, nothing in this section prohibits the governing body of a small utility from determining the utility should comply with any or all of the provisions of sections 3 through 5 of this act, which governing bodies are encouraged to do.

NEW SECTION. Sec. 7. Nothing in chapter . . . , Laws of 1998 (this act) shall be construed as conferring on any state agency jurisdiction, supervision, or control over any consumer-owned utility.

Sec. 8. RCW 74.38.070 and 1990 c 164 s 1 are each amended to read as follows:

(1) Notwithstanding any other provision of law, any county, city, town, municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low income senior citizens or other low-income ((disabled)) citizens: PROVIDED, That, for the purposes of this section, "low-income senior citizen" or "other low-income ((disabled)) citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, municipal corporation, or quasi municipal corporation providing the utility services except as provided in subsection (2) of this section. Any reduction in rates granted in whatever manner to low-income senior citizens or other low-income ((disabled)) citizens in one part of a service area shall be uniformly extended to low-income senior citizens or other low-income ((disabled)) citizens in all other parts of the service area.

(2) For purposes of implementing this section by any public utility district, (a) "low-income senior citizen" means a person who is sixty-two years of age or older and whose total income, including that of his or her spouse or cotenant, does not exceed the amount specified in RCW 84.36.381(5)(b), as now or hereafter amended and (b) "other low-income ((disabled)) citizen" means ((+)) a person ((qualifying for special parking privileges under RCW 46.16.381(1) (a) through (f), (ii) a blind person as defined in RCW 74.18.020, or (iii) a disabled,

handicapped, or incapacitated person as defined under any other existing state or federal program and)) whose household income((,-including that of his or her spouse or cotenant,)) does not exceed the amount specified in RCW 70.164.020(4).

****NEW SECTION. Sec. 9. If specific funding for the purposes of section 5 of this act, referencing section 5 of this act by bill or chapter number and section number, is not provided by June 30, 1998, in the omnibus appropriations act, section 5 of this act is null and void.***

*Sec. 9 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 10. Sections 1 through 4, 6, and 7 of this act constitute a new chapter in Title 19 RCW.

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

*Sec. 12 was vetoed. See message at end of chapter.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 2, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 2, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 9 and 12, Engrossed Substitute Senate Bill No. 6560 entitled:

"AN ACT Relating to retail electrical customers;"

ESSB 6560 establishes certain protections for consumers of electricity. It also, in section 5, directs the Washington Utilities and Transportation Commission and the Department of Community, Trade and Economic Development to jointly study several important features of our current electric system and potential changes to our electric system.

Section 9 of the bill is technically flawed. That section would nullify the study required by section 5, unless the Legislature funds the study in the budget and specifically references section 5 by section number. The legislature did in fact fund the study in the budget, but referenced only the bill number, not the section number. I believe the Legislature intended to fund the study, and my veto of section 9 will achieve that goal.

Section 12 contains an emergency clause that would have given immediate effect to the bill. Certain provisions of the bill obligate utilities to provide new customers with a list of policies and procedures. The utilities need some time to prepare that information. Without section 12, the bill will take effect on June 11, 1998, which allows adequate preparation time.

For these reasons I have vetoed sections 9 and 12 of Engrossed Substitute Senate Bill No. 6560.

With the exception of sections 9 and 12, Engrossed Substitute Senate Bill No. 6560 is approved."

CHAPTER 301

[Substitute Senate Bill 6565]

INSURANCE PAYMENTS FOR INSURED WHO ARE VICTIMS OF DOMESTIC ABUSE

AN ACT Relating to insurance payments for insureds who are victims of domestic abuse; and adding a new section to chapter 48.18 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.18 RCW to read as follows:

(1) No insurer shall deny or refuse to accept an application for insurance, refuse to insure, refuse to renew, cancel, restrict, or otherwise terminate a policy of insurance, or charge a different rate for the same coverage, on the basis that the applicant or insured person is, has been, or may be a victim of domestic abuse.

(2) Nothing in this section shall prevent an insurer from taking any of the actions set forth in subsection (1) of this section on the basis of loss history or medical condition or for any other reason not otherwise prohibited by this section, any other law, regulation, or rule.

(3) Any form filed or filed after the effective date of this section subject to RCW 48.18.120(1) or subject to a rule adopted under RCW 48.18.120(1) may exclude coverage for losses caused by intentional or fraudulent acts of any insured. Such an exclusion, however, shall not apply to deny an insured's otherwise-covered property loss if the property loss is caused by an act of domestic abuse by another insured under the policy, the insured claiming property loss files a police report and cooperates with any law enforcement investigation relating to the act of domestic abuse, and the insured claiming property loss did not cooperate in or contribute to the creation of the property loss. Payment by the insurer to an insured may be limited to the person's insurable interest in the property less payments made to a mortgagee or other party with a legal secured interest in the property. An insurer making payment to an insured under this section has all rights of subrogation to recover against the perpetrator of the act that caused the loss.

(4) Nothing in this section prohibits an insurer from investigating a claim and complying with chapter 48.30A RCW.

(5) As used in this section, "domestic abuse" means: (a) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault between family or household members; (b) sexual assault of one family or household member by another; (c) stalking as defined in RCW 9A.46.110 of one family or household member by another family or household member; or (d) intentionally, knowingly, or recklessly causing damage to property so as to intimidate or attempt to control the behavior of another family or household member.

Passed the Senate March 9, 1998.
 Passed the House March 4, 1998.
 Approved by the Governor April 2, 1998.
 Filed in Office of Secretary of State April 2, 1998.

CHAPTER 302

[Substitute Senate Bill 6727]

SAVINGS INCENTIVE AND EDUCATION SAVINGS ACCOUNTS--REVISIONS

AN ACT Relating to investments in education; amending RCW 43.79.460 and 28A.305.235; adding a new section to chapter 43.79 RCW; creating a new section; and recodifying RCW 28A.305.235.

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

Sec. 1. RCW 43.79.460 and 1997 c 261 s 1 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 ~~((moneys))~~ 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 fiscal management, after consulting with the legislative fiscal committees, shall report to the treasurer the amount of savings incentives achieved. ~~((4))~~ By December 1, 1998, and each December 1st thereafter, the office of financial management shall submit a report to the fiscal committees of the legislature on the implementation of this section. The report shall (a) evaluate the impact of this section on agency reversions and end-of-biennium expenditure patterns, and (b) itemize agency expenditures from the savings recovery account.

Sec. 2. RCW 28A.305.235 and 1997 c 261 s 2 are each amended to read as follows:

The education savings account is created in ~~((the custody of))~~ the state ~~((treasurer))~~ treasury. 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.~~

~~Expenditures from the))~~ (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.10.868; (b) seventeen percent to the graduate fellowship trust fund under RCW 28B.10.882; 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 ~~((authorized solely by the state board of education and))~~ appropriated solely for ~~((+))~~ (a) common school construction projects that are eligible for funding from the common school construction account, and ~~((2))~~ (b) technology improvements in the common schools.

NEW SECTION. Sec. 3. RCW 28A.305.235, as amended by this act, is recodified as a section in chapter 43.79 RCW.

NEW SECTION. Sec. 4. On the effective date of this act, the state treasurer shall transfer ten percent of the unappropriated balance of the education savings account, to be distributed as follows: (1) Fifty percent to the distinguished professorship trust fund under RCW 28B.10.868; (2) seventeen percent to the graduate fellowship trust fund under RCW 28B.10.882; and (3) thirty-three percent to the college faculty awards trust fund under RCW 28B.50.837.

Passed the Senate February 16, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 303

[Substitute Senate Bill 6746]

REGULATING CERTAIN INSURANCE SERVICES

AN ACT Relating to purchasing of insurance services; and creating a new section.

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

NEW SECTION. Sec. 1. (1) Any person, firm, partnership, corporation, or association promising, in exchange for dues, assessments, or periodic or lump-sum payments, to furnish members or subscribers with assistance in matters relating to trip cancellation, bail bond service or any accident, sickness, or death insurance benefit program must:

(a) Have a certificate of authority, issued by the insurance commissioner, authorizing the person, firm, partnership, corporation, or association to sell that coverage in this state; or

(b) Purchase the service or insurance from a company that holds a certificate of authority, issued by the insurance commissioner, authorizing the company to sell that coverage in this state. If coverage cannot be procured from an authorized insurer holding a certificate of authority issued by the insurance commissioner, insurance may be procured from an unauthorized insurer subject to chapter 48.15 RCW.

(2) Travel or automobile related products or assistance including but not limited to community traffic safety service, travel and touring service, theft or reward service, map service, towing service, emergency road service, lockout or lost key service, reimbursement of emergency expenses due to a vehicle disabling accident, or legal fee reimbursement service in the defense of traffic offenses shall not be considered to be insurance for the purposes of Title 48 RCW.

(3) Violation of this section is subject to the enforcement provisions of RCW 48.02.080 and to the hearing and appeal provisions of chapter 48.04 RCW.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 2, 1998.

Filed in Office of Secretary of State April 2, 1998.

CHAPTER 304

[Substitute House Bill 1126]

911 EMERGENCY COMMUNICATIONS FUNDING

AN ACT Relating to the implementation of the enhanced 911 excise tax study recommendations regarding 911 emergency communications system funding; amending RCW 82.14B.020, 82.14B.030, 82.14B.040, 82.14B.060, 82.32.010, 82.32.105, and 38.52.540; adding new sections to chapter 82.14B RCW; creating a new section; prescribing penalties; and providing effective dates.

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

NEW SECTION. Sec. 1. The legislature finds that:

(1) The state enhanced 911 excise tax imposed at the current rate of twenty cents per switched access line per month generates adequate tax revenues to

enhance the 911 telephone system for switched access lines state-wide by December 31, 1998, as mandated in RCW 38.52.510;

(2) The tax revenues generated from the state enhanced 911 excise tax when the tax rate decreases to a maximum of ten cents per switched access line on January 1, 1999, will not be adequate to fund the long-term operation and equipment replacement costs for the enhanced 911 telephone systems in the counties or multicounty regions that receive financial assistance from the state enhanced 911 office;

(3) Some counties or multicounty regions will need financial assistance from the state enhanced 911 office to implement and maintain enhanced 911 because the tax revenue generated from the county enhanced 911 excise tax is not adequate;

(4) Counties with populations of less than seventy-five thousand will need salary assistance to create multicounty regions and counties with populations of seventy-five thousand or more, if requested by smaller counties, will need technical assistance and incentives to provide multicounty services; and

(5) Counties should not request state financial assistance for implementation and maintenance of enhanced 911 for switched access lines unless the county has imposed the maximum enhanced 911 tax authorized in RCW 82.14B.030.

Sec. 2. RCW 82.14B.020 and 1994 c 96 s 2 are each amended to read as follows:

As used in this chapter:

(1) "Emergency services communication system" means a multicounty, county-wide, or district-wide radio or landline communications network, including an enhanced 911 telephone system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(2) "Enhanced 911 telephone system" means a public telephone system consisting of a network, data base, and on-premises equipment that is accessed by dialing 911 and that enables reporting police, fire, medical, or other emergency situations to a public safety answering point. The system includes the capability to selectively route incoming 911 calls to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, address, and telephone number of incoming 911 calls at the appropriate public safety answering point.

(3) "Switched access line" means the telephone service line which connects a subscriber's main telephone(s) or equivalent main telephone(s) to the local exchange company's switching office.

(4) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

(5) "Radio access line" means the telephone number assigned to or used by ~~((an end user))~~ a subscriber for two-way local wireless voice service available to the public for hire from a radio communications service company. Radio access lines include, but are not limited to, radio-telephone communications lines used

in cellular telephone service, personal communications services, and network radio access lines, or their functional and competitive equivalent. Radio access lines do not include lines that provide access to one-way signaling service, such as paging service, or to communications channels suitable only for data transmission, or to nonlocal radio access line service, such as wireless roaming service, or to a private telecommunications system.

(6) "Radio communications service company" has the meaning ascribed to it in RCW 80.04.010.

(7) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

(8) "Subscriber" means the retail purchaser of telephone service as telephone service is defined in RCW 82.04.065(3).

Sec. 3. RCW 82.14B.030 and 1994 c 96 s 3 are each amended to read as follows:

(1) The legislative authority of a county may impose a county enhanced 911 excise tax on the use of switched access lines in an amount not exceeding fifty cents per month for each switched access line. The amount of tax shall be uniform for each switched access line. Each county shall provide notice of such tax to all local exchange companies serving in the county at least sixty days in advance of the date on which the first payment is due.

(2) The legislative authority of a county may also impose a county 911 excise tax on the use of radio access lines located within the county in an amount not exceeding twenty-five cents per month for each radio access line. The amount of tax shall be uniform for each radio access line. The county shall provide notice of such tax to all radio communications service companies serving in the county at least sixty days in advance of the date on which the first payment is due. Any county imposing this tax shall include in its ordinance a refund mechanism whereby the amount of any tax ordered to be refunded by the judgment of a court of record, or as a result of the resolution of any appeal therefrom, shall be refunded to the radio communications service company or local exchange company that collected the tax, and those companies shall reimburse the ~~((users))~~ subscribers who paid the tax. The ordinance shall further provide that to the extent the ~~((users))~~ subscribers who paid the tax cannot be identified or located, the tax paid by those ~~((users))~~ subscribers shall be returned to the county.

(3) ~~((Beginning January 1, 1992,))~~ A state enhanced 911 excise tax is imposed on all switched access lines in the state. ~~((For 1992, the tax shall be set at a rate of twenty cents per month for each switched access line. Until December 31, 1998,))~~ The amount of tax shall not exceed twenty cents per month for each switched access line ~~((and thereafter shall not exceed ten cents per month for each switched access line))~~. The tax shall be uniform for each switched access line. The tax imposed under this subsection shall be remitted to the department of revenue by local exchange companies on a tax return provided by the department. Tax proceeds shall be deposited by the treasurer in the enhanced 911 account created in RCW 38.52.540.

(4) By August 31st of each year the state enhanced 911 coordinator shall recommend the level for the next year of the state enhanced 911 excise tax, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission shall by the following October 31st determine the level of the state enhanced 911 excise tax for the following year.

Sec. 4. RCW 82.14B.040 and 1994 c 96 s 4 are each amended to read as follows:

The state enhanced 911 tax and the county enhanced 911 tax on switched access lines shall be collected from the ~~((user))~~ subscriber by the local exchange company providing the switched access line. The county 911 tax on radio access lines shall be collected from the ~~((end-user))~~ subscriber by the radio communications service company providing the radio access line to the ~~((end user))~~ subscriber. The amount of the tax shall be stated separately on the billing statement which is sent to the ~~((user))~~ subscriber.

Sec. 5. RCW 82.14B.060 and 1981 c 160 s 6 are each amended to read as follows:

A county legislative authority imposing a tax under this chapter shall establish by ordinance all necessary and appropriate procedures for the administration and collection of the tax, which ordinance shall provide for reimbursement to the telephone companies for actual costs of administration and collection of the tax imposed. The ordinance shall also provide that the due date for remittance of the tax collected shall be ~~((thirty days following the collection month))~~ on or before the last day of the month following the month in which the tax liability accrues.

NEW SECTION. **Sec. 6.** A new section is added to chapter 82.14B RCW to read as follows:

(1) The department of revenue shall administer and shall adopt such rules as may be necessary to enforce and administer the state enhanced 911 excise tax imposed by this chapter. Chapter 82.32 RCW, with the exception of RCW 82.32.045, 82.32.145, and 82.32.380, applies to the administration, collection, and enforcement of the state enhanced 911 excise tax.

(2) The state enhanced 911 excise tax imposed by this chapter, along with reports and returns on forms prescribed by the department, are due monthly on or before the last day of the month following the month in which the tax liability accrues.

(3) The department of revenue may relieve any taxpayer or class of taxpayers from the obligation of remitting monthly and may require the return to cover other longer reporting periods, but in no event may returns be filed for a period greater than one year. For these taxpayers, tax payments are due on or before the last day of the month next succeeding the end of the period covered by the return.

(4) The state enhanced 911 excise tax imposed by this chapter is in addition to any taxes imposed upon the same persons under chapters 82.08 and 82.12 RCW.

NEW SECTION. Sec. 7. A new section is added to chapter 82.14B RCW to read as follows:

(1) A local exchange company or radio communications service company shall file tax returns on a cash receipts or accrual basis according to which method of accounting is regularly employed in keeping the books of the company. A local exchange company or radio communications service company filing returns on a cash receipts basis is not required to pay tax on debts that are deductible as worthless for federal income tax purposes.

(2) A local exchange company or radio communications service company is entitled to a credit or refund for state enhanced 911 excise taxes previously paid on debts that are deductible as worthless for federal income tax purposes.

NEW SECTION. Sec. 8. A new section is added to chapter 82.14B RCW to read as follows:

The taxes imposed by this chapter do not apply to any activity that the state or county is prohibited from taxing under the constitution of this state or the constitution or laws of the United States.

NEW SECTION. Sec. 9. A new section is added to chapter 82.14B RCW to read as follows:

(1) The state enhanced 911 excise tax imposed by this chapter must be paid by the subscriber to the local exchange company providing the switched access line, and each local exchange company shall collect from the subscriber the full amount of the tax payable. The state enhanced 911 excise tax required by this chapter to be collected by the local exchange company is deemed to be held in trust by the local exchange company until paid to the department. Any local exchange company that appropriates or converts the tax collected to its own use or to any use other than the payment of the tax to the extent that the money collected is not available for payment on the due date as prescribed in this chapter is guilty of a gross misdemeanor.

(2) If any local exchange company fails to collect the state enhanced 911 excise tax or, after collecting the tax, fails to pay it to the department in the manner prescribed by this chapter, whether such failure is the result of its own act or the result of acts or conditions beyond its control, the local exchange company is personally liable to the state for the amount of the tax, unless the local exchange company has taken from the buyer in good faith a properly executed resale certificate under section 10 of this act.

(3) The amount of tax, until paid by the subscriber to the local exchange company or to the department, constitutes a debt from the subscriber to the local exchange company. Any local exchange company that fails or refuses to collect the tax as required with intent to violate the provisions of this chapter or to gain some advantage or benefit, either direct or indirect, and any subscriber who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state enhanced 911 excise tax required by this chapter to be collected by the local

exchange company must be stated separately on the billing statement that is sent to the subscriber.

(4) If a subscriber has failed to pay to the local exchange company the state enhanced 911 excise tax imposed by this chapter and the local exchange company has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber for collection of the tax, in which case a penalty of ten percent may be added to the amount of the tax for failure of the subscriber to pay the tax to the local exchange company, regardless of when the tax is collected by the department. For the sole purpose of applying the various provisions of chapter 82.32 RCW, the last day of the month following the tax period in which the tax liability accrued is to be considered as the due date of the tax.

NEW SECTION. Sec. 10. A new section is added to chapter 82.14B RCW to read as follows:

(1) Unless a local exchange company has taken from the buyer a resale certificate or equivalent document under RCW 82.04.470, the burden of proving that a sale of the use of a switched access lines was not a sale to a subscriber is upon the person who made the sale.

(2) If a local exchange company does not receive a resale certificate at the time of the sale, have a resale certificate on file at the time of the sale, or obtain a resale certificate from the buyer within a reasonable time after the sale, the local exchange company remains liable for the tax as provided in section 9 of this act, unless the local exchange company can demonstrate facts and circumstances according to rules adopted by the department of revenue that show the sale was properly made without payment of the state enhanced 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state enhanced 911 excise taxes due but not paid as a result of the improper use of a resale certificate. This subsection does not prohibit or restrict the application of other penalties authorized by law.

NEW SECTION. Sec. 11. A new section is added to chapter 82.14B RCW to read as follows:

(1) Upon termination, dissolution, or abandonment of a corporate or limited liability company business, any officer, member, manager, or other person having control or supervision of state enhanced 911 excise tax funds collected and held in trust under section 9 of this act, or who is charged with the responsibility for the filing of returns or the payment of state enhanced 911 excise tax funds collected and held in trust under section 9 of this act, is personally liable for any unpaid taxes and interest and penalties on those taxes, if such officer or other person willfully fails to pay or to cause to be paid any state enhanced 911 excise taxes due from the corporation under this chapter. For the purposes of this section, any state enhanced 911 excise taxes that have been paid but not collected are deductible from the state enhanced 911 excise taxes collected but not paid. For purposes of this subsection "willfully fails to pay or to cause to be paid"

means that the failure was the result of an intentional, conscious, and voluntary course of action.

(2) The officer, member, manager, or other person is liable only for taxes collected that became due during the period he or she had the control, supervision, responsibility, or duty to act for the corporation described in subsection (1) of this section, plus interest and penalties on those taxes.

(3) Persons liable under subsection (1) of this section are exempt from liability if nonpayment of the state enhanced 911 excise tax funds held in trust is due to reasons beyond their control as determined by the department by rule.

(4) Any person having been issued a notice of assessment under this section is entitled to the appeal procedures under RCW 82.32.160 through 82.32.200.

(5) This section applies only if the department has determined that there is no reasonable means of collecting the state enhanced 911 excise tax funds held in trust directly from the corporation.

(6) This section does not relieve the corporation or limited liability company of other tax liabilities or otherwise impair other tax collection remedies afforded by law.

(7) Collection authority and procedures prescribed in chapter 82.32 RCW apply to collections under this section.

Sec. 12. RCW 82.32.010 and 1984 c 204 s 26 are each amended to read as follows:

The provisions of this chapter shall apply with respect to the taxes imposed under chapters 82.04 through 82.14 RCW, under RCW 82.14B.030(3), under chapters 82.16 through 82.29A RCW of this title, under chapter 84.33 RCW, and under other titles, chapters, and sections in such manner and to such extent as indicated in each such title, chapter, or section.

Sec. 13. RCW 82.32.105 and 1996 c 149 s 17 are each amended to read as follows:

(1) If the department of revenue finds that the payment by a taxpayer of a tax less than that properly due or the failure of a taxpayer to pay any tax by the due date was the result of circumstances beyond the control of the taxpayer, the department of revenue shall waive or cancel any penalties imposed under this chapter with respect to such tax.

(2) The department shall waive or cancel the penalty imposed under RCW 82.32.090(1) when the circumstances under which the delinquency occurred do not qualify for waiver or cancellation under subsection (1) of this section if:

(a) The taxpayer requests the waiver for a tax return required to be filed under RCW 82.32.045, section 6 of this act, 82.23B.020, 82.27.060, 82.29A.050, or 84.33.086; and

(b) The taxpayer has timely filed and remitted payment on all tax returns due for that tax program for a period of twenty-four months immediately preceding the period covered by the return for which the waiver is being requested.

(3) The department shall waive or cancel interest imposed under this chapter if:

(a) The failure to timely pay the tax was the direct result of written instructions given the taxpayer by the department; or

(b) The extension of a due date for payment of an assessment of deficiency was not at the request of the taxpayer and was for the sole convenience of the department.

(4) The department of revenue shall adopt rules for the waiver or cancellation of penalties and interest imposed by this chapter.

Sec. 14. RCW 38.52.540 and 1994 c 96 s 7 are each amended to read as follows:

The enhanced 911 account is created in the state treasury. All receipts from the state enhanced 911 excise tax imposed by RCW 82.14B.030 shall be deposited into the account. Moneys in the account shall be used only to help implement and operate enhanced 911 state-wide ~~(, and to conduct a study of the tax base and rate for the 911 excise tax)~~. Moneys in the account may be used to provide salary assistance on a temporary basis not to exceed three years to counties with a population of less than seventy-five thousand that need additional resources to cover unfunded costs that can be shown to result from handling 911 calls. Moneys in the account may be used to assist multicounty regions, including ongoing salary assistance for multicounty regions consisting of counties with populations of less than seventy-five thousand. However, funds shall not be distributed to any county that has not imposed the maximum county enhanced 911 taxes allowed under RCW 82.14B.030 (1) and (2). The state enhanced 911 coordinator, with the advice and assistance of the enhanced 911 advisory committee, shall specify by rule the purposes for which moneys may be expended from this account.

NEW SECTION. **Sec. 15.** This act takes effect January 1, 1999, except section 14 of this act which takes effect July 1, 1998.

Passed the House March 11, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 305

[House Bill 1297]

AGGRAVATING CIRCUMSTANCES IN FIRST DEGREE MURDER—NO-CONTACT ORDERS

AN ACT Relating to aggravating circumstances in first degree murder; reenacting and amending RCW 10.95.020; and prescribing penalties.

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

Sec. 1. RCW 10.95.020 and 1995 c 129 s 17 and 1994 c 121 s 3 are each reenacted and amended to read as follows:

A person is guilty of aggravated first degree murder if he or she commits first degree murder as defined by RCW 9A.32.030(1)(a), as now or hereafter amended, and one or more of the following aggravating circumstances exist:

(1) The victim was a law enforcement officer, corrections officer, or fire fighter who was performing his or her official duties at the time of the act resulting in death and the victim was known or reasonably should have been known by the person to be such at the time of the killing;

(2) At the time of the act resulting in the death, the person was serving a term of imprisonment, had escaped, or was on authorized or unauthorized leave in or from a state facility or program for the incarceration or treatment of persons adjudicated guilty of crimes;

(3) At the time of the act resulting in death, the person was in custody in a county or county-city jail as a consequence of having been adjudicated guilty of a felony;

(4) The person committed the murder pursuant to an agreement that he or she would receive money or any other thing of value for committing the murder;

(5) The person solicited another person to commit the murder and had paid or had agreed to pay money or any other thing of value for committing the murder;

(6) The person committed the murder 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;

(7) The murder was committed during the course of or as a result of a shooting where the discharge of the firearm, as defined in RCW 9.41.010, is either from a motor vehicle or from the immediate area of a motor vehicle that was used to transport the shooter or the firearm, or both, to the scene of the discharge;

(8) The victim was:

(a) A judge; juror or former juror; prospective, current, or former witness in an adjudicative proceeding; prosecuting attorney; deputy prosecuting attorney; defense attorney; a member of the indeterminate sentence review board; or a probation or parole officer; and

(b) The murder was related to the exercise of official duties performed or to be performed by the victim;

(9) The person committed the murder to conceal the commission of a crime or to protect or conceal the identity of any person committing a crime, including, but specifically not limited to, any attempt to avoid prosecution as a persistent offender as defined in RCW 9.94A.030;

(10) There was more than one victim and the murders were part of a common scheme or plan or the result of a single act of the person;

(11) The murder was committed in the course of, in furtherance of, or in immediate flight from one of the following crimes:

(a) Robbery in the first or second degree;

(b) Rape in the first or second degree;

- (c) Burglary in the first or second degree or residential burglary;
- (d) Kidnapping in the first degree; or
- (e) Arson in the first degree;

(12) The victim was regularly employed or self-employed as a newsreporter and the murder was committed to obstruct or hinder the investigative, research, or reporting activities of the victim;

(13) At the time the person committed the murder, there existed a court order, issued in this or any other state, which prohibited the person from either contacting the victim, molesting the victim, or disturbing the peace of the victim, and the person had knowledge of the existence of that order;

(14) At the time the person committed the murder, the person and the victim were "family or household members" as that term is defined in RCW 10.99.020(1), and the person had previously engaged in a pattern or practice of three or more of the following crimes committed upon the victim within a five-year period, regardless of whether a conviction resulted:

- (a) Harassment as defined in RCW 9A.46.020; or
- (b) Any criminal assault.

Passed the House March 9, 1998.

Passed the Senate March 4, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 306

[House Bill 1549]

PROPERTY TAX ASSESSMENT REDUCTION ON PROPERTY UNDER GOVERNMENT RESTRICTIONS

AN ACT Relating to reducing property tax assessments in response to government restrictions; amending RCW 84.69.020; and adding a new section to chapter 84.40 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 84.40 RCW to read as follows:

(1) The owner or person responsible for payment of taxes on any real property may petition the assessor for a reduction in the assessed value of the real property at any time within three years of adoption of a restriction by a government entity.

(2) Notwithstanding the revaluation cycle for the county, the assessor shall reconsider the valuation of the real property within one hundred twenty days of the filing of a petition under subsection (1) of this section. If the new valuation is established for the real property after this review, the assessor shall notify the property owner in the manner provided in RCW 84.40.045. Unless the real property would otherwise be revalued that year as a result of the revaluation cycle or new construction, the valuation of the real property shall not be increased as a result of this revaluation. If the new valuation is established after June 1st in

any year, the new valuation shall be used for purposes of imposing property taxes in the following year, but the property owner shall be eligible for a refund under RCW 84.69.020.

(3) A new valuation established under this section may be appealed under RCW 84.40.038.

(4) If the assessor reduces the valuation of real property using the process under this section, the property owner shall be entitled to a refund on property taxes paid on this property calculated as follows:

(a) A property owner is entitled to receive a refund for each year after the restriction was adopted, but not to exceed three years, that the taxpayer paid property taxes on the real property based upon the prior higher valuation; and

(b) The amount of the refund in each year shall be the amount of reduced valuation on the real property for that year, multiplied by the rate of property taxes imposed on the property in that year.

(5) As used in this section, "restriction" means a limitation, requirement, regulation, or restriction that limits the use of the property, including those imposed by the application of ordinances, resolutions, rules, regulations, policies, statutes, and conditions of land use approval.

Sec. 2. RCW 84.69.020 and 1996 c 296 s 2 are each amended to read as follows:

On the order of the county treasurer, ad valorem taxes paid before or after delinquency shall be refunded if they were:

- (1) Paid more than once; ((or))
- (2) Paid as a result of manifest error in description; ((or))
- (3) Paid as a result of a clerical error in extending the tax rolls; ((or))
- (4) Paid as a result of other clerical errors in listing property; ((or))
- (5) Paid with respect to improvements which did not exist on assessment date; ((or))
- (6) Paid under levies or statutes adjudicated to be illegal or unconstitutional; ((or))
- (7) Paid as a result of mistake, inadvertence, or lack of knowledge by any person exempted from paying real property taxes or a portion thereof pursuant to RCW 84.36.381 through 84.36.389, as now or hereafter amended; ((or))
- (8) Paid as a result of mistake, inadvertence, or lack of knowledge by either a public official or employee or by any person with respect to real property in which the person paying the same has no legal interest; ((or))
- (9) Paid on the basis of an assessed valuation which was appealed to the county board of equalization and ordered reduced by the board; ((or))
- (10) Paid on the basis of an assessed valuation which was appealed to the state board of tax appeals and ordered reduced by the board: PROVIDED, That the amount refunded under subsections (9) and (10) of this section shall only be for the difference between the tax paid on the basis of the appealed valuation and the tax payable on the valuation adjusted in accordance with the board's order; ((or))

(11) Paid as a state property tax levied upon property, the assessed value of which has been established by the state board of tax appeals for the year of such levy: PROVIDED, HOWEVER, That the amount refunded shall only be for the difference between the state property tax paid and the amount of state property tax which would, when added to all other property taxes within the one percent limitation of Article VII, section 2 of the state Constitution equal one percent of the assessed value established by the board;

(12) Paid on the basis of an assessed valuation which was adjudicated to be unlawful or excessive: PROVIDED, That the amount refunded shall be for the difference between the amount of tax which was paid on the basis of the valuation adjudged unlawful or excessive and the amount of tax payable on the basis of the assessed valuation determined as a result of the proceeding; ((or))

(13) Paid on property acquired under RCW 84.60.050, and canceled under RCW 84.60.050(2); ((or))

(14) Paid on the basis of an assessed valuation that was reduced under RCW 84.48.065; or

(15) Paid on the basis of an assessed valuation that was reduced under section 1 of this act.

No refunds under the provisions of this section shall be made because of any error in determining the valuation of property, except as authorized in subsections (9), (10), (11), and (12) of this section nor may any refunds be made if a bona fide purchaser has acquired rights that would preclude the assessment and collection of the refunded tax from the property that should properly have been charged with the tax. Any refunds made on delinquent taxes shall include the proportionate amount of interest and penalties paid. The county treasurer may deduct from moneys collected for the benefit of the state's levy, refunds of the state levy including interest on the levy as provided by this section and chapter 84.68 RCW.

The county treasurer of each county shall make all refunds determined to be authorized by this section, and by the first Monday in January of each year, report to the county legislative authority a list of all refunds made under this section during the previous year. The list is to include the name of the person receiving the refund, the amount of the refund, and the reason for the refund.

Passed the House January 21, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 307

[Substitute House Bill 1939]

COVERING RESERVE LAW ENFORCEMENT OFFICERS UNDER VOLUNTEER FIRE FIGHTERS RELIEF BENEFITS

AN ACT Relating to covering reserve law enforcement officers under volunteer fire fighters relief benefits; amending RCW 41.24.400; and adding new sections to chapter 41.24 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 41.24 RCW to read as follows:

A municipality employing reserve officers may adopt appropriate legislation extending disability and death benefits under this chapter to their reserve officers. Disability and death benefits under this chapter may not be extended to reserve officers if the municipality has extended industrial insurance coverage to its reserve officers under RCW 51.12.140 or 51.12.035(2), or any other provision of law. A municipality that adopts appropriate legislation extending disability and death benefits to its reserve officers under RCW 41.24.150 and 41.24.160 shall enjoy the same extent of immunity from civil actions for personal injuries to its reserve officers that arises if the reserve officers were covered under Title 51 RCW.

Each municipality that adopts appropriate legislation extending disability and death benefits under this chapter to its reserve officers must pay all fees established under section 3 of this act established for this coverage.

NEW SECTION. Sec. 2. A new section is added to chapter 41.24 RCW to read as follows:

A municipality that adopts appropriate legislation providing its reserve officers with disability and death benefits under RCW 41.24.150 and 41.24.160 shall create a reserve officer board of trustees to administer this chapter composed as follows:

(1) A county reserve officer board of trustees shall consist of the following five members: (a) Two members of the county legislative authority and the county auditor, or their designees; (b) the sheriff; and (c) one reserve officer who is elected by reserve officers of the county for an annual one-year term.

(2) Any other reserve officer board of trustees shall consist of the following five members: (a) The mayor, if one exists for the municipality, and one member of the municipality's legislative authority, or two members of the municipality's legislative authority if a mayor does not exist for the municipality, or their designees; (b) the clerk, comptroller, or chief fiscal officer of the municipality; (c) the head of the law enforcement agency; and (d) one reserve officer who is elected by reserve officers of the municipality for an annual term of one year.

NEW SECTION. Sec. 3. A new section is added to chapter 41.24 RCW to read as follows:

The state board shall set the amount of fees that each municipality must pay to fully finance the costs of providing disability and death benefits for its reserve officers under RCW 41.24.150 and 41.24.160 if the municipality has adopted appropriate legislation providing its reserve officers with such benefits.

Sec. 4. RCW 41.24.400 and 1995 c 11 s 2 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, any municipality may make provision by appropriate legislation and payment of fees required by RCW

41.24.030(1)(d) solely for the purpose of enabling any reserve officer to enroll under the retirement provisions of this chapter or fees required under section 3 of this act to pay for the costs of extending disability and death benefits to its reserve officers.

(2) A reserve officer is not eligible to receive a benefit under the retirement provisions of this chapter for service under chapter 41.26, 41.32, or 41.40 RCW.

(3) Every municipality shall make provisions for the collection and payment of the fees required under this chapter, and shall continue to make provisions for all reserve officers who come under this chapter as long as they continue to be employed as reserve officers.

(4) Except as provided under section 1 of this act, a reserve officer is not eligible to receive a benefit under the relief and compensation provisions of this chapter.

Passed the House February 13, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 308

[Substitute House Bill 2051]

REMEDIES AND REMEDIAL ACTIONS REGARDING HAZARDOUS WASTE-- TAX EXEMPTIONS

AN ACT Relating to exempting from taxation remedies and remedial actions regarding hazardous waste; amending RCW 82.04.050, 82.04.290, and 82.04.290; reenacting and amending RCW 82.04.190; adding a new section to chapter 82.04 RCW; providing effective dates; and providing an expiration date.

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

Sec. 1. RCW 82.04.050 and 1997 c 127 s 1 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used

in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services"

does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

(9) Until July 1, 2003, the term shall not include the sale of or charge made for labor and services rendered for environmental remedial action as defined in section 3(2) of this act.

Sec. 2. RCW 82.04.190 and 1996 c 173 s 2, 1996 c 148 s 4, and 1996 c 112 s 2 are each reenacted and amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install,

repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290; (b) any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business; and (c) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, bridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year, Nothing contained in this or any other subsection of this section shall be construed to modify any other definition of "consumer"; ((and))

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development(~~—Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer."~~); and

(9) Until July 1, 2003, any person engaged in the business of conducting environmental remedial action as defined in section 3(2) of this act.

NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of environmental remedial action, the amount of tax with respect to such business shall be equal to the value of the gross income of the business multiplied by the rate 0.471 percent.

(2) For purposes of this chapter, "environmental remedial action" means:

(a) Those services related to the identification, investigation, or cleanup arising out of the release or threatened release of hazardous substances that are conducted under contract with the department of ecology or under an enforcement order, agreed order, or consent decree executed by the department of ecology, or those services, when evaluated as a whole, that are the substantial equivalent of a department of ecology-conducted or supervised remedial action under the model toxics control act, chapter 70.105D RCW; or

(b) Those services related to the identification, investigation, or cleanup of a facility that are conducted under contract with the United States environmental protection agency or under an order or consent decree executed by the United States environmental protection agency, or that are consistent with the national contingency plan adopted under the comprehensive environmental response compensation and liability act, 42 U.S.C. Sec. 9605 as it exists on the effective date of this section, and those services are conducted at facilities that are included on the national priorities list adopted under 42 U.S.C. Sec. 9605 as it exists on the effective date of this section or at facilities subject to a removal action authorized under 42 U.S.C. Sec. 9604 as it exists on the effective date of this section.

(3) A site is eligible for environmental remedial action upon submittal, via certified mail to the department of ecology and the department of revenue, of the following:

(a) A certification from the owner, the department of ecology, or the United States environmental protection agency, containing the following information:

(i) The location of the site, shown on a map and identified by parcel number or numbers and street address;

(ii) The name and address and daytime phone number of a contact person;

(iii) A statement that the proposed environmental remedial actions will be conducted by the department of ecology or its authorized contractor under chapter 70.105D RCW or will be substantially equivalent to a department of ecology-conducted or supervised remedial action under the model toxics control act, chapter 70.105D RCW, or will be conducted by the United States environmental protection agency or its authorized contractor or will be consistent with the national contingency plan under 42 U.S.C. Sec. 9605 as it exists on the effective date of this section; and

(iv) A description of the proposed environmental remedial actions to be taken; and

(b)(i) A certification from a certified underground storage tank service supervisor as authorized in chapter 90.76 RCW, from a professional engineer licensed in the state of Washington, or from an environmental professional who subscribes to a code of professional responsibility administered by a recognized organization representing such professions containing the following information:

(A) Confirmation that an environmental remedial action as defined in this section is to be conducted at the site;

(B) The location of the site, shown on a map and identified by parcel number or numbers and street address, and the approximate location of the proposed environmental remedial action; and

(C) The name, address, telephone number, and uniform business identifier of the person providing the certification; or

(ii) If applicable to the site, a copy of an enforcement order, agreed order, or consent decree executed by the department of ecology or the United States environmental protection agency.

(4) The department of revenue shall respond in writing to the owner within thirty days confirming receipt of the certification, or certifications, of eligibility.

(5) The owner shall provide a copy of the confirmation from the department of revenue to each person who renders environmental remedial action at the site. Each person who renders such action shall separately state the charges for labor and services associated with the environmental remedial action.

(6) Upon completion of the environmental remedial action, the owner shall submit to the department of ecology a report documenting the environmental remedial actions conducted at the site and documenting compliance with the requirements of chapter 70.105D RCW.

(7) In addition to any other penalties, a person who files a certificate with the department of ecology or the department of revenue that contains falsehoods or misrepresentations are subject to penalties authorized under chapter 18.43 or 90.76 RCW or RCW 9A.76.175. Also, a person who improperly reports the person's tax class shall be assessed a penalty of fifty percent of the tax due, in addition to other taxes or penalties, together with interest. The department of revenue shall waive the penalty imposed under this section if it finds that the falsehoods or misrepresentations or improper reporting of the tax classification was due to circumstances beyond the control of the person.

(8) This section expires July 1, 2003.

Sec. 4. RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, ~~((and))~~ 82.04.280, and section 3 of this act, and subsection (I) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

Sec. 5. RCW 82.04.290 and 1998 c . . . s 4 (section 4 of this act) are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, and 82.04.280, (~~and section 3 of this act;~~) and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

NEW SECTION. Sec. 6. (1) Sections 1 through 4 of this act take effect July 1, 1998.

(2) Section 5 of this act takes effect July 1, 2003.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 309

[House Bill 2278]

ELECTRIC GENERATION FACILITIES POWERED BY LANDFILL GAS— SALES AND USE TAX EXEMPTIONS

AN ACT Relating to exempting electric generating facilities powered by landfill gas from sales and use taxes; amending RCW 82.08.02567 and 82.12.02567; and declaring an emergency.

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

Sec. 1. RCW 82.08.02567 and 1996 c 166 s 1 are each amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall not apply to sales of machinery and equipment used directly in generating electricity using ~~((the))~~ wind ~~((or))~~, sun ~~((energy))~~, or landfill gas as the principal source of power, or to sales of or charges made for labor and services rendered in respect to installing such machinery and equipment, but only if the purchaser develops with such machinery, equipment, and labor a facility capable of generating not less than two hundred kilowatts of electricity and provides the seller with an exemption

certificate in a form and manner prescribed by the department by rule, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require. The seller shall retain a copy of the certificate for the seller's files.

(2) For purposes of this section and RCW 82.12.02567:

(a) "Landfill gas" means biomass fuel of the type qualified for federal tax credits under 26 U.S.C. Sec. 29 collected from a landfill. "Landfill" means a landfill as defined under RCW 70.95.030.

(b) "Machinery and equipment" means industrial fixtures, devices, and support facilities that are integral and necessary to the generation of electricity using ~~((the))~~ wind ~~((or))~~, sun ~~((energy))~~, or landfill gas as the principal source of power;

~~((b))~~ (c) "Machinery and equipment" does not include: (i) Hand tools; (ii) property with a useful life of less than one year; (iii) repair parts required to restore machinery and equipment to normal working order; (iv) replacement parts that do not increase productivity, improve efficiency, or extend the useful life of machinery and equipment; (v) buildings; or (vi) building fixtures that are not integral and necessary to the generation of electricity that are permanently affixed to and become a physical part of a building;

~~((e))~~ (d) Machinery and equipment is "used directly" in generating electricity by wind ~~((or))~~ energy, solar, or landfill gas power if it provides any part of the process that captures the energy of the wind ~~((or))~~, sun, or landfill gas, converts that energy to electricity, and transforms or transmits that electricity for entry into electric transmission and distribution systems.

(3) This section expires June 30, 2005.

Sec. 2. RCW 82.12.02567 and 1996 c 166 s 2 are each amended to read as follows:

(1) The provisions of this chapter shall not apply with respect to machinery and equipment used directly in generating not less than two hundred kilowatts of electricity using ~~((the))~~ wind ~~((or))~~, sun, or landfill gas as the principal source of power, but only when the user provides the department with:

(a) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of such machinery and equipment in this state; or

(b) An annual summary listing the machinery and equipment by January 31st of the year following the calendar year in which the machinery and equipment is first used in this state.

(2) The definitions in RCW 82.08.02567 apply to this section.

(3) This section expires June 30, 2005.

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 the House February 27, 1998.
Passed the Senate March 11, 1998.
Approved by the Governor April 3, 1998.
Filed in Office of Secretary of State April 3, 1998.

CHAPTER 310

[House Bill 2309]

NOTIFICATION OF DENIAL OF PROPERTY TAX EXEMPTION—NOTICE BY MAIL

AN ACT Relating to notification of denial of property tax exemption; amending RCW 84.36.830; and providing an effective date.

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

Sec. 1. RCW 84.36.830 and 1984 c 220 s 12 are each amended to read as follows:

The department of revenue shall review each application for exemption and make a determination thereon prior to August 1st of the assessment year for which such application is made; PROVIDED, That each exemption application received after March 31 shall be reviewed and determination made thereon within thirty days of the date received or by August 1, whichever is later. The department of revenue may request such additional relevant information as it deems necessary. The department of revenue shall make a physical inspection of the property and satisfy itself as to the use of all parcels prior to approving or denying the application, and thereafter at regular intervals designed to insure compliance with this chapter. When the department of revenue has examined the application and the subject property, it shall either approve or deny the request and clearly state the reasons for denial in written notification by ((certified)) mail to the applicant. The department shall also notify the assessor of the county in which the property is located. The county assessor shall place such property on the assessment roll for the current year.

NEW SECTION. Sec. 2. This act takes effect January 1, 1999.

Passed the House February 6, 1998.
Passed the Senate March 4, 1998.
Approved by the Governor April 3, 1998.
Filed in Office of Secretary of State April 3, 1998.

CHAPTER 311

[Substitute House Bill 2315]

EXCISE AND PROPERTY TAX STATUTES—TECHNICAL CORRECTIONS

AN ACT Relating to technical corrections of excise and property tax statutes; amending RCW 19.146.050, 82.04.392, 82.04.405, 82.08.0262, 82.08.0263, 82.12.0254, 82.32.210, 82.32.215, 82.32.220, 82.36.130, 84.12.230, 84.33.091, 84.34.111, 84.34.131, 84.34.141, 84.34.145, 84.34.150, 84.36.037, 84.36.041, 84.36.161, 84.36.353, 84.36.473, 84.36.815, 84.36.825, and 84.36.835; reenacting and amending RCW 82.04.260, 84.36.800, 84.36.805, and 84.36.810; creating a new section; and repealing RCW 84.36.330.

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

Sec. 1. RCW 19.146.050 and 1997 c 106 s 5 are each amended to read as follows:

All moneys received by a mortgage broker from a borrower for payment of third-party provider services shall be deemed as held in trust immediately upon receipt by the mortgage broker. A mortgage broker shall deposit, prior to the end of the third business day following receipt of such trust funds, all such trust funds in a trust account of a federally insured financial institution located in this state. All trust account funds collected under this chapter must remain on deposit in a trust account in the state of Washington until disbursement. The trust account shall be designated and maintained for the benefit of borrowers. Moneys maintained in the trust account shall be exempt from execution, attachment, or garnishment. A mortgage broker shall not in any way encumber the corpus of the trust account or commingle any other operating funds with trust account funds. Withdrawals from the trust account shall be only for the payment of bona fide services rendered by a third-party provider or for refunds to borrowers. The director shall make rules which: (1) Direct mortgage brokers how to handle checks and other instruments that are received by the broker and that combine trust funds with other funds; and (2) permit transfer of trust funds out of the trust account for payment of other costs only when necessary and only with the prior express written permission of the borrower. Any interest earned on the trust account shall be refunded or credited to the borrowers at closing. Trust accounts that are operated in a manner consistent with this section and any rules adopted by the director, are not considered (~~exempt from taxation~~) gross receipts taxable under chapter 82.04 RCW.

Sec. 2. RCW 82.04.260 and 1996 c 148 s 2 and 1996 c 115 s 1 are each reenacted and amended to read as follows:

(1) Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured (~~or processed~~) products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.

(2) Upon every person engaging within this state in the business of manufacturing wheat into flour, barley into pearl barley, soybeans into soybean oil, canola into canola oil, canola meal, or canola byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent.

(3) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of 0.275 percent.

(4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.33 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

(6) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

(7) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

(8) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

(9) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

(10) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

(11) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.363 percent.

(12) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of 0.363 percent. Persons subject to taxation under this subsection shall be 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.

(13) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

(14) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of 0.55 percent.

(15) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be 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. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

Sec. 3. RCW 82.04.392 and 1997 c 106 s 21 are each amended to read as follows:

This chapter shall not apply to amounts received from trust accounts ~~((that))~~ to mortgage brokers for the payment of third-party costs if the accounts are operated in a manner consistent with RCW 19.146.050 and any rules adopted by the director of financial institutions.

Sec. 4. RCW 82.04.405 and 1970 ex.s. c 101 s 3 are each amended to read as follows:

This chapter shall not apply to the gross income of credit unions organized under the laws of this state, any other state, or the United States.

Sec. 5. RCW 82.08.0262 and 1994 c 43 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of airplanes, locomotives, railroad cars, or watercraft for use in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or for use in conducting commercial deep sea fishing operations outside the territorial waters of the state or airplanes sold to the United States government; also sales of tangible personal property which becomes a component part of such airplanes, locomotives, railroad cars, or watercraft, and of motor vehicles or trailers whether owned by or leased with or without drivers and used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state, in the course of constructing, repairing, cleaning, altering, or improving the same; also sales of or charges made for labor and services rendered in respect to such constructing, repairing, cleaning, altering, or improving.

Sec. 6. RCW 82.08.0263 and 1995 c 63 s 1 are each amended to read as follows:

The tax levied by RCW 82.08.020 shall not apply to sales of motor vehicles and trailers to be used for the purpose of transporting therein persons or property for hire in interstate or foreign commerce whether such use is by the owner or whether such motor vehicles and trailers are leased to the user with or without drivers: PROVIDED, That the purchaser or user must be the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency.

Sec. 7. RCW 82.12.0254 and 1995 c 63 s 2 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use of any airplane, locomotive, railroad car, or watercraft used primarily in conducting interstate or foreign commerce by transporting therein or therewith property and persons for hire or used primarily in commercial deep sea fishing operations outside the territorial waters of the state, and in respect to use of tangible personal

property which becomes a component part of any such airplane, locomotive, railroad car, or watercraft, and in respect to the use by a nonresident of this state of any motor vehicle or trailer used exclusively in transporting persons or property across the boundaries of this state and in intrastate operations incidental thereto when such motor vehicle or trailer is registered and licensed in a foreign state and in respect to the use by a nonresident of this state of any motor vehicle or trailer so registered and licensed and used within this state for a period not exceeding fifteen consecutive days under such rules as the department of revenue shall adopt: PROVIDED, That under circumstances determined to be justifiable by the department of revenue a second fifteen day period may be authorized consecutive with the first fifteen day period; and for the purposes of this exemption the term "nonresident" as used herein, shall include a user who has one or more places of business in this state as well as in one or more other states, but the exemption for nonresidents shall apply only to those vehicles which are most frequently dispatched, garaged, serviced, maintained, and operated from the user's place of business in another state; and in respect to the use by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency of any motor vehicle or trailer whether owned by or leased with or without driver to the permit holder and used in substantial part in the normal and ordinary course of the user's business for transporting therein persons or property for hire across the boundaries of this state; and in respect to the use of any motor vehicle or trailer while being operated under the authority of a one-transit permit issued by the director of licensing pursuant to RCW 46.16.160 and moving upon the highways from the point of delivery in this state to a point outside this state; and in respect to the use of tangible personal property which becomes a component part of any motor vehicle or trailer used by the holder of a carrier permit issued by the Interstate Commerce Commission or its successor agency authorizing transportation by motor vehicle across the boundaries of this state whether such motor vehicle or trailer is owned by or leased with or without driver to the permit holder.

Sec. 8. RCW 82.32.210 and 1997 c 157 s 3 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 (~~(under its official seal)~~) in the amount of such 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 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 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 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) The department shall 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. Upon filing, the clerk shall 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 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 not be superior, however, to bona fide interests of third persons which had vested prior to 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 payment of a debt or the receiving of 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 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 sufficient to support the issuance of writs of garnishment in favor of the state in the manner provided by law in the case of judgments wholly or partially unsatisfied.

Sec. 9. RCW 82.32.215 and 1983 1st ex.s. c 55 s 9 are each amended to read as follows:

If any warrant issued under this chapter is not paid within thirty days after it has been filed with the clerk of the superior court, or if any taxpayer is delinquent, for three consecutive reporting periods, in the transmission to the department of revenue of retail sales tax collected by ~~((him))~~ the taxpayer, the department of revenue may, by order ~~((issued under its official seal))~~, revoke the certificate of registration of the taxpayer against whom the warrant was issued, and, if the order is entered, a copy thereof shall be posted in a conspicuous place at the main entrance to the taxpayer's place of business and shall remain posted until such

time as the warrant has been paid. Any certificate so revoked shall not be reinstated, nor shall a new certificate of registration be issued to the taxpayer, until the amount due on the warrant has been paid, or provisions for payment satisfactory to the department of revenue have been entered, and until the taxpayer has deposited with the department of revenue such security for payment of any taxes, increases, and penalties, due or which may become due in an amount and under such terms and conditions as the department of revenue may require, but the amount of the security shall not be greater than one-half the estimated average annual liability of the taxpayer.

Sec. 10. RCW 82.32.220 and 1983 1st ex.s. c 55 s 10 are each amended to read as follows:

The department of revenue may issue an order of execution, pursuant to a filed warrant, (~~under its official seal~~) directed to the sheriff of the county in which the warrant has been filed, commanding ((him)) the sheriff to levy upon and sell the real and/or personal property of the taxpayer found within ((his)) the sheriff's county, or so much thereof as may be necessary, for the payment of the amount of the warrant, plus the cost of executing the warrant, and return the warrant to the department of revenue and pay to it the money collected by virtue thereof within sixty days after the receipt of the warrant. The sheriff shall thereupon proceed upon the same in all respects and with like effect as prescribed by law with respect to execution or other process issued against rights or property upon judgments of the superior court.

The sheriff shall be entitled to fees as provided by law for ((his)) the sheriff's services in levying execution on a superior court judgment and the clerk shall be entitled to a filing fee as provided by law, which shall be added to the amount of the warrant.

The proceeds received from any sale shall be credited upon the amount due under the warrant and when the final amount due is received, together with interest, penalties, and costs, the judgment docket shall show the claim for taxes to be satisfied and the clerk of the court shall so note upon the docket. Any surplus received from any sale of property shall be paid to the taxpayer or to any lien holder entitled thereto. If the return on the warrant shows that the same has not been satisfied in full, the amount of the deficiency shall remain the same as a judgment against the taxpayer which may be collected in the same manner as the original amount of the warrant.

Sec. 11. RCW 82.36.130 and 1961 c 15 s 82.36.130 are each amended to read as follows:

If any distributor is in default for more than ten days in the payment of any excise taxes or penalties thereon, the director shall issue a warrant (~~under the official seal of his office~~) directed to the sheriff of any county of the state commanding ((him)) the sheriff to levy upon and sell the goods and chattels of the distributor, without exemption, found within ((his)) the sheriff's jurisdiction, for the payment of the amount of such delinquency, with the added penalties and

interest and the cost of executing the warrant, and to return such warrant to the director and to pay the director the money collected by virtue thereof within the time to be therein specified, which shall not be less than twenty nor more than sixty days from the date of the warrant. The sheriff to whom the warrant is directed shall proceed upon it in all respects and with like effect and in the same manner as prescribed by law in respect to executions issued against goods and chattels upon judgment by a court of record and shall be entitled to the same fees for ~~((his))~~ the sheriff's services to be collected in the same manner.

Sec. 12. RCW 84.12.230 and 1984 c 132 s 1 are each amended to read as follows:

Each company doing business in this state shall annually on or before the 15th day of March, make and file with the department of revenue an annual report, in such manner, upon such form, and giving such information as the department may direct: PROVIDED, That the department, upon written request filed on or before such date and for good cause shown therein, may allow an extension of time for filing not to exceed sixty days. At the time of making such report each company shall also be required to furnish to the department the annual reports of the board of directors, or other officers to the stockholders of the company, duplicate copies of the annual reports made to the interstate commerce commission or its successor agency and to the utilities and transportation commission of this state and duplicate copies of such other reports as the department may direct: PROVIDED, That the duplicate copies of these annual reports shall not be due until such time as they are due to the stockholders or commissioners.

Sec. 13. RCW 84.33.091 and 1984 c 204 s 11 are each amended to read as follows:

(1) The department of revenue shall designate areas containing timber having similar growing, harvesting, and marketing conditions to be used as units for the preparation and application of stumpage values. Each year on or before December 31 for use the following January through June 30, and on or before June 30 for use the following July through December 31, the department shall prepare tables of stumpage values of each species or subclassification of timber within these units. The stumpage value shall be the amount that each such species or subclassification would sell for at a voluntary sale made in the ordinary course of business for purposes of immediate harvest. These stumpage values, expressed in terms of a dollar amount per thousand board feet or other unit measure, shall be determined in a manner which makes reasonable and adequate allowances for age, size, quality, costs of removal, accessibility to point of conversion, market conditions, and all other relevant factors from:

(a) Gross proceeds from sales on the stump of similar timber of like quality and character at similar locations, and in similar quantities;

(b) Gross proceeds from sales of logs adjusted to reflect only the portion of such proceeds attributable to value on the stump immediately prior to harvest; or

(c) A combination of (a) and (b) of this subsection.

(2) Upon application from any person who plans to harvest damaged timber, the stumpage values for which have been materially reduced from the values shown in the applicable tables due to damage resulting from fire, blow down, ice storm, flood, or other sudden unforeseen cause, the department shall revise the stumpage value tables for any area in which such timber is located and shall specify any additional accounting or other requirements to be complied with in reporting and paying the tax.

(3) The preliminary area designations and stumpage value tables and any revisions thereof are subject to review by the ways and means committees of the house of representatives and senate prior to finalization. Tables of stumpage values shall be signed by the director or the director's designee (~~and authenticated by the official seal of the department~~). A copy thereof shall be mailed to anyone who has submitted to the department a written request for a copy.

(4) On or before the sixtieth day after the date of final adoption of any stumpage value tables, any harvester may appeal to the board of tax appeals for a revision of stumpage values for an area determined pursuant to subsection (3) of this section.

Sec. 14. RCW 84.34.111 and 1973 1st ex.s. c 212 s 13 are each amended to read as follows:

The owner of any land as to which additional tax is imposed as provided in this chapter (~~(212, Laws of 1973 1st ex. sess.)~~) shall have with respect to valuation of the land and imposition of the additional tax all remedies provided by this title (~~(84 RCW)~~).

Sec. 15. RCW 84.34.131 and 1973 1st ex.s. c 212 s 16 are each amended to read as follows:

Nothing in this chapter (~~(212, Laws of 1973 1st ex. sess.)~~) shall be construed as in any manner affecting the method for valuation of timber standing on timber land which has been classified under (~~the provisions of~~) this chapter (~~(212, Laws of 1973 1st ex. sess.)~~).

Sec. 16. RCW 84.34.141 and 1973 1st ex.s. c 212 s 17 are each amended to read as follows:

The department of revenue of the state of Washington shall make such rules and regulations consistent with (~~the provisions of~~) this chapter (~~(212, Laws of 1973 1st ex. sess.)~~) as shall be necessary or desirable to permit its effective administration.

Sec. 17. RCW 84.34.145 and 1992 c 69 s 13 are each amended to read as follows:

The county legislative authority shall appoint a five member committee representing the active farming community within the county to serve in an advisory capacity to the assessor in implementing assessment guidelines as established by the department of revenue for the assessment of open space, farms

and agricultural lands, and timber lands classified (~~(pursuant to)~~) under this chapter (~~((212, Laws of 1973 1st ex. sess.))~~).

Sec. 18. RCW 84.34.150 and 1992 c 69 s 14 are each amended to read as follows:

Land classified under the provisions of chapter 84.34 RCW prior to July 16, 1973 which meets the criteria for classification under (~~(the provisions of)~~) this chapter (~~((212, Laws of 1973 1st ex. sess.))~~), is hereby reclassified under (~~(the provisions of)~~) this chapter (~~((212, Laws of 1973 1st ex. sess.))~~). This change in classification shall be made without additional tax, applicable interest, penalty, or other requirements(~~(= PROVIDED, That)~~), but subsequent to such reclassification, the land shall be fully subject to (~~(the provisions of)~~) this chapter (~~((84.34 RCW))~~). A condition imposed by a granting authority prior to July 16, 1973, upon land classified pursuant to RCW 84.34.020 (1) or (3) shall remain in effect during the period of classification.

Sec. 19. RCW 84.36.037 and 1997 c 298 s 1 are each amended to read as follows:

(1) Real or personal property owned by a nonprofit organization, association, or corporation in connection with the operation of a public assembly hall or meeting place is exempt from taxation. The area exempt under this section includes the building or buildings, the land under the buildings, and an additional area necessary for parking, not exceeding a total of one acre(~~(= PROVIDED, That for)~~). When property for which exemption is sought is essentially unimproved except for restroom facilities and structures (~~(on such)~~) and this property (~~(which)~~) has been used primarily for annual community celebration events for at least ten years, (~~(such)~~) the exempt property shall not exceed twenty-nine acres.

(2) To qualify for this exemption the property must be used exclusively for public gatherings and be available to all organizations or persons desiring to use the property, but the owner may impose conditions and restrictions which are necessary for the safekeeping of the property and promote the purposes of this exemption. Membership shall not be a prerequisite for the use of the property.

(3) The use of the property for pecuniary gain or to promote business activities, except as provided in this section, nullifies the exemption otherwise available for the property for the assessment year. The exemption is not nullified by:

(a) The collection of rent or donations if the amount is reasonable and does not exceed maintenance and operation expenses created by the user.

(b) Fund-raising activities conducted by a nonprofit organization.

(c) The use of the property for pecuniary gain or to promote business activities for periods of not more than seven days in a year.

(d) An inadvertent use of the property in a manner inconsistent with the purpose for which exemption is granted, if the inadvertent use is not part of a pattern of use. A pattern of use is presumed when an inadvertent use is repeated in the same assessment year or in two or more successive assessment years.

(4) The department of revenue shall narrowly construe this exemption.

Sec. 20. RCW 84.36.041 and 1997 c 3 s 124 are each amended to read as follows:

(1) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and:

(a) At least fifty percent of the occupied dwelling units in the home are occupied by eligible residents; or

(b) The home is subsidized under a federal department of housing and urban development program. The department of revenue shall provide by rule a definition of homes eligible for exemption under this subsection (b), consistent with the purposes of this section.

(2) All real and personal property used by a nonprofit home for the aging that is reasonably necessary for the purposes of the home is exempt from taxation if the benefit of the exemption inures to the home and the construction, rehabilitation, acquisition, or refinancing of the home is financed under a program using bonds exempt from federal income tax if at least seventy-five percent of the total amount financed uses the tax exempt bonds and the financing program requires the home to reserve a percentage of all dwelling units so financed for low-income residents. The initial term of the exemption under this subsection shall equal the term of the tax exempt bond used in connection with the financing program, or the term of the requirement to reserve dwelling units for low-income residents, whichever is shorter. If the financing program involves less than the entire home, only those dwelling units included in the financing program are eligible for total exemption. The department of revenue shall provide by rule the requirements for monitoring compliance with the provisions of this subsection and the requirements for exemption including:

(a) The number or percentage of dwelling units required to be occupied by low-income residents, and a definition of low income;

(b) The type and character of the dwelling units, whether independent units or otherwise; and

(c) Any particular requirements for continuing care retirement communities.

(3) A home for the aging is eligible for a partial exemption on the real property and a total exemption for the home's personal property if the home does not meet the requirements of subsection (1) of this section because fewer than fifty percent of the occupied dwelling units are occupied by eligible residents, as follows:

(a) A partial exemption shall be allowed for each dwelling unit in a home occupied by a resident requiring assistance with activities of daily living.

(b) A partial exemption shall be allowed for each dwelling unit in a home occupied by an eligible resident.

(c) A partial exemption shall be allowed for an area jointly used by a home for the aging and by a nonprofit organization, association, or corporation currently exempt from property taxation under one of the other provisions of this chapter.

The shared area must be reasonably necessary for the purposes of the nonprofit organization, association, or corporation exempt from property taxation under one of the other provisions of this chapter, such as kitchen, dining, and laundry areas.

(d) The amount of exemption shall be calculated by multiplying the assessed value of the property reasonably necessary for the purposes of the home, less the assessed value of any area exempt under (c) of this subsection, by a fraction. The numerator of the fraction is the number of dwelling units occupied by eligible residents and by residents requiring assistance with activities of daily living. The denominator of the fraction is the total number of occupied dwelling units as of January 1st of the year for which exemption is claimed.

(4) To be exempt under this section, the property must be used exclusively for the purposes for which the exemption is granted, except as provided in RCW 84.36.805.

(5) A home for the aging is exempt from taxation only if the organization operating the home is exempt from income tax under section 501(c) of the federal internal revenue code as existing on January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purposes of this section.

(6) In order for the home to be eligible for exemption under subsections (1)(a) and (2)(b) of this section, each eligible resident of a home for the aging shall submit an income verification form to the county assessor by July 1st of the assessment year in which the application for exemption is made. The income verification form shall be prescribed and furnished by the department of revenue. An eligible resident who has filed a form for a previous year need not file a new form until there is a change in status affecting the person's eligibility.

(7) In determining the assessed value of a home for the aging for purposes of the partial exemption provided by subsection (3) of this section, the assessor shall apply the computation method provided by RCW 84.34.060 and shall consider only the use to which such property is applied during the years for which such partial exemptions are available and shall not consider potential uses of such property.

(8) ~~((A home for the aging that was exempt or partially exempt for taxes levied in 1993 for collection in 1994 is partially exempt for taxes levied in 1994 for collection in 1995, has an increase in taxable value for taxes levied in 1994 for collection in 1995 due to the change prescribed by chapter 151, Laws of 1993 with respect to the numerator of the fraction used to determine the amount of a partial exemption, and is not fully exempt under this section is entitled to partial exemptions as follows:~~

~~—(a) For taxes levied in 1994 for collection in 1995, the home shall pay taxes based upon the taxable value in 1993 plus one-third of the increase in the taxable value from 1993 to the nonexempt value calculated under subsection (3)(d) of this section for 1994.~~

~~—(b) For taxes levied in 1995 for collection in 1996, the home shall pay taxes based upon the taxable value for 1994 as calculated in (a) of this subsection plus one-half of the increase in the taxable value from 1994 to the nonexempt value~~

~~calculated under subsection (3)(d) of this section for 1995. For taxes levied in 1996 for collection in 1997 and for taxes levied thereafter, this subsection (8) does not apply, and the home shall pay taxes without reference to this subsection (8).~~
~~(c) For purposes of this subsection (8), "taxable value" means the value of the home upon which the tax rate is applied in order to determine the amount of taxes due.~~

~~(9))~~ As used in this section:

(a) "Eligible resident" means a person who:

(i) Occupied the dwelling unit as a principal place of residence as of January 1st of the year for which the exemption is claimed. Confinement of the person to a hospital or nursing home does not disqualify the claim of exemption if the dwelling unit is temporarily unoccupied or if the dwelling unit is occupied by a spouse, a person financially dependent on the claimant for support, or both; and

(ii) Is sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or is, at the time of filing, retired from regular gainful employment by reason of physical disability. Any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this subsection; and

(iii) Has a combined disposable income of no more than the greater of twenty-two thousand dollars or eighty percent of the median income adjusted for family size as most recently determined by the federal department of housing and urban development for the county in which the person resides. For the purposes of determining eligibility under this section, a "cotenant" means a person who resides with an eligible resident and who shares personal financial resources with the eligible resident.

(b) "Combined disposable income" means the disposable income of the person submitting the income verification form, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the dwelling unit for the preceding calendar year, less amounts paid by the person submitting the income verification form or his or her spouse or cotenant during the previous year for the treatment or care of either person received in the dwelling unit or in a nursing home. If the person submitting the income verification form was retired for two months or more of the preceding year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person submitting the income verification form is reduced for two or more months of the preceding year by reason of the death of the person's spouse, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after the death of the spouse by twelve.

(c) "Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose

of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:

(i) Capital gains, other than nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;

(ii) Amounts deducted for loss;

(iii) Amounts deducted for depreciation;

(iv) Pension and annuity receipts;

(v) Military pay and benefits other than attendant-care and medical-aid payments;

(vi) Veterans benefits other than attendant-care and medical-aid payments;

(vii) Federal social security act and railroad retirement benefits;

(viii) Dividend receipts; and

(ix) Interest received on state and municipal bonds.

(d) "Resident requiring assistance with activities of daily living" means a person who requires significant assistance with the activities of daily living and who would be at risk of nursing home placement without this assistance.

(e) "Home for the aging" means a residential housing facility that (i) provides a housing arrangement chosen voluntarily by the resident, the resident's guardian or conservator, or another responsible person; (ii) has only residents who are at least sixty-one years of age or who have needs for care generally compatible with persons who are at least sixty-one years of age; and (iii) provides varying levels of care and supervision, as agreed to at the time of admission or as determined necessary at subsequent times of reappraisal.

~~((H))~~ (9) A for-profit home for the aging that converts to nonprofit status after June 11, 1992, and would otherwise be eligible for tax exemption under this section may not receive the tax exemption until five years have elapsed since the conversion. The exemption shall then be ratably granted over the next five years.

Sec. 21. RCW 84.36.161 and 1961 c 15 s 84.36.161 are each amended to read as follows:

RCW 84.36.140, 84.36.150, 84.36.160 and 84.36.162 shall not be construed to amend or repeal RCW 84.40.210 (~~or 84.44.060~~).

Sec. 22. RCW 84.36.353 and 1970 ex.s. c 81 s 2 are each amended to read as follows:

Unless a different meaning is plainly required by the context, the following term as (~~hereinafter~~) used in (~~this chapter shall have~~) RCW 84.36.350 has the following meaning:

"Sheltered workshop" means rehabilitation facility, or that part of a rehabilitation facility operated by a nonprofit corporation, where any manufacture or handiwork is carried on and which is operated for the primary purpose of (1) providing gainful employment or rehabilitation services to the handicapped as an interim step in the rehabilitation process for those who cannot be readily absorbed

in the competitive labor market or during such time as employment opportunities for them in the competitive labor market do not exist; or (2) providing evaluation and work adjustment services for handicapped individuals.

Sec. 23. RCW 84.36.473 and 1983 1st ex.s. c 62 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply ~~((throughout)) to RCW ((84.36.475 and)) 84.36.477((:)).~~

(1) "Business inventories" means all livestock and means personal property not under lease or rental, acquired or produced solely for the purpose of sale or lease, or for the purpose of consuming such property in producing for sale or lease a new article of tangible personal property of which such property becomes an ingredient or component. Business inventories shall not mean personal property acquired or produced for the purpose of lease or rental if such property was leased or rented at any time during the calendar year immediately preceding the year of assessment and was not thereafter remanufactured, nor shall it include property held within the normal course of business for lease or rental for periods of less than thirty days. It shall not include agricultural or horticultural property fully or partially exempt under RCW 84.36.470 or timber which is standing on public land and which is sold under a contract entered into after August 1, 1982. It shall include inventories of finished goods and work in process. For purposes of this section, "remanufacturing" shall mean restoration of property to essentially original condition, but shall not mean normal maintenance or repairs.

(2) "Successor" shall have the meaning given to it in RCW 82.04.180.

Sec. 24. RCW 84.36.800 and 1997 c 156 s 7 and 1997 c 143 s 2 are each reenacted and amended to read as follows:

As used in ~~((RCW 84.36.020, 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.050, 84.36.060, 84.36.550, 84.36.046, and 84.36.800 through 84.36.865))~~ this chapter:

(1) "Church purposes" means the use of real and personal property owned by a nonprofit religious organization for religious worship or related administrative, educational, eleemosynary, and social activities. This definition is to be broadly construed;

(2) "Convent" means a house or set of buildings occupied by a community of clergy or nuns devoted to religious life under a superior;

(3) "Hospital" means any portion of a hospital building, or other buildings in connection therewith, used as a residence for persons engaged or employed in the operation of a hospital, or operated as a portion of the hospital unit;

(4) "Nonprofit" means an organization, association or corporation no part of the income of which is paid directly or indirectly to its members, stockholders, officers, directors or trustees except in the form of services rendered by the organization, association, or corporation in accordance with its purposes and bylaws and the salary or compensation paid to officers of such organization,

association or corporation is for actual services rendered and compares to the salary or compensation of like positions within the public services of the state;

(5) "Parsonage" means a residence occupied by a member of the clergy who has been designated for a particular congregation and who holds regular services therefor.

Sec. 25. RCW 84.36.805 and 1997 c 156 s 8 and 1997 c 143 s 3 are each reenacted and amended to read as follows:

In order to be exempt pursuant to RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, 84.36.480, and 84.36.550(~~(, and 84.36.046)~~), the nonprofit organizations, associations or corporations shall satisfy the following conditions:

(1) The property is used exclusively for the actual operation of the activity for which exemption is granted, unless otherwise provided, and does not exceed an amount reasonably necessary for that purpose, except:

(a) The loan or rental of the property does not subject the property to tax if:

(i) The rents and donations received for the use of the portion of the property are reasonable and do not exceed the maintenance and operation expenses attributable to the portion of the property loaned or rented; and

(ii) Except for the exemptions under RCW 84.36.030(4) and 84.36.037, the property would be exempt from tax if owned by the organization to which it is loaned or rented;

(b) The use of the property for fund-raising activities does not subject the property to tax if the fund-raising activities are consistent with the purposes for which the exemption is granted;

(2) The property is irrevocably dedicated to the purpose for which exemption has been granted, and on the liquidation, dissolution, or abandonment by said organization, association, or corporation, said property will not inure directly or indirectly to the benefit of any shareholder or individual, except a nonprofit organization, association, or corporation which too would be entitled to property tax exemption. This property need not be irrevocably dedicated if it is leased or rented to those qualified for exemption pursuant to RCW 84.36.035, 84.36.040, 84.36.041, 84.36.043, or 84.36.046 or those qualified for exemption as an association engaged in the production or performance of musical, dance, artistic, dramatic, or literary works pursuant to RCW 84.36.060, but only if under the terms of the lease or rental agreement the nonprofit organization, association, or corporation receives the benefit of the exemption;

(3) The facilities and services are available to all regardless of race, color, national origin or ancestry;

(4) The organization, association, or corporation is duly licensed or certified where such licensing or certification is required by law or regulation;

(5) Property sold to organizations, associations, or corporations with an option to be repurchased by the seller shall not qualify for exempt status;

(6) The director of the department of revenue shall have access to its books in order to determine whether such organization, association, or corporation is

exempt from taxes within the intent of RCW 84.36.030, 84.36.035, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.045, 84.36.046, 84.36.047, 84.36.050, 84.36.060, 84.36.350, and 84.36.480(~~(-and 84.36.046)~~).

Sec. 26. RCW 84.36.810 and 1997 c 156 s 9 and 1997 c 143 s 4 are each reenacted and amended to read as follows:

(1) Upon cessation of a use under which an exemption has been granted pursuant to RCW 84.36.030, 84.36.037, 84.36.040, 84.36.041, 84.36.043, 84.36.046, 84.36.050, 84.36.060, and 84.36.550(~~(-and 84.36.046)~~), the county treasurer shall collect all taxes which would have been paid had the property not been exempt during the three years preceding, or the life of such exemption, if such be less, together with the interest at the same rate and computed in the same way as that upon delinquent property taxes. Where the property has been granted an exemption for more than ten years, taxes and interest shall not be assessed under this section.

(2) Subsection (1) of this section applies only when ownership of the property is transferred or when fifty-one percent or more of the area of the property has lost its exempt status. The additional tax under subsection (1) of this section shall not be imposed if the cessation of use resulted solely from:

(a) Transfer to a nonprofit organization, association, or corporation for a use which also qualifies and is granted exemption under the provisions of chapter 84.36 RCW;

(b) A taking through the exercise of the power of eminent domain, or sale or transfer to an entity having the power of eminent domain in anticipation of the exercise of such power;

(c) Official action by an agency of the state of Washington or by the county or city within which the property is located which disallows the present use of such property;

(d) A natural disaster such as a flood, windstorm, earthquake, or other such calamity rather than by virtue of the act of the organization, association, or corporation changing the use of such property;

(e) Relocation of the activity and use of another location or site except for undeveloped properties of camp facilities exempted under RCW 84.36.030;

(f) Cancellation of a lease on property that had been exempt under RCW 84.36.040, 84.36.041, 84.36.043, 84.36.046, or 84.36.060(~~(-or 84.36.046)~~);

(g) A change in the exempt portion of a home for the aging under RCW 84.36.041(3), as long as some portion of the home remains exempt;

(h) The conversion of a full exemption of a home for the aging to a partial exemption or taxable status or the conversion of a partial exemption to taxable status under RCW 84.36.041(8).

Sec. 27. RCW 84.36.815 and 1994 c 123 s 1 are each amended to read as follows:

In order to qualify for exempt status for any real or personal property under this chapter except personal property under RCW 84.36.600, all foreign national

governments, ~~((churches,))~~ cemeteries, nongovernmental nonprofit corporations, organizations, and associations, ~~((private schools or colleges,))~~ and soil and water conservation districts shall file an initial application on or before March 31 with the state department of revenue. All applications shall be filed on forms prescribed by the department and shall be signed by an authorized agent of the applicant.

In order to requalify for exempt status, ~~((such))~~ all applicants except nonprofit cemeteries shall file an annual renewal declaration on or before March 31 each year. The renewal declaration shall be on forms prescribed by the department of revenue and shall contain an affidavit certifying the exempt status of the real or personal property owned by the exempt organization. When an organization acquires real property qualified for exemption or converts real property to exempt status, such organization shall file an initial application for the property within sixty days following the acquisition or conversion. If the application is filed after the expiration of the sixty-day period a late filing penalty shall be imposed pursuant to RCW 84.36.825, as now or hereafter amended.

When organizations acquire real property qualified for exemption or convert real property to an exempt use, the property, upon approval of the application for exemption, is entitled to a property tax exemption for property taxes due and payable the following year. If the owner has paid taxes for the year following the year the property qualified for exemption, the owner is entitled to a refund of the amount paid on the property so acquired or converted.

Sec. 28. RCW 84.36.825 and 1994 c 123 s 2 are each amended to read as follows:

An application fee of thirty-five dollars for each initial application and eight dollars and seventy-five cents for each annual renewal declaration shall be required and shall be deposited within the general fund. The department of revenue may waive the application or declaration fee related to the property of any church or cemetery applying for exemption under the provisions of RCW 84.36.020 whose gross receipts related to the use of such property for exempt purposes did not exceed two thousand five hundred dollars during the calendar year preceding the application year. ~~((Applications made for assessment year 1974, if approved, shall be considered initial applications whether or not an exemption has previously been approved.))~~ A late filing penalty of ten dollars per month for each month an application or declaration is past due shall be required and shall be deposited in the general fund.

Sec. 29. RCW 84.36.835 and 1973 2nd ex.s. c 40 s 13 are each amended to read as follows:

On or before August 31st, the department of revenue shall prepare a list by county of those properties exempted by the department under ~~((chapter 40, Laws of 1973 2nd ex. sess.))~~ this chapter and shall forward a list to each county assessor of the property exempt in that county.

NEW SECTION. Sec. 30. The intent of sections 1 and 3 of this act is to clarify the original intent of sections 5 and 21, chapter 106, Laws of 1997 and shall not be construed otherwise. Therefore, sections 1 and 3 of this act apply retroactively to July 27, 1997.

NEW SECTION. Sec. 31. RCW 84.36.330 and 1969 ex.s. c 124 s 4 are each repealed.

Passed the House February 6, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 312

[House Bill 2335]

CONSOLIDATING BUSINESS AND OCCUPATION TAXES INTO FEWER CATEGORIES

AN ACT Relating to consolidating business and occupation tax rates into fewer categories; amending RCW 48.14.080, 82.04.240, 82.04.250, 82.04.260, 82.04.270, 82.04.290, and 82.04.440; adding new sections to chapter 82.04 RCW; creating a new section; and providing an effective date.

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

Sec. 1. RCW 48.14.080 and 1993 sp.s. c 25 s 602 are each amended to read as follows:

As to insurers, other than title insurers and taxpayers under RCW 48.14.0201, the taxes imposed by this title shall be in lieu of all other taxes, except taxes on real and tangible personal property, excise taxes on the sale, purchase or use of such property, and the tax imposed in RCW 82.04.260(~~((+5))~~) (12).

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

This chapter does not apply to amounts received from buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye, and barley, but not including any manufactured products thereof, and selling the same at wholesale.

Sec. 3. RCW 82.04.240 and 1993 sp.s. c 25 s 102 are each amended to read as follows:

Upon every person except persons taxable under RCW 82.04.260 (1), (2), (~~((3)),~~) (4), (5), (~~((7), (8), or (9))~~) or (6) engaging within this state in business as a manufacturer; as to such persons the amount of the tax with respect to such business shall be equal to the value of the products, including byproducts, manufactured, multiplied by the rate of 0.484 percent.

The measure of the tax is the value of the products, including byproducts, so manufactured regardless of the place of sale or the fact that deliveries may be made to points outside the state.

Sec. 4. RCW 82.04.250 and 1993 sp.s. c 25 s 103 are each amended to read as follows:

(1) Upon every person except persons taxable under RCW 82.04.260~~((8))~~ (5) or subsection (2) of this section engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

Sec. 5. RCW 82.04.260 and 1998 c . . . s 3 (section 3 of Z-1031.7/98) are each amended to read as follows:

~~(1) ((Upon every person engaging within this state in the business of buying wheat, oats, dry peas, dry beans, lentils, triticale, canola, corn, rye and barley, but not including any manufactured products thereof, and selling the same at wholesale; the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.011 percent.~~

~~—(2))~~ 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 byproducts, or sunflower seeds into sunflower oil; as to such persons the amount of tax with respect to such business shall be equal to the value of the flour, pearl barley, oil, canola meal, or canola byproduct manufactured, multiplied by the rate of 0.138 percent;

(b) Seafood products which remain in a raw, raw frozen, or raw salted state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent; and

(c) By canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.138 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.

~~((3))~~ (2) Upon every person engaging within this state in the business of splitting or processing dried peas; as to such persons the amount of tax with respect to such business shall be equal to the value of the peas split or processed, multiplied by the rate of ~~((0.275))~~ 0.138 percent.

~~((4) Upon every person engaging within this state in the business of manufacturing seafood products which remain in a raw, raw frozen, or raw salted~~

state at the completion of the manufacturing by that person; as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured, multiplied by the rate of 0.138 percent.

~~—(5) Upon every person engaging within this state in the business of manufacturing by canning, preserving, freezing, processing, or dehydrating fresh fruits and vegetables, or selling at wholesale fresh fruits and vegetables canned, preserved, frozen, processed, or dehydrated by the seller and sold to purchasers who transport in the ordinary course of business the goods out of this state; as to such persons the amount of tax with respect to such business shall be equal to the value of the products canned, preserved, frozen, processed, or dehydrated multiplied by the rate of 0.33 percent. As proof of sale to a person who transports in the ordinary course of business goods out of this state, the seller shall annually provide a statement in a form prescribed by the department and retain the statement as a business record.~~

~~—(6))~~ (3) Upon every nonprofit corporation and nonprofit association engaging within this state in research and development, as to such corporations and associations, the amount of tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.484 percent.

~~((7))~~ (4) Upon every person engaging within this state in the business of slaughtering, breaking and/or processing perishable meat products and/or selling the same at wholesale only and not at retail; as to such persons the tax imposed shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.138 percent.

~~((8))~~ (5) Upon every person engaging within this state in the business of making sales, at retail or wholesale, of nuclear fuel assemblies manufactured by that person, as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the assemblies multiplied by the rate of 0.275 percent.

~~((9))~~ (6) Upon every person engaging within this state in the business of manufacturing nuclear fuel assemblies, as to such persons the amount of tax with respect to such business shall be equal to the value of the products manufactured multiplied by the rate of 0.275 percent.

~~((10))~~ (7) Upon every person engaging within this state in the business of acting as a travel agent or tour operator; as to such persons the amount of the tax with respect to such activities shall be equal to the gross income derived from such activities multiplied by the rate of 0.275 percent.

~~((11))~~ (8) Upon every person engaging within this state in business as an international steamship agent, international customs house broker, international freight forwarder, vessel and/or cargo charter broker in foreign commerce, and/or international air cargo agent; as to such persons the amount of the tax with respect to only international activities shall be equal to the gross income derived from such activities multiplied by the rate of ~~((0.363))~~ 0.275 percent.

~~((+2))~~ (9) Upon every person engaging within this state in the business of stevedoring and associated activities pertinent to the movement of goods and commodities in waterborne interstate or foreign commerce; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such activities multiplied by the rate of ~~((0.363))~~ 0.275 percent. Persons subject to taxation under this subsection shall be 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.

~~((+3))~~ (10) Upon every person engaging within this state in the business of disposing of low-level waste, as defined in RCW 43.145.010; as to such persons the amount of the tax with respect to such business shall be equal to the gross income of the business, excluding any fees imposed under chapter 43.200 RCW, multiplied by the rate of 3.3 percent.

If the gross income of the taxpayer is attributable to activities both within and without this state, the gross income attributable to this state shall be determined in accordance with the methods of apportionment required under RCW 82.04.460.

~~((+4))~~ (11) Upon every person engaging within this state as an insurance agent, insurance broker, or insurance solicitor licensed under chapter 48.17 RCW; as to such persons, the amount of the tax with respect to such licensed activities shall be equal to the gross income of such business multiplied by the rate of ~~((0.55))~~ 0.484 percent.

~~((+5))~~ (12) Upon every person engaging within this state in business as a hospital, as defined in chapter 70.41 RCW, that is operated as a nonprofit corporation or by the state or any of its political subdivisions, as to such persons, the amount of tax with respect to such activities shall be 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. The moneys collected under this subsection shall be deposited in the health services account created under RCW 43.72.900.

Sec. 6. RCW 82.04.270 and 1994 c 124 s 2 are each amended to read as follows:

(1) Upon every person except persons taxable under ~~((subsections (1) or (8) of))~~ RCW 82.04.260(5) or section 2 of this act engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales. The tax designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying 0.484 percent of the value of the article so distributed as of the time of such distribution. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers. Delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

NEW SECTION. **Sec. 7.** A new section is added to chapter 82.04 RCW to read as follows:

Upon every person engaging within this state in the business of providing child care for periods of less than twenty-four hours; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds derived from such sales multiplied by the rate of 0.484 percent.

Sec. 8. RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, section 7 of this act, and 82.04.280, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

Sec. 9. RCW 82.04.440 and 1994 c 124 s 4 are each amended to read as follows:

(1) Every person engaged in activities which are within the purview of the provisions of two or more of sections RCW 82.04.230 to 82.04.290, inclusive, shall be taxable under each paragraph applicable to the activities engaged in.

(2) Persons taxable under RCW 82.04.250, 82.04.270, or 82.04.260(~~((7))~~) (4) with respect to selling products in this state shall be 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 shall not exceed the tax liability arising under this chapter with respect to the sale of those products.

(3) Persons taxable under RCW 82.04.240 or 82.04.260 (~~(subsection (4))~~) (1)(b) shall be 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 shall 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, or (~~(subsection (2), (3), (4), (5), or (7) of)~~) RCW 82.04.260 (1), (2), (4), or (6) with respect to extracting or manufacturing products in this state shall be 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 shall 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 and ~~((subsections (2), (3), (4), (5), and (7) of))~~ RCW 82.04.260 ~~(1), (2), and (4))~~, and (ii) 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 the tax imposed in RCW 82.04.230 and 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.

NEW SECTION. Sec. 10. This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor does it affect any proceeding instituted under those sections.

NEW SECTION. Sec. 11. This act takes effect July 1, 1998.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 313

[Engrossed Second Substitute House Bill 2342]

INTERNATIONAL SERVICES IN ELIGIBLE AREAS—TAX EXEMPTIONS

AN ACT Relating to international services; adding a new section to chapter 82.04 RCW; adding a new section to chapter 48.14 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to attract and retain businesses that provide professional services and insurance services to international customers. To that end, the legislature finds that an incentive measured by a business's growth in jobs is a meaningful method of attracting and retaining such businesses. Therefore, the incentive in this act is specifically targeted at "net new jobs." In addition, to further the impact and benefit of this program, this incentive is limited to those urban areas of the state, both in eastern Washington and western Washington, that are characterized by unemployment

and poverty. The legislature finds that providing this targeted incentive will be of benefit to the state as a whole.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under this chapter. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international services as defined in this section. In order to receive the credit, the international service activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after the effective date of this act in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on the effective date of this act. Credit is authorized for new employees hired for new positions created after the effective date of this act. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.63A.700; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.63A.710 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international services;

(c)(i) "International services" means the provision of a service, as defined under (c)(iii) of this subsection, that is subject to tax under RCW 82.04.290(2), and either:

(A) Is for a person domiciled outside the United States; or

(B) The service itself is for use primarily outside of the United States.

(ii) "International services" excludes any service taxable under RCW 82.04.290(1).

(iii) Eligible services are: Computer; data processing; information; legal; accounting and tax preparation; engineering; architectural; business consulting; business management; public relations and advertising; surveying; geological

consulting; real estate appraisal; or financial services. For the purposes of this section these services mean the following:

(A) "Computer services" are services such as computer programming, custom software modification, customization of canned software, custom software installation, custom software maintenance, custom software repair, training in the use of software, computer systems design, and custom software update services;

(B) "Data processing services" are services such as word processing, data entry, data retrieval, data search, information compilation, payroll processing, business accounts processing, data production, and other computerized data and information storage or manipulation. "Data processing services" also includes the use of a computer or computer time for data processing whether the processing is performed by the provider of the computer or by the purchaser or other beneficiary of the service;

(C) "Information services" are services such as electronic data retrieval or research that entails furnishing financial or legal information, data or research, internet service as defined in RCW 82.04.297, general or specialized news, or current information;

(D) "Legal services" are services such as representation by an attorney, or other person when permitted, in an administrative or legal proceeding, legal drafting, paralegal services, legal research services, and court reporting services, arbitration, and mediation services;

(E) "Accounting and tax preparation services" are services such as accounting, auditing, actuarial, bookkeeping, or tax preparation services;

(F) "Engineering services" are services such as civil, electrical, mechanical, petroleum, marine, nuclear, and design engineering, machine designing, machine tool designing, and sewage disposal system designing services;

(G) "Architectural services" are services such as structural or landscape design or architecture, interior design, building design, building program management, and space planning services;

(H) "Business consulting services" are services such as primarily providing operating counsel, advice, or assistance to the management or owner of any business, private, nonprofit, or public organization, including but not limited to those in the following areas: Administrative management consulting; general management consulting; human resource consulting or training; management engineering consulting; management information systems consulting; manufacturing management consulting; marketing consulting; operations research consulting; personnel management consulting; physical distribution consulting; site location consulting; economic consulting; motel, hotel, and resort consulting; restaurant consulting; government affairs consulting; and lobbying;

(I) "Business management services" are services such as administrative management, business management, and office management. "Business management services" does not include property management or property leasing, motel, hotel, and resort management, or automobile parking management;

(J) "Public relations and advertising services" are services such as layout, art direction, graphic design, copy writing, mechanical preparation, opinion research, marketing research, marketing, or production supervision;

(K) "Surveying services" are services such as land surveying;

(L) "Geological consulting services" are services rendered for the oil, gas, and mining industry and other earth resource industries, and other services such as soil testing;

(M) "Real estate appraisal services" are services such as market appraisal and other real estate valuation; and

(N) "Financial services" are services such as banking, loan, security, investment management, investment advisory, mortgage servicing, contract collection, and finance leasing services, engaged in by financial businesses, or businesses similar to or in competition with financial businesses; and

(d) "Qualified employment position" means a permanent full-time position to provide international services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city, or legislative authorities of contiguous cities by ordinance of each city's legislative authority, with population greater than eighty thousand, located in a county containing no community empowerment zones as designated under RCW 43.63A.700, may designate a contiguous group of census tracts within the city or cities as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.63A.710. Upon making the designation, the city or cities shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

(a) Employment records for the previous six years;

(b) Information relating to description of international service activity engaged in at the eligible location by the person; and

(c) Information relating to customers of international service activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section.

NEW SECTION. Sec. 3. A new section is added to chapter 48.14 RCW to read as follows:

(1) Subject to the limits in this section, an eligible person is allowed a credit against the tax due under RCW 48.14.020. The credit is based on qualified employment positions in eligible areas. The credit is available to persons who are engaged in international insurance services as defined in this section. In order to receive the credit, the international insurance services activities must take place at a business within the eligible area.

(2)(a) The credit shall equal three thousand dollars for each qualified employment position created after the effective date of this act in an eligible area. A credit is earned for the calendar year the person is hired to fill the position, plus the four subsequent consecutive years, if the position is maintained for those four years.

(b) Credit may not be taken for hiring of persons into positions that exist on the effective date of this act. Credit is authorized for new employees hired for new positions created after the effective date of this act. New positions filled by existing employees are eligible for the credit under this section only if the position vacated by the existing employee is filled by a new hire.

(c) When a position is newly created, if it is filled before July 1st, this position is eligible for the full yearly credit. If it is filled after June 30th, this position is eligible for half of the credit.

(d) Credit may be accrued and carried over until it is used. No refunds may be granted for credits under this section.

(3) For the purposes of this section:

(a) "Eligible area" means: (i) A community empowerment zone under RCW 43.63A.700; or (ii) a contiguous group of census tracts that meets the unemployment and poverty criteria of RCW 43.63A.710 and is designated under subsection (4) of this section;

(b) "Eligible person" means a person, as defined in RCW 82.04.030, who in an eligible area at a specific location is engaged in the business of providing international insurance services;

(c) "International insurance services" means a business that provides insurance services related directly to the delivery of the service outside the United States or on behalf of persons residing outside the United States; and

(d) "Qualified employment position" means a permanent full-time position to provide international insurance services. If an employee is either voluntarily or involuntarily separated from employment, the employment position is considered filled on a full-time basis if the employer is either training or actively recruiting a replacement employee.

(4) By ordinance, the legislative authority of a city with population greater than eighty thousand, located in a county containing no community empowerment

zones as designated under RCW 43.63A.700, may designate a contiguous group of census tracts within the city as an eligible area under this section. Each of the census tracts must meet the unemployment and poverty criteria of RCW 43.63A.710. Upon making the designation, the city shall transmit to the department of revenue a certification letter and a map, each explicitly describing the boundaries of the census tract. This designation must be made by December 31, 1998.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section. This information includes:

- (a) Employment records for the previous six years;
- (b) Information relating to description of international insurance services activity engaged in at the eligible location by the person; and
- (c) Information relating to customers of international insurance services activity engaged in at that location by the person.

(6) If at any time the department finds that a person is not eligible for tax credit under this section, the amount of taxes for which a credit has been used shall be immediately due. The department shall assess interest, but not penalties, on the credited taxes for which the person is not eligible. The interest shall be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, shall be assessed retroactively to the date the tax credit was taken, and shall accrue until the taxes for which a credit has been used are repaid.

(7) The employment security department shall provide to the department of revenue such information needed by the department of revenue to verify eligibility under this section.

NEW SECTION. Sec. 4. This act takes effect July 1, 1998.

Passed the House March 12, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 314

[Substitute House Bill 2556]

CHILD ABUSE AND TREATMENT ACT AND THE ADOPTION AND SAFE FAMILIES ACT— CONFORMITY WITH FEDERAL STATUTES

AN ACT Relating to amendments concerning the child abuse prevention and treatment act and the adoption and safe families act; amending RCW 13.34.020, 13.34.130, 13.34.180, 13.34.190, 74.15.130, 26.44.100, 70.190.010, 70.190.060, 70.190.130, and 13.34.070; reenacting and amending RCW 13.34.145, 26.44.020, 74.13.031, and 70.47.060; adding a new section to chapter 26.44 RCW; adding new sections to chapter 13.34 RCW; adding new sections to chapter 70.190 RCW; adding new sections to chapter 74.09 RCW; adding new sections to chapter 18.71 RCW; adding new sections to chapter 18.57 RCW; adding new sections to chapter 18.79 RCW; creating new sections; prescribing penalties; making an appropriation; providing effective dates; providing expiration dates; and declaring an emergency.

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

Sec. 1. RCW 13.34.020 and 1990 c 284 s 31 are each amended to read as follows:

The legislature declares that the family unit is a fundamental resource of American life which should be nurtured. Toward the continuance of this principle, the legislature declares that the family unit should remain intact unless a child's right to conditions of basic nurture, health, or safety is jeopardized. When the rights of basic nurture, physical and mental health, and safety of the child and the legal rights of the parents are in conflict, the rights and safety of the child should prevail. In making reasonable efforts under this chapter, the child's health and safety shall be the paramount concern. The right of a child to basic nurturing includes the right to a safe, stable, and permanent home and a speedy resolution of any proceeding under this chapter.

Sec. 2. RCW 13.34.130 and 1997 c 280 s 1 are each amended to read as follows:

If, after a fact-finding hearing pursuant to RCW 13.34.110, it has been proven by a preponderance of the evidence that the child is dependent within the meaning of RCW 13.34.030; after consideration of the predisposition report prepared pursuant to RCW 13.34.110 and after a disposition hearing has been held pursuant to RCW 13.34.110, the court shall enter an order of disposition pursuant to this section.

(1) The court shall order one of the following dispositions of the case:

(a) Order a disposition other than removal of the child from his or her home, which shall provide a program designed to alleviate the immediate danger to the child, to mitigate or cure any damage the child has already suffered, and to aid the parents so that the child will not be endangered in the future. In selecting a program, the court should choose those services that least interfere with family autonomy, provided that the services are adequate to protect the child.

(b) Order that the child be removed from his or her home and ordered into the custody, control, and care of a relative or the department of social and health services or a licensed child placing agency for placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or in a home not required to be licensed pursuant to chapter 74.15 RCW. Unless there is reasonable cause to believe that the safety or welfare of the child would be jeopardized or that efforts to reunite the parent and child will be hindered, such child shall be placed with a person who is related to the child as defined in RCW 74.15.020(4)(a) and with whom the child has a relationship and is comfortable, and who is willing and available to care for the child. Placement of the child with a relative under this subsection shall be given preference by the court. An order for out-of-home placement may be made only if the court finds that reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home, specifying the services that have been provided to the child and the child's parent, guardian, or legal custodian, and that preventive services have been offered or

provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home, and that:

- (i) There is no parent or guardian available to care for such child;
- (ii) The parent, guardian, or legal custodian is not willing to take custody of the child;
- (iii) The court finds, by clear, cogent, and convincing evidence, a manifest danger exists that the child will suffer serious abuse or neglect if the child is not removed from the home and an order under RCW 26.44.063 would not protect the child from danger; or
- (iv) The extent of the child's disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home.

(2) If the court has ordered a child removed from his or her home pursuant to subsection (1)(b) of this section, the court may order that a petition seeking termination of the parent and child relationship be filed if the court finds ~~((it));~~; (a) Termination is recommended by the supervising agency~~((, that it));~~; (b) termination is in the best interests of the child; and (c) that ((it is not reasonable to provide further services to reunify the family)) because of the existence of aggravated circumstances ((make it unlikely that services will effectuate the return of the child to the child's parents in the near future)), reasonable efforts to unify the family are not required. Notwithstanding the existence of aggravated circumstances, reasonable efforts may be required if the court or department determines it is in the best interest of the child. In determining whether aggravated circumstances exist, the court shall consider one or more of the following:

~~((a))~~ (i) Conviction of the parent of rape of the child in the first, second, or third degree as defined in RCW 9A.44.073, 9A.44.076, and 9A.44.079;

~~((b))~~ (ii) Conviction of the parent of criminal mistreatment of the child in the first or second degree as defined in RCW 9A.42.020 and 9A.42.030;

~~((c))~~ (iii) Conviction of the parent of one of the following assault crimes, when the child is the victim: Assault in the first or second degree as defined in RCW 9A.36.011 and 9A.36.021 or assault of a child in the first or second degree as defined in RCW 9A.36.120 or 9A.36.130;

~~((d))~~ (iv) Conviction of the parent of murder, manslaughter, or homicide by abuse of the child's other parent, sibling, or another child;

~~((e))~~ (v) Conviction of the parent of attempting, soliciting, or conspiracy to commit a crime listed in (c)(i), (ii), (iii), or (iv) of this subsection;

(vi) A finding by a court that a parent is a sexually violent predator as defined in RCW 71.09.020;

~~((f))~~ (vii) Failure of the parent to complete available treatment ordered under this chapter or the equivalent laws of another state, where such failure has resulted in a prior termination of parental rights to another child and the parent

has failed to effect significant change in the interim. In the case of a parent of an Indian child, as defined in the Indian Child Welfare Act, P.L. 95-608 (25 U.S.C. 1903), the court shall also consider tribal efforts to assist the parent in completing treatment and make it possible for the child to return home;

(viii) An infant under three years of age has been abandoned as defined in RCW 13.34.030(4)(a);

(ix) The mother has given birth to three or more drug-affected infants, resulting in the department filing a petition under section 23 of this act.

(3) If reasonable efforts are not ordered under subsection (2) of this section a permanency plan hearing shall be held within thirty days. Reasonable efforts shall be made to place the child in a timely manner in accordance with the permanency plan, and to complete whatever steps are necessary to finalize the permanent placement of the child;

(4) Whenever a child is ordered removed from the child's home, the agency charged with his or her care shall provide the court with:

(a) A permanency plan of care that shall identify one of the following outcomes as a primary goal and may identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older. Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(b) Unless the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to return the child home, and what actions the agency will take to maintain parent-child ties. All aspects of the plan shall include the goal of achieving permanence for the child.

(i) The agency plan shall specify what services the parents will be offered in order to enable them to resume custody, what requirements the parents must meet in order to resume custody, and a time limit for each service plan and parental requirement.

(ii) The agency shall be required to encourage the maximum parent-child contact possible, including regular visitation and participation by the parents in the care of the child while the child is in placement. Visitation may be limited or

denied only if the court determines that such limitation or denial is necessary to protect the child's health, safety, or welfare.

(iii) A child shall be placed as close to the child's home as possible, preferably in the child's own neighborhood, unless the court finds that placement at a greater distance is necessary to promote the child's or parents' well-being.

(iv) The agency charged with supervising a child in placement shall provide all reasonable services that are available within the agency, or within the community, or those services which the department of social and health services has existing contracts to purchase. It shall report to the court if it is unable to provide such services.

(c) If the court has ordered, pursuant to subsection (2) of this section, that a termination petition be filed, a specific plan as to where the child will be placed, what steps will be taken to achieve permanency for the child, services to be offered or provided to the child, and, if visitation would be in the best interests of the child, a recommendation to the court regarding visitation between parent and child pending a fact-finding hearing on the termination petition. The agency shall not be required to develop a plan of services for the parents or provide services to the parents.

~~((4))~~ (5) If the court determines that the continuation of reasonable efforts to prevent or eliminate the need to remove the child from his or her home or to safely return the child home should not be part of the permanency plan of care for the child, reasonable efforts shall be made to place the child in a timely manner and to complete whatever steps are necessary to finalize the permanent placement of the child.

(6) If there is insufficient information at the time of the disposition hearing upon which to base a determination regarding the suitability of a proposed placement with a relative, the child shall remain in foster care and the court shall direct the supervising agency to conduct necessary background investigations as provided in chapter 74.15 RCW and report the results of such investigation to the court within thirty days. However, if such relative appears otherwise suitable and competent to provide care and treatment, the criminal history background check need not be completed before placement, but as soon as possible after placement. Any placements with relatives, pursuant to this section, shall be contingent upon cooperation by the relative with the agency case plan and compliance with court orders related to the care and supervision of the child including, but not limited to, court orders regarding parent-child contacts and any other conditions imposed by the court. Noncompliance with the case plan or court order shall be grounds for removal of the child from the relative's home, subject to review by the court.

~~((5))~~ (7) Except for children whose cases are reviewed by a citizen review board under chapter 13.70 RCW, the status of all children found to be dependent shall be reviewed by the court at least every six months from the beginning date of the placement episode or the date dependency is established, whichever is first, at a hearing in which it shall be determined whether court supervision should continue. The review shall include findings regarding the agency and parental

completion of disposition plan requirements, and if necessary, revised permanency time limits. The supervising agency shall provide a foster parent, preadoptive parent, or relative with notice of, and their right to an opportunity to be heard in, a review hearing pertaining to the child, but only if that person is currently providing care to that child at the time of the hearing. This section shall not be construed to grant party status to any person who has been provided an opportunity to be heard.

(a) A child shall not be returned home at the review hearing unless the court finds that a reason for removal as set forth in this section no longer exists. The parents, guardian, or legal custodian shall report to the court the efforts they have made to correct the conditions which led to removal. If a child is returned, casework supervision shall continue for a period of six months, at which time there shall be a hearing on the need for continued intervention.

(b) If the child is not returned home, the court shall establish in writing:

(i) Whether reasonable services have been provided to or offered to the parties to facilitate reunion, specifying the services provided or offered;

(ii) Whether the child has been placed in the least-restrictive setting appropriate to the child's needs, including whether consideration and preference has been given to placement with the child's relatives;

(iii) Whether there is a continuing need for placement and whether the placement is appropriate;

(iv) Whether there has been compliance with the case plan by the child, the child's parents, and the agency supervising the placement;

(v) Whether progress has been made toward correcting the problems that necessitated the child's placement in out-of-home care;

(vi) Whether the parents have visited the child and any reasons why visitation has not occurred or has been infrequent;

(vii) Whether additional services are needed to facilitate the return of the child to the child's parents; if so, the court shall order that reasonable services be offered specifying such services; and

(viii) The projected date by which the child will be returned home or other permanent plan of care will be implemented.

(c) The court at the review hearing may order that a petition seeking termination of the parent and child relationship be filed.

Sec. 3. RCW 13.34.145 and 1995 c 311 s 20 and 1995 c 53 s 2 are each reenacted and amended to read as follows:

(1) A permanency plan shall be developed no later than sixty days from the time the supervising agency assumes responsibility for providing services, including placing the child, or at the time of a hearing under RCW 13.34.130, whichever occurs first. The permanency planning process continues until a permanency planning goal is achieved or dependency is dismissed. The planning process shall include reasonable efforts to return the child to the parent's home.

(a) Whenever a child is placed in out-of-home care pursuant to RCW 13.34.130, the agency that has custody of the child shall provide the court with

a written permanency plan of care directed towards securing a safe, stable, and permanent home for the child as soon as possible. The plan shall identify one of the following outcomes as the primary goal and may also identify additional outcomes as alternative goals: Return of the child to the home of the child's parent, guardian, or legal custodian; adoption; guardianship; or long-term relative or foster care, until the child is age eighteen, with a written agreement between the parties and the care provider; and independent living, if appropriate and if the child is age sixteen or older and the provisions of subsection (2) of this section are met.

(b) The identified outcomes and goals of the permanency plan may change over time based upon the circumstances of the particular case.

(c) Permanency planning goals should be achieved at the earliest possible date, preferably before the child has been in out-of-home care for fifteen months. In cases where parental rights have been terminated, the child is legally free for adoption, and adoption has been identified as the primary permanency planning goal, it shall be a goal to complete the adoption within six months following entry of the termination order.

(2) Whenever a permanency plan identifies independent living as a goal, the plan shall also specifically identify the services that will be provided to assist the child to make a successful transition from foster care to independent living. Before the court approves independent living as a permanency plan of care, the court shall make a finding that the provision of services to assist the child in making a transition from foster care to independent living will allow the child to manage his or her financial affairs and to manage his or her personal, social, educational, and nonfinancial affairs. The department shall not discharge a child to an independent living situation before the child is eighteen years of age unless the child becomes emancipated pursuant to chapter 13.64 RCW.

(3)~~((a) For children ten and under,))~~ A permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least nine months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than twelve months following commencement of the current placement episode.

~~((b) For children over ten, a permanency planning hearing shall be held in all cases where the child has remained in out-of-home care for at least fifteen months and an adoption decree or guardianship order has not previously been entered. The hearing shall take place no later than eighteen months following commencement of the current placement episode.))~~

(4) Whenever a child is removed from the home of a dependency guardian or long-term relative or foster care provider, and the child is not returned to the home of the parent, guardian, or legal custodian but is placed in out-of-home care, a permanency planning hearing shall take place no later than twelve ~~((or eighteen))~~ months, as provided in subsection (3) of this section, following the date of removal unless, prior to the hearing, the child returns to the home of the dependency guardian or long-term care provider, the child is placed in the home

of the parent, guardian, or legal custodian, an adoption decree or guardianship order is entered, or the dependency is dismissed.

(5) No later than ten working days prior to the permanency planning hearing, the agency having custody of the child shall submit a written permanency plan to the court and shall mail a copy of the plan to all parties and their legal counsel, if any.

(6) At the permanency planning hearing, the court shall enter findings as required by RCW 13.34.130(~~((5))~~) (7) and shall review the permanency plan prepared by the agency. If the child has resided in the home of a foster parent or relative for more than six months prior to the permanency planning hearing, the court shall also enter a finding regarding whether the foster parent or relative was informed of the hearing as required in RCW 74.13.280 and 13.34.130(7). If a goal of long-term foster or relative care has been achieved prior to the permanency planning hearing, the court shall review the child's status to determine whether the placement and the plan for the child's care remain appropriate. In cases where the primary permanency planning goal has not yet been achieved, the court shall inquire regarding the reasons why the primary goal has not been achieved and determine what needs to be done to make it possible to achieve the primary goal. In all cases, the court shall:

(a)(i) Order the permanency plan prepared by the agency to be implemented;
or

(ii) Modify the permanency plan, and order implementation of the modified plan; and

(b)(i) Order the child returned home only if the court finds that a reason for removal as set forth in RCW 13.34.130 no longer exists; or

(ii) Order the child to remain in out-of-home care for a limited specified time period while efforts are made to implement the permanency plan.

(7) If the court orders the child returned home, casework supervision shall continue for at least six months, at which time a review hearing shall be held pursuant to RCW 13.34.130(~~((5))~~) (7), and the court shall determine the need for continued intervention.

(8) Following the first permanency planning hearing, the court shall hold a further permanency planning hearing in accordance with this section at least once every twelve months until a permanency planning goal is achieved or the dependency is dismissed, whichever occurs first.

(9) Except as otherwise provided in RCW 13.34.235, the status of all dependent children shall continue to be reviewed by the court at least once every six months, in accordance with RCW 13.34.130(~~((5))~~) (7), until the dependency is dismissed. Prior to the second permanency planning hearing, the agency that has custody of the child shall consider whether to file a petition for termination of parental rights.

(10) Nothing in this chapter may be construed to limit the ability of the agency that has custody of the child to file a petition for termination of parental rights or a guardianship petition at any time following the establishment of

dependency. Upon the filing of such a petition, a fact-finding hearing shall be scheduled and held in accordance with this chapter unless the agency requests dismissal of the petition prior to the hearing or unless the parties enter an agreed order terminating parental rights, establishing guardianship, or otherwise resolving the matter.

(11) The approval of a permanency plan that does not contemplate return of the child to the parent does not relieve the supervising agency of its obligation to provide reasonable services, under this chapter, intended to effectuate the return of the child to the parent, including but not limited to, visitation rights.

(12) Nothing in this chapter may be construed to limit the procedural due process rights of any party in a termination or guardianship proceeding filed under this chapter.

Sec. 4. RCW 13.34.180 and 1997 c 280 s 2 are each amended to read as follows:

A petition seeking termination of a parent and child relationship may be filed in juvenile court by any party to the dependency proceedings concerning that child. Such petition shall conform to the requirements of RCW 13.34.040, shall be served upon the parties as provided in RCW 13.34.070(8), and shall allege:

(1) That the child has been found to be a dependent child under RCW 13.34.030(4); and

(2) That the court has entered a dispositional order pursuant to RCW 13.34.130; and

(3) That the child has been removed or will, at the time of the hearing, have been removed from the custody of the parent for a period of at least six months pursuant to a finding of dependency under RCW 13.34.030(4); and

(4) That the services ordered under RCW 13.34.130 have been expressly and understandably offered or provided and all necessary services, reasonably available, capable of correcting the parental deficiencies within the foreseeable future have been expressly and understandably offered or provided; and

(5) That there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been clearly offered or provided. In determining whether the conditions will be remedied the court may consider, but is not limited to, the following factors:

(a) Use of intoxicating or controlled substances so as to render the parent incapable of providing proper care for the child for extended periods of time and documented unwillingness of the parent to receive and complete treatment or documented multiple failed treatment attempts; or

(b) Psychological incapacity or mental deficiency of the parent that is so severe and chronic as to render the parent incapable of providing proper care for the child for extended periods of time, and documented unwillingness of the parent to receive and complete treatment or documentation that there is no treatment that can render the parent capable of providing proper care for the child in the near future; and

(6) That continuation of the parent and child relationship clearly diminishes the child's prospects for early integration into a stable and permanent home; or

(7) In lieu of the allegations in subsections (1) through (6) of this section, the petition may allege that the child was found under such circumstances that the whereabouts of the child's parent are unknown and no person has acknowledged paternity or maternity and requested custody of the child within two months after the child was found; or

(8) In lieu of the allegations in subsections (2) through (6) of this section, the petition may allege that the parent has been found by a court of competent jurisdiction:

(a) To have committed, against another child of such parent, murder in the first degree, murder in the second degree, or homicide by abuse as defined in chapter 9A.32 RCW;

(b) To have committed, against another child of such parent, manslaughter in the first degree or manslaughter in the second degree, as defined in chapter 9A.32 RCW;

(c) To have attempted, conspired, or solicited to commit one or more of the crimes listed in (a) or (b) of this subsection; or

(d) To have committed assault in the first or second degree, as defined in chapter 9A.36 RCW, against the surviving child or another child of the parent.

~~((A parent's failure to substantially improve parental deficiencies within twelve months following entry of the dispositional order shall give rise to a rebuttable presumption that there is little likelihood that conditions will be remedied so that the child can be returned to the parent in the near future. The presumption shall not arise unless the petitioner makes a showing that all necessary services reasonably capable of correcting the parental deficiencies within the foreseeable future have been offered or provided.))~~

Notice of rights shall be served upon the parent, guardian, or legal custodian with the petition and shall be in substantially the following form:

"NOTICE

A petition for termination of parental rights has been filed against you. You have important legal rights and you must take steps to protect your interests. This petition could result in permanent loss of your parental rights.

1. You have the right to a fact-finding hearing before a judge.
2. You have the right to have a lawyer represent you at the hearing. A lawyer can look at the files in your case, talk to the

department of social and health services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing.

You may call (insert agency) for more information about your child. The agency's name and telephone number are (insert name and telephone number)."

Sec. 5. RCW 13.34.190 and 1993 c 412 s 3 are each amended to read as follows:

After hearings pursuant to RCW 13.34.110, the court may enter an order terminating all parental rights to a child if the court finds that:

(1)(a) The allegations contained in the petition as provided in RCW 13.34.180 (1) through (6) are established by clear, cogent, and convincing evidence; or

~~((2))~~ (b) RCW 13.34.180 (3) and (4) may be waived because the allegations under RCW 13.34.180 (1), (2), (5), and (6) are established beyond a reasonable doubt and when an infant has been abandoned, as defined in RCW 13.34.030, the abandonment has been proved beyond a reasonable doubt; or

~~((3))~~ (c) The allegation under RCW 13.34.180(7) is established beyond a reasonable doubt. In determining whether RCW 13.34.180 (5) and (6) are established beyond a reasonable doubt, the court shall consider whether one or more of the aggravated circumstances listed in RCW 13.34.130(2) exist; or

(d) The allegation under RCW 13.34.180(8) is established beyond a reasonable doubt; and

~~((4))~~ (2) Such an order is in the best interests of the child.

Sec. 6. RCW 74.15.130 and 1995 c 302 s 5 are each amended to read as follows:

(1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties.

Sec. 7. RCW 26.44.020 and 1997 c 386 s 45, 1997 c 386 s 24, 1997 c 282 s 4, and 1997 c 132 s 2 are each reenacted and amended to read as follows:

For the purpose of and as used in this chapter:

(1) "Court" means the superior court of the state of Washington, juvenile department.

(2) "Law enforcement agency" means the police department, the prosecuting attorney, the state patrol, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery or to provide other health services. The term "practitioner" shall include a duly accredited Christian Science practitioner: PROVIDED, HOWEVER, That a person who is being furnished Christian Science treatment by a duly accredited Christian Science practitioner shall not be considered, for that reason alone, a neglected person for the purposes of this chapter.

(4) "Institution" means a private or public hospital or any other facility providing medical diagnosis, treatment or care.

(5) "Department" means the state department of social and health services.

(6) "Child" or "children" means any person under the age of eighteen years of age.

(7) "Professional school personnel" shall include, but not be limited to, teachers, counselors, administrators, child care facility personnel, and school nurses.

(8) "Social service counselor" shall mean anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support or education of children, or providing social services to adults or families, including mental health, drug and alcohol treatment, and domestic violence programs, whether in an individual capacity, or as an employee or agent of any public or private organization or institution.

(9) "Psychologist" shall mean any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(10) "Pharmacist" shall mean any registered pharmacist under the provisions of chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(11) "Clergy" shall mean any regularly licensed or ordained minister, priest or rabbi of any church or religious denomination, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(12) "Abuse or neglect" shall mean the injury, sexual abuse, sexual exploitation, negligent treatment, or maltreatment of a child, adult dependent, or developmentally disabled person by any person under circumstances which indicate that the child's or adult's health, welfare, and safety is harmed, excluding conduct permitted under RCW 9A.16.100. An abused child is a child who has been subjected to child abuse or neglect as defined herein.

(13) "Child protective services section" shall mean the child protective services section of the department.

(14) "Adult dependent persons" shall be defined as those persons over the age of eighteen years who have been found to be legally incompetent or disabled pursuant to chapter 11.88 RCW.

(15) "Sexual exploitation" includes: (a) Allowing, permitting, or encouraging a child to engage in prostitution by any person; or (b) allowing, permitting, encouraging, or engaging in the obscene or pornographic photographing, filming, or depicting of a child by any person.

(16) "Negligent treatment or maltreatment" means an act or omission which evidences a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the child's health, welfare, and safety. The fact that siblings share a bedroom is not, in and of itself, "negligent treatment or maltreatment."

(17) "Developmentally disabled person" means a person who has a disability defined in RCW 71A.10.020.

(18) "Child protective services" means those services provided by the department designed to protect children from child abuse and neglect and safeguard such children from future abuse and neglect, and conduct investigations of child abuse and neglect reports. Investigations may be conducted regardless of the location of the alleged abuse or neglect. Child protective services includes referral to services to ameliorate conditions which endanger the welfare of children, the coordination of necessary programs and services relevant to the prevention, intervention, and treatment of child abuse and neglect, and services to children to ensure that each child has a permanent home. In determining whether protective services should be provided, the department shall not decline to provide such services solely because of the child's unwillingness or developmental inability to describe the nature and severity of the abuse or neglect.

(19) "Malice" or "maliciously" means an evil intent, wish, or design to vex, annoy, or injure another person. Such malice may be inferred from an act done in wilful disregard of the rights of another, or an act wrongfully done without just cause or excuse, or an act or omission of duty betraying a wilful disregard of social duty.

(20) "Sexually aggressive youth" means a child who is defined in RCW 74.13.075(1)(b) as being a "sexually aggressive youth."

(21) "Unfounded" means available ((evidenece)) information indicates that, more likely than not, child abuse or neglect did not occur.

Sec. 8. RCW 26.44.100 and 1997 c 282 s 2 are each amended to read as follows:

(1) The legislature finds parents and children often are not aware of their due process rights when agencies are investigating allegations of child abuse and neglect. The legislature reaffirms that all citizens, including parents, shall be afforded due process, that protection of children remains the priority of the legislature, and that this protection includes protecting the family unit from unnecessary disruption. To facilitate this goal, the legislature wishes to ensure

that parents and children be advised in writing and orally, if feasible, of their basic rights and other specific information as set forth in this chapter, provided that nothing contained in this chapter shall cause any delay in protective custody action.

(2) The department shall notify the alleged perpetrator of the allegations of child abuse and neglect at the earliest possible point in the investigation that will not jeopardize the safety and protection of the child or the investigation process.

Whenever the department completes an investigation of a child abuse or neglect report under chapter 26.44 RCW, the department shall notify the alleged perpetrator of the report and the department's investigative findings. The notice shall also advise the alleged perpetrator that:

(a) A written response to the report may be provided to the department and that such response will be filed in the record following receipt by the department;

(b) Information in the department's record may be considered in subsequent investigations or proceedings related to child protection or child custody;

(c) ~~((There is currently information in the department's record that may))~~ Founded reports of child abuse and neglect may be considered in determining ~~((that))~~ whether the person is disqualified from being licensed to provide child care, employed by a licensed child care agency, or authorized by the department to care for children; and

(d) ~~((A person who has demonstrated a good-faith desire to work in a licensed agency may request an informal meeting with the department to have an opportunity to discuss and contest the information currently in the record.))~~ An alleged perpetrator named in a founded report of child abuse or neglect has the right to seek review of the finding as provided in this chapter.

(3) The notification required by this section shall be made by ~~((regular))~~ certified mail, return receipt requested, to the person's last known address.

(4) The duty of notification created by this section is subject to the ability of the department to ascertain the location of the person to be notified. The department shall exercise reasonable, good-faith efforts to ascertain the location of persons entitled to notification under this section.

NEW SECTION. Sec. 9. A new section is added to chapter 26.44 RCW to read as follows:

(1) A person who is named as an alleged perpetrator after October 1, 1998, in a founded report of child abuse or neglect has the right to seek review and amendment of the finding as provided in this section.

(2) Within twenty calendar days after receiving written notice from the department under RCW 26.44.100 that a person is named as an alleged perpetrator in a founded report of child abuse or neglect, he or she may request that the department review the finding. The request must be made in writing. If a request for review is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

(3) Upon receipt of a written request for review, the department shall review and, if appropriate, may amend the finding. Management level staff within the children's administration designated by the secretary shall be responsible for the review. The review must be conducted in accordance with procedures the department establishes by rule. Upon completion of the review, the department shall notify the alleged perpetrator in writing of the agency's determination. The notification must be sent by certified mail, return receipt requested, to the person's last known address.

(4) If, following agency review, the report remains founded, the person named as the alleged perpetrator in the report may request an adjudicative hearing to contest the finding. The adjudicative proceeding is governed by chapter 34.05 RCW and this section. The request for an adjudicative proceeding must be filed within thirty calendar days after receiving notice of the agency review determination. If a request for an adjudicative proceeding is not made as provided in this subsection, the alleged perpetrator may not further challenge the finding and shall have no right to agency review or to an adjudicative hearing or judicial review of the finding.

(5) Reviews and hearings conducted under this section are confidential and shall not be open to the public. Information about reports, reviews, and hearings may be disclosed only in accordance with federal and state laws pertaining to child welfare records and child protective services reports.

(6) The department may adopt rules to implement this section.

Sec. 10. RCW 74.13.031 and 1997 c 386 s 32 and 1997 c 272 s 1 are each reenacted and amended to read as follows:

The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of homeless, runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of ~~((alleged neglect, abuse, or abandonment of children))~~ any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the

problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

**Sec. 11. RCW 70.190.010 and 1996 c 132 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) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(4) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

(7) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of community, trade, and economic development, and such other departments as may be specifically designated by the governor.

(8) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of community, trade, and economic development or their designees, ~~(one)~~ two legislators from each caucus of the senate and house of representatives, and one representative of the governor.

(9) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice

system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(10) "Outcome" or "outcome based" means defined and measurable outcomes used to evaluate progress in reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

(11) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a network. The network's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds shall not be used as a match. State general funds shall not be used as a match for violence reduction and drug enforcement account funds created under RCW 69.50.520.

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence.

*Sec. 11 was vetoed. See message at end of chapter.

Sec. 12. RCW 70.190.060 and 1996 c 132 s 3 are each amended to read as follows:

(1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health

and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based nonsecular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

~~((5))~~ (6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

~~((6))~~ (7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of RCW 42.17.270 through 42.17.310.

Sec. 13. RCW 70.190.130 and 1996 c 132 s 8 are each amended to read as follows:

(1) The council shall only disburse funds to a network after a comprehensive plan has been prepared by the network and approved by the council. In approving the plan the council shall consider whether the network:

(a) Promoted input from the widest practical range of agencies and affected parties, including public hearings;

(b) Reviewed the indicators of violence data compiled by the local public health departments and incorporated a response to those indicators in the plan;

(c) Obtained a declaration by the largest health department within the network boundary, indicating whether the plan meets minimum standards for assessment and policy development relating to social development according to RCW 43.70.555;

(d) Included a specific mechanism of data collection and transmission based on the rules established under RCW 43.70.555;

(e) Considered all relevant causes of violence in its community and did not isolate only one or a few of the elements to the exclusion of others and demonstrated evidence of building community capacity through effective neighborhood and community development;

(f) Considered youth employment and job training programs outlined in this chapter as a strategy to reduce the rate of at-risk children and youth;

(g) Integrated local programs that met the network's priorities and were deemed successful by the network;

(h) Committed to make measurable reductions in the rate of at-risk children and youth by reducing the rate of state-funded out-of-home placements and make reductions in at least three of the following rates of youth: Violent criminal acts, substance abuse, pregnancy and male parentage, suicide attempts, dropping out of school, child abuse or neglect, and domestic violence; and

(i) Held a public hearing on its proposed comprehensive plan and submitted to the council all of the written comments received at the hearing and a copy of the minutes taken at the hearing.

(2) The council may establish a maximum amount to be expended by a network for purposes of planning and administrative duties, that shall not, in total, exceed ten percent of funds available to a network. The council shall make recommendations to the legislature regarding the specific maximum amounts that can be spent by a network or group of networks on planning and administrative duties. The recommendation may provide differing percentages, considering the size of the budgets of each network and giving consideration to whether there should be a higher percentage for administrative and planning purposes in budgets for smaller networks and a smaller percentage of the budgets for administration and planning purposes in larger networks.

(3) The council may determine that a network is not in compliance with this chapter if it fails to comply with statutory requirements. Upon a determination of noncompliance, the council may suspend or revoke a network's status or contract and specify a process and deadline for the network's compliance.

NEW SECTION. Sec. 14. The legislature finds that it is critically important to the basic nurture, health, and safety of children that the state examine a state-wide program relating to child abuse and neglect that includes citizen review

panels as required by the federal child abuse prevention and treatment act, 42 U.S.C. Sec. 5106a.

NEW SECTION. Sec. 15. The Washington state institute for public policy shall conduct, or contract for, a study regarding the creation of citizen review panels to meet the requirements of federal law, and located independent of the department of social and health services. The study shall include an examination of a system of independent citizen review panels to:

(1) Examine the policies and procedures of state agencies and, where appropriate, specific cases, to evaluate the extent to which the agencies are effectively discharging their child protection responsibilities according to the state law and the state plan required under 42 U.S.C. Sec. 5106a.

(2) Examine child protection standards set forth in the federal and state law.

(3) Examine any other criteria that the panel considers important to ensure the protection of children, including a review of the extent to which the state child protective services system is coordinated with the foster care and adoption programs established under part E, Title IV of the Social Security Act.

(4) Examine whether the panels should report possible criminal activity to the local prosecuting attorney in the county in which the case resides.

(5) Examine whether, if the panel finds possible civil infractions, whether the findings should be turned over to the aggrieved individual, if the conditions set forth in RCW 74.13.500 through 74.13.525 are met, and who should turn the findings over, and whether the individual should be awarded attorneys' fees, costs, damages, including punitive damages, if the individual prevails in court.

The study shall include an examination of the barriers to broad access to information, whether the panels should have access to the information and specific recommendations on how the panels can obtain access to such information from the department of social and health services, criminal justice agencies, law enforcement, schools, and medical providers, and other sources that have relevant information, including reports and records made and maintained by the department and its contracting agencies, while preserving the confidentiality of the records.

The study shall also include a review of the department of social and health services' current committees and teams that have citizen membership and participation, to determine whether any of these committees and teams should be consolidated.

An interim report of the study shall be submitted to the legislative children's oversight committee by September 15, 1998. The final study and recommendations shall be submitted to the appropriate committees of the house of representatives and the senate by December 1, 1998.

NEW SECTION. Sec. 16. The sum of twelve thousand dollars, or as much thereof as may be necessary, is appropriated for the fiscal year ending June 30, 1998, from the general fund to The Evergreen State College for the Washington state institute for public policy for the purposes of sections 14 and 15 of this act.

Sec. 17. RCW 70.47.060 and 1997 c 337 s 2, 1997 c 335 s 2, 1997 c 245 s 6, and 1997 c 231 s 206 are each reenacted and amended to read as follows:

The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for groups of subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW ((48.42.080)) 48.47.030, and such other factors as the administrator deems appropriate.

However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that the services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan

due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator.

(d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 1996, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of enrollee cost sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the

managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If, as a result of an eligibility review, the administrator determines that a subsidized enrollee's income exceeds twice the federal poverty level and that the enrollee knowingly failed to inform the plan of such increase in income, the administrator may bill the enrollee for the subsidy paid on the enrollee's behalf during the period of time that the enrollee's income exceeded twice the federal poverty level. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

****NEW SECTION. Sec. 18. The legislature finds that all children have the right to be born healthy and free of the consequences of substance abuse by the mother during pregnancy. Individuals who abuse substances are unable to make reasoned decisions that help ensure the birth of a healthy infant. The availability of long-term pharmaceutical birth control, when combined with other treatment regimens, may allow women to regain control of their lives and make long-term decisions in the best interest of themselves and their children. The legislature finds that it may be unreasonable to continue efforts to reunify the family when a mother has given birth to a third or subsequent infant affected by her substance abuse.***

****Sec. 18 was vetoed. See message at end of chapter.***

***NEW SECTION.** *Sec. 19. A new section is added to chapter 13.34 RCW to read as follows:*

(1) A physician licensed under chapter 18.71 or 18.57 RCW, or an advanced registered nurse practitioner under chapter 18.79 RCW, primarily responsible for the care of a newborn infant, who has reasonable cause to believe the infant has been exposed to nonprescription use of controlled substances shall: (a) Conduct reasonably available and appropriate tests to determine whether the infant is drug-affected; (b) notify the department of the name and address of the parent or parents of the infant who is drug-affected; and (c) retain the infant in the birthing facility for medical treatment or place the infant in appropriate pediatric interim care services with the concurrence of the department for sufficient time for the infant to undergo withdrawal from the effects of the controlled substances. The withdrawal shall be under the supervision of appropriate health care professionals.

(2) The physician or nurse practitioner who was responsible for the birth shall, as soon as practical, inform the mother of a drug-affected infant of: (a) The availability of publicly funded tubal ligation surgery as provided under section 34 of this act; (b) available drug treatment and counseling; and (c) birth control counseling and education. The mother may accept the offer of a tubal ligation up to six months following its tender.

(3) A physician or nurse practitioner who makes any determination under this section shall not be liable in any cause of action as a result of his or her determination except for acts of gross negligence or intentional misconduct.

(4) For the purpose of this section, "newborn infant" means an infant within seven days after birth.

(5) This section expires June 30, 2002.

**Sec. 19 was vetoed. See message at end of chapter.*

***NEW SECTION.** *Sec. 20. A new section is added to chapter 13.34 RCW to read as follows:*

(1) The department, upon receipt of a report under section 19 of this act, shall investigate and, in appropriate cases, file a dependency petition. In the event the department does not file a petition, it shall refer the mother to available chemical dependency treatment programs or a model project.

(2) The department and the mother may enter an agreement in which the mother agrees to chemical dependency treatment on an inpatient or outpatient basis or be referred to a model project created under section 30 of this act. The agreement must specify completion dates for each of the conditions. All agreements expire twelve months from the date of execution. If the conditions have not been fulfilled at the time the agreement expires, the department shall investigate and in appropriate cases, file a dependency petition.

(3) If the department and mother enter an agreement under subsection (2) of this section, the department shall, if a dependency petition has been filed, request the court to defer the entry of an order of dependency for as long as the mother remains in treatment or enrolled in the model project, subject to the

department's monitoring for compliance. As a condition of deferral of the order of dependency, the parents, if both are available and known, shall stipulate to facts sufficient to constitute a dependency and the court shall order treatment or enrollment in a model project and prohibit nonprescription use of controlled substances. In the event that an available parent unreasonably refuses to stipulate to facts constituting a dependency, the court may proceed with the hearing on the petition.

(4) This section expires June 30, 2002.

**Sec. 20 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 21. A new section is added to chapter 13.34 RCW to read as follows:*

(1) If the department receives a report under section 19 of this act of a mother who has given birth to a second drug-affected infant, the department:

(a) May request the court to proceed immediately with the entry of a dependency for the first drug-affected infant; and

(b) Shall investigate and, unless there are compelling reasons to the contrary, file a dependency petition on the second drug-affected infant. If the department does not file a petition, it shall refer the woman to available chemical dependency treatment programs or a model project.

(2) The department and the mother may enter an agreement in which the mother agrees to: (a) Enter chemical dependency inpatient treatment or a model project, together with an aftercare program that includes participation in a model project when feasible; and (b) medically appropriate pharmaceutical pregnancy prevention that is administered not less than once every thirty days. The selection of the pregnancy prevention method shall be based on an evaluation of the medical and physical consequences to the mother and shall remain in effect until the dependency petition is dismissed or the court determines it is no longer medically appropriate. The agreement must specify completion dates for each of the conditions. All agreements expire twelve months from the date of execution. If the conditions have not been fulfilled at the time the agreement expires, the department shall investigate and in appropriate cases, file a dependency petition.

(3) If the department and the mother enter an agreement under subsection (2) of this section, the department shall, if a dependency petition has been filed, request the court to defer the entry of an order of dependency on the second drug-affected infant for as long as the mother remains in treatment or enrolled in the model project, subject to the department's monitoring for compliance. As a condition of deferral of the order of dependency, the parents, if both are available and known, shall stipulate to facts sufficient to constitute a dependency and the court shall order treatment or enrollment in a model project and prohibit nonprescription use of controlled substances. In the event that an available parent unreasonably refuses to stipulate to facts constituting a dependency, the court may proceed with the hearing on the petition.

(4) This section expires June 30, 2002.

*Sec. 21 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 22. A new section is added to chapter 13.34 RCW to read as follows:

(1) The department may request the court to dismiss the petition deferred under section 20 or 21 of this act at any time. No petition may be vacated or dismissed unless the mother demonstrates by clear and convincing evidence that she has not used controlled substances in a nonprescription manner for at least twelve consecutive months and can safely provide for the child's welfare without continuing supervision by the department or court.

(2) This section expires June 30, 2002.

*Sec. 22 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 23. A new section is added to chapter 13.34 RCW to read as follows:

(1) If the department receives a report under section 19 of this act of a mother who has given birth to a third or subsequent drug-affected infant, the department shall:

(a) Request the court to proceed immediately with the entry of a finding of dependency on all drug-affected children born before the third or subsequent birth unless an order of dependency has been vacated or dismissed; and

(b) File a dependency petition on any drug-affected infant subject to this section as well as any other child born before the third or subsequent birth of a drug-affected infant.

(2) This section expires June 30, 2002.

*Sec. 23 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 24. A new section is added to chapter 13.34 RCW to read as follows:

(1) Following a filing of a petition under section 23 of this act:

(a) The court shall order evaluation by a designated chemical dependency specialist, as defined in RCW 70.96A.020 who shall undertake the processes described in RCW 70.96A.140.

(b) If the court has ordered removal of a child or children, the out-of-home placement order shall remain in effect until the petition is dismissed or the mother has successfully completed inpatient treatment and any aftercare program for controlled substances ordered by the court.

(2) This section expires June 30, 2002.

*Sec. 24 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 25. By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement this act, including a definition of "drug-affected infant," which shall be limited to infants who are affected by a mother's nonprescription use of controlled substances.

***NEW SECTION.** Sec. 26. A new section is added to chapter 13.34 RCW to read as follows:

(1) A physician licensed under chapter 18.71 or 18.57 RCW, or an advanced registered nurse practitioner under chapter 18.79 RCW, primarily responsible for the care of a newborn infant, who has reasonable cause to believe the infant has been physiologically affected by the mother's alcohol abuse during her pregnancy shall: (a) Conduct reasonably available and appropriate tests to determine whether the infant is alcohol-affected; (b) notify the department of the name and address of the parent or parents of the infant who is alcohol-affected; and (c) retain the infant in the birthing facility for medical treatment or place the infant in appropriate pediatric interim care services with the concurrence of the department for sufficient time for the infant to undergo withdrawal from the effects of the alcohol. The withdrawal shall be under the supervision of appropriate medical professionals.

(2) The physician or nurse practitioner who was responsible for the birth shall, as soon as practical, inform the mother of an alcohol-affected infant of: (a) The availability of publicly funded tubal ligation surgery as provided under section 35 of this act; (b) available alcohol treatment and counseling; and (c) birth control counseling and education. The mother may accept the offer of a tubal ligation up to six months following its tender.

(3) A physician or nurse practitioner who makes any determination under this section shall not be liable in any cause of action as a result of his or her determination except for acts of gross negligence or intentional misconduct.

(4) For the purposes of this section, "newborn infant" means an infant within seven days after birth.

(5) This section expires June 30, 2002.

**Sec. 26 was vetoed. See message at end of chapter.*

***NEW SECTION.** *Sec. 27. A new section is added to chapter 13.34 RCW to read as follows:*

(1) The department, upon receipt of a report under section 26 of this act, shall investigate and, in appropriate cases, file a dependency petition. In the event the department does not file a petition, it shall refer the mother to available alcohol dependency treatment programs or a model project.

(2) The department and the mother may enter an agreement in which the mother agrees to alcohol treatment on an inpatient or outpatient basis or be referred to a model project created under section 30 of this act. The agreement must specify completion dates for each of the conditions. All agreements expire twelve months from the date of execution. If the conditions have not been fulfilled at the time the agreement expires, the department shall investigate and in appropriate cases, file a dependency petition.

(3) If the department and mother enter an agreement under subsection (2) of this section, the department shall, if a dependency petition has been filed, request the court to defer the entry of an order of dependency for as long as the mother remains in treatment or enrolled in the model project, subject to the department's monitoring for compliance. As a condition of deferral of the order of dependency, the parents, if both are available and known, shall stipulate to

facts sufficient to constitute a dependency and the court shall order treatment or enrollment in a model project and prohibit alcohol abuse. In the event that an available parent unreasonably refuses to stipulate to facts constituting a dependency, the court may proceed with the hearing on the petition.

(4) This section expires June 30, 2002.

*Sec. 27 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 28. A new section is added to chapter 13.34 RCW to read as follows:

(1) The department may request the court to dismiss the petition deferred under section 27 of this act at any time. No petition may be vacated or dismissed unless the mother demonstrates by clear and convincing evidence that she has not abused alcohol for at least twelve consecutive months and can safely provide for the child's welfare without continuing supervision by the department or court.

(2) This section expires June 30, 2002.

*Sec. 28 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 29. By July 1, 1999, the department of social and health services, in consultation with the department of health, shall adopt rules to implement this act, including a definition of "alcohol-affected infant," which shall be limited to infants who are affected by a mother's abuse of alcohol.

NEW SECTION. Sec. 30. To the extent funds are appropriated, the department shall operate a model project to provide services to women who give birth to infants exposed to the nonprescription use of controlled substances or abuse of alcohol by the mother during pregnancy. Within available funds, the project may be offered in one site in each of the three department's administrative regions that have the highest incidence of drug-affected or alcohol-affected infants annually. The project shall accept women referred to it by the department following the birth of a drug-affected or alcohol-affected infant. The model project shall be concluded by July 1, 2002.

NEW SECTION. Sec. 31. To the extent funds are appropriated, the institute for public policy shall study the cost-effectiveness of this act and report to the governor and legislature not later than January 1, 2002. The study shall measure the reduction in the birth rate of drug-affected infants among women and shall compare the reduction with the rate of birth of drug-affected infants born to women referred to chemical dependency treatment programs. The study shall identify the factors that promote or discourage the ability of women to avoid giving birth to drug-affected infants.

NEW SECTION. Sec. 32. To the extent funds are appropriated, the institute for public policy study referenced in section 31 of this act shall include alcohol-affected births.

NEW SECTION. Sec. 33. A new section is added to chapter 70.96A RCW to read as follows:

(1) Any treatment program or model project in which a mother is enrolled under sections 20 through 22 of this act shall provide family planning, which means the process of limiting or spacing the birth of children, education, counseling, information, and services. Family planning does not include pregnancy termination.

(2) This section expires June 30, 2002.

NEW SECTION. **Sec. 34.** A new section is added to chapter 74.09 RCW to read as follows:

The department may make available, or cause to be made available, pharmaceutical birth control services, information, and counseling to any person who enters chemical dependency treatment under section 20 or 21 of this act. Within available funds, the department may pay for any tubal ligations requested under section 19 of this act if the mother's income is less than two hundred percent of the federal poverty level. The department shall report by December 1st of each year to the governor and legislature: (1) The number of tubal ligations performed as a result of chapter . . . , Laws of 1998 (this act); (2) the number of women who decline to undergo the surgery; (3) the number of women who obtain pharmaceutical birth control, by type of birth control; and (4) the number of women who are reported to the department.

NEW SECTION. **Sec. 35.** A new section is added to chapter 74.09 RCW to read as follows:

The department may make available, or cause to be made available, pharmaceutical birth control services, information, and counseling to any person who enters chemical dependency treatment under section 27 of this act. Within available funds, the department may pay for any tubal ligations requested under section 26 of this act if the mother's income is less than two hundred percent of the federal poverty level. The department shall report by December 1st of each year to the governor and legislature: (1) The number of tubal ligations performed as a result of chapter . . . , Laws of 1998 (this act); (2) the number of women who decline to undergo the surgery; (3) the number of women who obtain pharmaceutical birth control, by type of birth control; and (4) the number of women who are reported to the department.

NEW SECTION. **Sec. 36.** A new section is added to chapter 18.71 RCW to read as follows:

(1) Nothing in section 19 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, a physician licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 33 and 34 of this act.

(2) This section expires June 30, 2002.

NEW SECTION. **Sec. 37.** A new section is added to chapter 18.57 RCW to read as follows:

(1) Nothing in section 19 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, an osteopath

licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 33 and 34 of this act.

(2) This section expires June 30, 2002.

NEW SECTION. Sec. 38. A new section is added to chapter 18.79 RCW to read as follows:

(1) Nothing in section 19 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, an advanced registered nurse practitioner licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 33 and 34 of this act.

(2) This section expires June 30, 2002.

***Sec. 39.** *RCW 13.34.070 and 1993 c 358 s 1 are each amended to read as follows:*

(1) Upon the filing of the petition, the clerk of the court shall issue a summons, one directed to the child, if the child is twelve or more years of age, and another to the parents, guardian, or custodian, and such other persons as appear to the court to be proper or necessary parties to the proceedings, requiring them to appear personally before the court at the time fixed to hear the petition. If the child is developmentally disabled and not living at home, the notice shall be given to the child's custodian as well as to the child's parent. The developmentally disabled child shall not be required to appear unless requested by the court. Where the custodian is summoned, the parent or guardian or both shall also be served with a summons. The fact-finding hearing on the petition shall be held no later than seventy-five days after the filing of the petition, unless exceptional reasons for a continuance are found. In cases where an infant has been affected by the mother's substance abuse, exceptional reasons for a continuance exist if the mother and the department have executed an agreement that will take more than seventy-five days to fulfill. The party requesting the continuance shall have the burden of proving by a preponderance of the evidence that exceptional circumstances do exist. To ensure that the hearing on the petition occurs within the seventy-five day time limit, the court shall schedule and hear the matter on an expedited basis.

(2) A copy of the petition shall be attached to each summons.

(3) The summons shall advise the parties of the right to counsel. The summons shall also inform the child's parent, guardian, or legal custodian of his or ~~(her)~~ her right to appointed counsel, if indigent, and of the procedure to use to secure appointed counsel.

(4) The summons shall advise the parents that they may be held responsible for the support of the child if the child is placed in out-of-home care.

(5) The judge may endorse upon the summons an order directing any parent, guardian, or custodian having the custody or control of the child to bring the child to the hearing.

(6) If it appears from affidavit or sworn statement presented to the judge that there is probable cause for the issuance of a warrant of arrest or that the

child needs to be taken into custody pursuant to RCW 13.34.050, the judge may endorse upon the summons an order that an officer serving the summons shall at once take the child into custody and take him to the place of shelter designated by the court.

(7) If the person summoned as provided in this section is subject to an order of the court pursuant to subsection (5) or (6) of this section, and if the person fails to abide by the order, he may be proceeded against as for contempt of court. The order endorsed upon the summons shall conspicuously display the following legend:

**NOTICE:
VICIATION OF THIS ORDER
IS SUBJECT TO PROCEEDING
FOR CONTEMPT OF COURT
PURSUANT TO RCW 13.34.070.**

(8) If a party to be served with a summons can be found within the state, the summons shall be served upon the party personally as soon as possible following the filing of the petition, but in no case later than fifteen court days before the fact-finding hearing, or such time as set by the court. If the party is within the state and cannot be personally served, but the party's address is known or can with reasonable diligence be ascertained, the summons may be served upon the party by mailing a copy thereof by certified mail as soon as possible following the filing of the petition, but in no case later than fifteen court days before the hearing, or such time as set by the court. If a party other than the child is without the state but can be found or the address is known, or can with reasonable diligence be ascertained, service of the summons may be made either by delivering a copy thereof to the party personally or by mailing a copy thereof to the party by certified mail at least ten court days before the fact-finding hearing, or such time as set by the court.

(9) Service of summons may be made under the direction of the court by any person eighteen years of age or older who is not a party to the proceedings or by any law enforcement officer, probation counselor, or department of social and health services social worker.

(10) In any proceeding brought under this chapter where the court knows or has reason to know that the child involved is a member of an Indian tribe, notice of the pendency of the proceeding shall also be sent by registered mail, return receipt requested, to the child's tribe. If the identity or location of the tribe cannot be determined, such notice shall be transmitted to the secretary of the interior of the United States.

*Sec. 39 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 40. (1) The departments of health and social and health services, shall develop a comprehensive plan for providing services to mothers who (a) have delivered a drug or alcohol exposed or affected infant, and (b) meet the definition of at-risk eligible persons in RCW 74.09.790 and who have

a child up to three years of age. The services to be provided by the plan will include those defined in RCW 74.09.790. The plan shall provide for the coordination of services through community-based programs and among: (a) The departments; (b) the departments' divisions; and (c) other state agencies. The plan shall include recommendations to the legislature for implementing the plan and any alternative methods for addressing the needs of these mothers and their children.

(2) In developing the plan, the department of health shall inventory the community-based programs that may be accessed to provide services to these mothers and their children; evaluate implementing services for these mothers through extension of the maternity care access system; and evaluate the fiscal impact of the plan. In performing the fiscal evaluation, the department shall calculate potential long-term cost savings to the state resulting from reduced use of the medical, juvenile justice, public assistance, and dependency systems by children and mothers receiving services under the plan.

(3) The department shall submit a report describing the plan to the appropriate committees of the house of representatives and senate by November 1, 1998.

NEW SECTION. Sec. 41. A new section is added to chapter 70.96A RCW to read as follows:

(1) Any treatment program or model project in which a mother is enrolled under section 27 of this act shall provide family planning, which means the process of limiting or spacing the birth of children, education, counseling, information, and services. Family planning does not include pregnancy termination.

(2) This section expires June 30, 2002.

NEW SECTION. Sec. 42. A new section is added to chapter 18.71 RCW to read as follows:

(1) Nothing in section 26 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, a physician licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 35 and 41 of this act.

(2) This section expires June 30, 2002.

NEW SECTION. Sec. 43. A new section is added to chapter 18.57 RCW to read as follows:

(1) Nothing in section 26 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, an osteopath licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 35 and 41 of this act.

(2) This section expires June 30, 2002.

NEW SECTION. Sec. 44. A new section is added to chapter 18.79 RCW to read as follows:

(1) Nothing in section 26 of this act imposes any additional duties or responsibilities on, or removes any duties or responsibilities from, an advanced registered nurse practitioner licensed under this chapter, except as specifically included in chapter 13.34 RCW and sections 35 and 41 of this act.

(2) This section expires June 30, 2002.

NEW SECTION. **Sec. 45.** Section 9 of this act takes effect October 1, 1998.

NEW SECTION. **Sec. 46.** Sections 18 through 24, 26 through 28, 30 through 39, and 41 through 44 of this act take effect January 1, 1999.

NEW SECTION. **Sec. 47.** Sections 14 through 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.

NEW SECTION. **Sec. 48.** The department of community, trade, and economic development shall contract with The Evergreen State College for completion of the study by the Washington institute for public policy ordered pursuant to sections 14 through 16 of this act. The department of community, trade, and economic development shall contract with the department of social and health services for the purpose of implementing sections 18 through 44 of this act. No funds for administrative expenses may be deducted by the department of community, trade, and economic development prior to allocation as provided in this section.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 11, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 39, Substitute House Bill No. 2556 entitled:

"AN ACT Relating to amendments concerning the child abuse prevention and treatment act and the adoption and safe families act;"

This bill enacts changes in state law required to conform with federal mandates. It also addresses a number of other matters, including the Family Policy Council and Community Health and Safety Networks, citizen review panels for child abuse and neglect, a definition of "income" within the Basic Health Plan, and dependency matters related to drug- and alcohol-affected infants and their mothers.

I have vetoed the following sections of SHB 2556:

Section 11. The 1994 Youth Violence Reduction Act describes specific roles and responsibilities for the Family Policy Council, and provides for representation from both the executive and legislative branches of government. Since the Legislature already has the authority to exercise its powers of oversight for the council, it is not necessary to amend the council's structure.

Section 19 describes the requirements for testing an infant when a physician or nurse caring for the child believes that the infant was born drug-affected, for notifying DSHS, and for retaining the infant in a birthing facility or in a pediatric center during withdrawal. Section 26 is the comparable language for a newborn suspected of being alcohol-affected.

I support the purposes of these sections. However, there are serious questions relating to the efficacy of the medical approaches and the requirements that would be imposed by these sections.

The activities and aims of sections 18, 20, 21, 22, 23, 24, 27, 28 and 39 are defined with reference to sections 19 and 26. Without these latter two sections, the former sections are left without purpose.

I have other concerns about the above sections as well. The intent section, section 18, might be read to say that, beginning with the birth of a woman's third child, it is unreasonable to continue efforts to reunify drug-affected babies with that mother. I am certain that the sponsors of this bill did not intend for that interpretation.

Sections 20, 21, 23, 24, 27 and 39 are premised upon a foundation that giving birth to a drug-affected baby is sufficient to establish dependency. This foundation is not supported in RCW 13.34, the dependency statutes. These sections need to be crafted better to work with RCW 13.34. Sections 22 and 28 are contrary to Civil Rule 41(a) which permits a plaintiff to have an action dismissed by the court.

I urge the sponsors of this bill to work with the appropriate medical professional organizations and state agencies to perfect this legislation.

For these reasons, I have vetoed sections 11, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 39 of Substitute House Bill No. 2556.

With the exception of sections 11, 18, 19, 20, 21, 22, 23, 24, 26, 27, 28 and 39, Substitute House Bill No. 2556 is approved."

CHAPTER 315

[House Bill 2566]

LAUNDRY SERVICES FOR NONPROFIT HEALTH CARE FACILITIES— RETAIL SALES TAX EXEMPTION

AN ACT Relating to the retail sales tax exemption for sales of laundry service; and amending RCW 82.04.050.

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

Sec. 1. RCW 82.04.050 and 1997 c 127 s 1 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical

reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to ~~((members by)) nonprofit ((associations composed exclusively of nonprofit hospitals))~~ health care facilities, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services"

does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

(7) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

(8) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

Passed the House February 25, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 316

[Substitute House Bill 2711]

SMALL IRRIGATION DISTRICTS—TAX EXEMPTIONS

AN ACT Relating to tax exemptions for small irrigation districts; amending RCW 82.04.312 and 82.16.042; providing an effective date; and providing expiration dates.

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

Sec. 1. RCW 82.04.312 and 1997 c 407 s 2 are each amended to read as follows:

(1) This chapter does not apply to amounts received for water services supplied by a water-sewer district established under Title 57 RCW or by an irrigation district established under Title 87 RCW that (~~has been certified by the department of health as~~):

(a) (~~Having~~) Has less than one thousand five hundred connections; and

(b) (~~Charging~~) Charges residential water rates that exceed one hundred twenty-five percent of the state-wide average residential water rate published on or before July 1st of each year by the department of health.

(2) This chapter does not apply to amounts received for water services supplied by a water system that (~~has been certified by the department of health as~~):

(a) (~~Being~~) Is operated or owned by a qualified satellite management agency under RCW 70.116.134;

(b) (~~Having~~) Has less than two hundred connections; and

(c) (~~Charging~~) Charges residential water rates that exceed one hundred twenty-five percent of the state-wide average residential water rate published on or before July 1st of each year by the department of health.

(3) To receive an exemption under this section, the water system or irrigation district shall supply to the department of (~~health~~) revenue proof that an amount equal to at least ninety percent of the value of the exemption shall be expended to repair, equip, maintain, and upgrade the water system.

(4) The department of health (~~shall certify to the department of revenue the eligibility of water districts and water systems under this section. In order to determine eligibility, the department of health may use rate information provided in surveys and reports produced by the association of Washington cities, an association of elected officials, or other municipal association to estimate a state-wide average residential water rate. The department of health shall update the estimated state-wide average residential water rate by July 1 of each year that this section remains in effect~~) may use rate information provided in surveys and reports produced by the association of Washington cities, an association of elected officials, or other municipal association to estimate a state-wide average residential water rate.

(5) This section expires July 1, (~~2003~~) 2004.

Sec. 2. RCW 82.16.042 and 1997 c 407 s 3 are each amended to read as follows:

(1) This chapter does not apply to amounts received for water services supplied by a water-sewer district established under Title 57 RCW or by an irrigation district established under Title 87 RCW that (~~has been certified by the department of health as~~):

(a) (~~Having~~) Has less than one thousand five hundred connections; and

(b) (~~Charging~~) Charges residential water rates that exceed one hundred twenty-five percent of the state-wide average residential water rate published on or before July 1st of each year by the department of health.

(2) This chapter does not apply to amounts received for water services supplied by a water system that (~~has been certified by the department of health as~~):

(a) (~~Being~~) Is operated or owned by a qualified satellite management agency under RCW 70.116.134;

(b) (~~Having~~) Has less than two hundred connections; and

(c) (~~Charging~~) Charges residential water rates that exceed one hundred twenty-five percent of the state-wide average residential water rate.

(3) To receive an exemption under this section, the water system or irrigation district shall supply to the department of (~~health~~) revenue proof that an amount equal to at least ninety percent of the value of the exemption shall be expended to repair, equip, maintain, and upgrade the water system.

(4) (~~The department of health shall certify to the department of revenue the eligibility of water districts and water systems under this section. In order to determine eligibility, the department of health may use rate information provided in surveys and reports produced by the association of Washington cities, an association of elected officials, or other municipal association to estimate a state-wide average residential water rate. The department of health shall update the estimated state-wide average residential water rate by July 1 of each year that this section remains in effect.~~) For the purposes of this section, "state-wide average residential water rate" means the state-wide average residential water rate published under RCW 82.04.312.

(5) This section expires July 1, (~~2003~~) 2004.

NEW SECTION. Sec. 3. This act takes effect July 1, 1998.

Passed the House February 25, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 317

[Engrossed House Bill 2772]

DRUG PARAPHERNALIA—PENALTIES

AN ACT Relating to drug paraphernalia; adding a new section to chapter 26.28 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 26.28 RCW to read as follows:

(1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

- (a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (b) Water pipes;
- (c) Carburetion tubes and devices;
- (d) Smoking and carburetion masks;
- (e) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;
- (f) Miniature cocaine spoons and cocaine vials;
- (g) Chamber pipes;
- (h) Carburetor pipes;
- (i) Electric pipes;
- (j) Air-driven pipes;
- (k) Chillums;
- (l) Bongs; and
- (m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs.

Passed the House February 13, 1998.

Passed the Senate March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 318

[Substitute House Bill 2773]

NET METERING FOR CERTAIN RENEWABLE ENERGY SYSTEMS

AN ACT Relating to net metering for certain renewable energy systems; and adding a new chapter to Title 80 RCW.

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

NEW SECTION. Sec. 1. The legislature finds that it is in the public interest to:

- (1) Encourage private investment in renewable energy resources;
- (2) Stimulate the economic growth of this state; and
- (3) Enhance the continued diversification of the energy resources used in this state.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter unless the context clearly indicates otherwise.

- (1) "Commission" means the utilities and transportation commission.
- (2) "Customer-generator" means a user of a net metering system.
- (3) "Electrical company" means a company owned by investors that meets the definition of RCW 80.04.010.
- (4) "Electric cooperative" means a cooperative or association organized under chapter 23.86 or 24.06 RCW.
- (5) "Electric utility" means any electrical company, public utility district, irrigation district, port district, electric cooperative, or municipal electric utility that is engaged in the business of distributing electricity to retail electric customers in the state.
- (6) "Irrigation district" means an irrigation district under chapter 87.03 RCW.
- (7) "Municipal electric utility" means a city or town that owns or operates an electric utility authorized by chapter 35.92 RCW.
- (8) "Net metering" means measuring the difference between the electricity supplied by an electric utility and the electricity generated by a customer-generator that is fed back to the electric utility over the applicable billing period.
- (9) "Net metering system" means a facility for the production of electrical energy that:
 - (a) Uses as its fuel either solar, wind, or hydropower;
 - (b) Has a generating capacity of not more than twenty-five kilowatts;
 - (c) Is located on the customer-generator's premises;
 - (d) Operates in parallel with the electric utility's transmission and distribution facilities; and
 - (e) Is intended primarily to offset part or all of the customer-generator's requirements for electricity.
- (10) "Port district" means a port district within which an industrial development district has been established as authorized by Title 53 RCW.
- (11) "Public utility district" means a district authorized by chapter 54.04 RCW.

NEW SECTION. Sec. 3. An electric utility:

(1) Shall offer to make net metering available to eligible customers-generators on a first-come, first-served basis until the cumulative generating capacity of net metering systems equals 0.1 percent of the utility's peak demand during 1996;

(2) Shall allow net metering systems to be interconnected using a standard kilowatt-hour meter capable of registering the flow of electricity in two directions, unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment:

(a) That the use of additional metering equipment to monitor the flow of electricity in each direction is necessary and appropriate for the interconnection of net metering systems, after taking into account the benefits and costs of purchasing and installing additional metering equipment; and

(b) How the cost of purchasing and installing an additional meter is to be allocated between the customer-generator and the utility;

(3) Shall charge the customer-generator a minimum monthly fee that is the same as other customers of the electric utility in the same rate class, but shall not charge the customer-generator any additional standby, capacity, interconnection, or other fee or charge unless the commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, determines, after appropriate notice and opportunity for comment that:

(a) The electric utility will incur direct costs associated with interconnecting or administering net metering systems that exceed any offsetting benefits associated with these systems; and

(b) Public policy is best served by imposing these costs on the customer-generator rather than allocating these costs among the utility's entire customer base.

NEW SECTION. Sec. 4. Consistent with the other provisions of this chapter, the net energy measurement must be calculated in the following manner:

(1) The electric utility shall measure the net electricity produced or consumed during the billing period, in accordance with normal metering practices.

(2) If the electricity supplied by the electric utility exceeds the electricity generated by the customer-generator and fed back to the electric utility during the billing period, the customer-generator shall be billed for the net electricity supplied by the electric utility, in accordance with normal metering practices.

(3) If electricity generated by the customer-generator exceeds the electricity supplied by the electric utility, the customer-generator:

(a) Shall be billed for the appropriate customer charges for that billing period, in accordance with section 3 of this act; and

(b) Shall be credited for the excess kilowatt-hours generated during the billing period, with this kilowatt-hour credit appearing on the bill for the following billing period.

At the beginning of each calendar year, any remaining unused kilowatt-hour credit accumulated during the previous year shall be granted to the electric utility, without any compensation to the customer-generator.

NEW SECTION. Sec. 5. (1) A net metering system used by a customer-generator shall include, at the customer-generator's own expense, all equipment necessary to meet applicable safety, power quality, and interconnection requirements established by the national electrical code, national electrical safety code, the institute of electrical and electronics engineers, and underwriters laboratories.

(2) The commission, in the case of an electrical company, or the appropriate governing body, in the case of other electric utilities, after appropriate notice and opportunity for comment, may adopt by regulation additional safety, power quality, and interconnection requirements for customer-generators that the commission determines are necessary to protect public safety and system reliability.

NEW SECTION. Sec. 6. Sections 1 through 5 of this act constitute a new chapter in Title 80 RCW.

Passed the House March 7, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 319

[Second Substitute House Bill 2849]

STUDENT ACHIEVEMENT ACCOUNTABILITY ENHANCEMENTS

AN ACT Relating to student achievement accountability; amending RCW 28A.300.320 and 28A.230.190; adding a new section to chapter 28A.630 RCW; creating new sections; and providing expiration dates.

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

PART I

ESTABLISHMENT OF READING ACCOUNTABILITY GOALS

NEW SECTION. Sec. 101. (1) By December 15, 1998, each school district board of directors shall:

(a) Select the reading standard results on either the 1997 or 1998 Washington assessment of student learning as the school district's initial baseline reading standard;

(b) Establish a three-year, district-wide goal to increase, by the end of the 2000-01 school year, the percentage of students who meet or exceed the reading standard on the fourth grade Washington assessment of student learning. The three-year percentage increase goal may not be less than the district's total percentage of students who did not meet the baseline reading standard multiplied by twenty-five percent;

(c) Specify the annual district-wide percentage improvement increments to meet the three-year goal; and

(d) Direct each elementary school to establish a three-year goal for its fourth grade students, subject to approval by the board. The aggregate of the elementary goals must meet or exceed the district-wide goals established by the board.

(2) Each school district board of directors shall:

(a) Report biannually to parents in writing and to the community in a public meeting the following information:

(i) District-wide and school-level three-year goals;

(ii) Student performance relative to the goals; and

(iii) District-wide and school-level plans to achieve the reading goal in kindergarten through fourth grade, including grade-level expectations, curriculum and instruction, parental or guardian involvement, and resources available to parents and guardians to help students meet the reading standard;

(b) Report annually to the superintendent of public instruction and in a news release to the local media the district's progress toward meeting the district-wide and school-level goals; and

(c) Include the reported information in each school's annual school performance report under RCW 28A.320.205.

(3) By December 1, 2000, the superintendent of public instruction shall report to the education committees of the house of representatives and the senate on the progress that has been made in achieving the three-year reading goal, and provide recommendations to the legislature on setting reading goals for the next three years.

(4) This section expires July 1, 2006.

PART II

ADMINISTRATION OF READING ASSESSMENTS

Sec. 201. RCW 28A.300.320 and 1997 c 262 s 3 are each amended to read as follows:

(1) The superintendent of public instruction shall create a pilot project to identify which second grade reading tests selected under RCW 28A.300.310 will be included in the final collection of tests that must be available by June 30, 1998.

(2) Schools and school districts may voluntarily participate in the second grade reading test pilot projects in the 1997-98 school year. Schools and school districts voluntarily participating in the pilot project test are not required to have the results available by the fall parent-teacher conference.

(3)(a) Starting in the 1998-99 school year, school districts must select a test from the collection adopted by the superintendent of public instruction. Selection must be at the entire school district level and must remain in place at that school district for at least three years.

(b) The second grade reading test selected by the school district must be administered annually in the fall beginning with the 1998-99 school year. Students who score substantially below grade level when tested in the fall shall

be tested at least one more time during the second grade. Test performance deemed to be "substantially below grade level" is to be determined for each test in the collection by the superintendent of public instruction during the pilot year of 1997-98.

(c) If a student, while taking the test, reaches a point at which the student's performance will be considered "substantially below grade level" regardless of the student's performance on the remainder of the test, the test may be discontinued.

(d) Each school must have the test results available by the fall parent-teacher conference. Schools must notify parents about the second grade reading test during the conferences, inform the parents of their students' performance on the test, identify actions the school intends to take to improve the child's reading skills, and provide parents with strategies to help the parents improve their child's score.

Sec. 202. RCW 28A.230.190 and 1997 c 262 s 5 are each amended to read as follows:

(1) ~~((Every school district is encouraged to test pupils in grade two by an assessment device designed or selected by the school district. This test shall be used to help teachers in identifying those pupils in need of assistance in the skills of reading, writing, mathematics, and language arts. The test results are not to be compiled by the superintendent of public instruction, but are only to be used by the local school district.))~~ School districts shall test students for second grade reading accuracy and fluency skills starting in the 1998-99 school year as provided in RCW 28A.300.320.

(2) The superintendent of public instruction shall prepare and conduct, with the assistance of school districts, a norm-referenced standardized achievement test to be given annually to all pupils in grade ~~((four))~~ three. The test shall assess students' skill in reading~~(;)~~ and mathematics, ~~((and language arts))~~ and shall focus upon appropriate input variables. Results of such tests shall be compiled by the superintendent of public instruction, who shall make those results available annually to the legislature, to all local school districts and subsequently to parents of those children tested. The results shall allow parents to ascertain the achievement levels and input variables of their children as compared with the other students within the district, the state and, if applicable, the nation.

(3) The superintendent of public instruction shall report annually to the legislature on the achievement levels of students in grade ~~((four))~~ three.

PART III REPORTING ASSESSMENT RESULTS

NEW SECTION. **Sec. 301.** A new section is added to chapter 28A.630 RCW to read as follows:

(1) By September 10, 1998, and by September 10th each year thereafter, the superintendent of public instruction shall:

(a) Report to schools, school districts, and the legislature on the results of the fourth grade Washington assessment of student learning; and

(b) Post individual school results of the fourth grade Washington assessment of student learning on the superintendent of public instruction's internet world-wide web site. The reports shall include the assessment results by school and school district, and include changes over time.

(2) This section expires July 1, 2006.

PART IV MISCELLANEOUS

NEW SECTION. Sec. 401. PART HEADINGS NOT LAW. Part headings used in this act are not any part of the law.

NEW SECTION. Sec. 402. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.

Passed the House March 12, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 320

[Engrossed Substitute House Bill 2871]

CURRENT USE VALUATION OF PROPERTY

AN ACT Relating to current use valuation; amending RCW 84.34.070, 84.34.020, 84.34.065, and 36.70B.230; reenacting and amending RCW 84.40.030; adding a new section to chapter 36.70A RCW; adding a new chapter to Title 84 RCW; recodifying RCW 36.70B.230; and repealing RCW 35.63.240, 35A.63.260, and 36.70.495.

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

***NEW SECTION. Sec. 1.** *This chapter creates a new system of classifying agricultural land for property tax purposes as agricultural land with long-term commercial significance where the true and fair value of the land is based upon its current use. This new current use valuation program applies to eligible land automatically and is in addition to the voluntary farm and agricultural land valuation program under chapter 84.34 RCW.*

*Sec. 1 was vetoed. See message at end of chapter.

***NEW SECTION. Sec. 2.** *(1) Land shall be classified as agricultural land with long-term commercial significance if: (a) The land is designated as agricultural land under RCW 36.70A.170(1) by a county, city, or town planning under RCW 36.70A.040; (b) the land is devoted primarily to agricultural uses specified under RCW 36.70A.030(2) and not used for residential purposes, industrial purposes, or other commercial purposes; and (c) the county, city, or town has adopted its development regulations under RCW 36.70A.060 conserving agricultural land designated under RCW 36.70A.170(1).*

(2) The assessor shall automatically classify or reclassify land meeting the requirements of this section based upon information submitted to the assessor

by counties, cities, and towns under RCW 36.70B.230 (as recodified by this act). The manifest error provisions of RCW 84.48.065 apply to the classification or reclassification of land as agricultural land with long-term commercial significance.

(3) The true and fair value of agricultural land with long-term commercial significance for property tax purposes shall be the current use value of the land determined in the same manner as the current use value of land classified as farm and agricultural land is determined under chapter 84.34 RCW.

(4) The owner of any land eligible for classification or reclassification as agricultural land with long-term commercial significance that is not so classified or reclassified by the assessor under subsection (2) of this section may submit a written request to the assessor requesting the land be classified or reclassified as agricultural land with long-term commercial significance together with proof that the land meets the requirements of this section. The assessor shall investigate the request and either deny or approve the request within thirty days of the date the request was received. The assessor shall give written notice of the denial or approval to the owner requesting the classification or reclassification. A denial may be appealed to the board of equalization of the county in which the property is located, in accordance with RCW 84.40.038, within thirty days of the date the notice of denial is mailed.

(5) Eligible land classified as farm and agricultural land under chapter 84.34 RCW shall be reclassified as agricultural land with long-term commercial significance. Land classified or designated as forest land under chapter 84.33 RCW shall not be classified as agricultural land with long-term commercial significance, even if it meets the requirements of this section. Land classified as open space land or timber land under RCW 84.34.020 (1) or (3) shall not be classified as agricultural land with long-term commercial significance, even if it meets the requirements of this section. However, the owner of open space farm and agricultural conservation land under RCW 84.34.020(1)(c) may submit an application requesting the land be reclassified as agricultural land with long-term commercial significance and the assessor shall so reclassify this land if it meets the requirements of this section.

*Sec. 2 was vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 3. (1) The classification or reclassification of land as agricultural land with long-term commercial significance shall be removed if either: (a) The county, city, or town removes the designation of the land under RCW 36.70A.170(1); or (b) the use of the land changes to a use not permitted for designation as agricultural land with long-term commercial significance.

Land removed from classification as agricultural land with long-term commercial significance shall be valued at its true and fair value under RCW 84.40.030 unless it is reclassified under another current use valuation program under chapter 84.33 or 84.34 RCW.

(2) Land classified as agricultural land with long-term commercial significance that was not reclassified to that status from farm and agricultural land or open space farm and agricultural conservation land under chapter 84.34 RCW is not subject to any additional tax, penalty, and interest if removed from classification as agricultural land with long-term commercial significance.

(3) However, land classified as agricultural land with long-term commercial significance that was reclassified to that status from farm and agricultural land or open space farm and agricultural conservation land under chapter 84.34 RCW is subject to additional tax, penalty, and interest, if the land is removed from classification as agricultural land with long-term commercial significance as follows:

(a) The additional tax, penalty, and interest shall be calculated in the same manner as set forth under RCW 84.34.108 and 84.34.080 for removing land from classification as farm and agricultural land or open space farm and agricultural conservation land under chapter 84.34 RCW, except for each year the land remains classified as agricultural land with long-term commercial significance one year of the additional tax, penalty, and interest shall be abated. Additional tax, penalty, and interest shall not be imposed if the reclassified land remains classified as agricultural land with long-term commercial significance for at least seven years.

(b) Additional tax, penalty, and interest under this subsection is not due if the land is reclassified as farm and agricultural land or open space farm and agricultural conservation land under chapter 84.34 RCW immediately upon being removed from classification as agricultural land with long-term commercial significance.

*Sec. 3 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 4. The provisions of RCW 84.34.300 through 84.34.380, relating to exemptions from special benefit assessments, apply to agricultural land with long-term commercial significance.

*Sec. 4 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 5. The department shall adopt rules consistent with this chapter as are necessary or desirable to permit the effective administration of this chapter.

*Sec. 5 was vetoed. See message at end of chapter.

*Sec. 6. RCW 84.34.070 and 1992 c 69 s 10 are each amended to read as follows:

(1) When land has once been classified under this chapter, it shall remain under such classification and shall not be applied to other use except as provided by subsection (2) of this section for at least ten years from the date of classification and shall continue under such classification until and unless withdrawn from classification after notice of request for withdrawal shall be made by the owner. During any year after eight years of the initial ten-year classification period have elapsed, notice of request for withdrawal of all or a portion of the land may be given by the owner to the assessor or assessors of the

county or counties in which such land is situated. In the event that a portion of a parcel is removed from classification, the remaining portion must meet the same requirements as did the entire parcel when such land was originally granted classification pursuant to this chapter unless the remaining parcel has different income criteria. Within seven days the assessor shall transmit one copy of such notice to the legislative body which originally approved the application. The assessor or assessors, as the case may be, shall, when two assessment years have elapsed following the date of receipt of such notice, withdraw such land from such classification and the land shall be subject to the additional tax and applicable interest due under RCW 84.34.108. Agreement to tax according to use shall not be considered to be a contract and can be abrogated at any time by the legislature in which event no additional tax or penalty shall be imposed.

(2) The following reclassifications are not considered withdrawals or removals and are not subject to additional tax under RCW 84.34.108:

(a) Reclassification between lands under RCW 84.34.020 (2) and (3);
 (b) Reclassification of land classified under RCW 84.34.020 (2) or (3) or chapter 84.33 RCW to open space land under RCW 84.34.020(1);

(c) Reclassification of land classified under RCW 84.34.020 (2) or (3) to forest land classified under chapter 84.33 RCW; ~~((and))~~

(d) Reclassification of farm and agricultural land classified under RCW 84.34.020(2), or open space farm and agricultural conservation land classified under RCW 84.34.020(1)(c), to agricultural land of long-term commercial significance under section 2 of this act; and

(e) Reclassification of land classified as open space land under RCW 84.34.020(1)(c) and reclassified to farm and agricultural land under RCW 84.34.020(2) if the land had been previously classified as farm and agricultural land under RCW 84.34.020(2).

(3) Applications for reclassification shall be subject to applicable provisions of RCW 84.34.037, 84.34.035, 84.34.041, and chapter 84.33 RCW.

(4) The income criteria for land classified under RCW 84.34.020(2) (b) and (c) may be deferred for land being reclassified from land classified under RCW 84.34.020 (1)(c) or (3), or chapter 84.33 RCW into RCW 84.34.020(2) (b) or (c) for a period of up to five years from the date of reclassification.

*Sec. 6 was vetoed. See message at end of chapter.

Sec. 7. RCW 84.34.020 and 1997 c 429 s 31 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) 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:

(i) 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

(ii) 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;

(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) and (c)(i) of this subsection shall, upon any transfer of the property excluding a transfer to a surviving spouse, be subject to the limits of (b)(ii) and (c)(ii) of this subsection.

Agricultural lands shall also include such 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"; or

(d) 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((;

~~— (e) Any parcel of land designated as agricultural land under RCW 36.70A.170; or~~

~~— (f) Any parcel of land not within an urban growth area zoned as agricultural land under a comprehensive plan adopted under chapter 36.70A RCW)).~~

(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 forest crops for commercial purposes. A timber management plan shall be filed with the county legislative authority at the time (a) an application is made for classification as timber land pursuant to this chapter or (b) when a sale or transfer of timber land occurs and a notice of classification continuance is signed. Timber land means the land only.

(4) "Current" or "currently" means as of the date on which property is to be listed and valued by the assessor.

(5) "Owner" means the party or parties having the fee interest in land, except that where land is subject to real estate contract "owner" shall mean the contract vendee.

(6) "Contiguous" means land adjoining and touching other property held by the same ownership. Land divided by a public road, but otherwise an integral part of a farming operation, shall be considered contiguous.

(7) "Granting authority" means the appropriate agency or official who acts on an application for classification of land pursuant to this chapter.

(8) "Farm and agricultural conservation land" means either:

(a) Land that was previously classified under subsection (2) of this section, that no longer meets the criteria of subsection (2) of this section, and that is reclassified under subsection (1) of this section; or

(b) Land that is traditional farmland that is not classified under chapter 84.33 or 84.34 RCW, that has not been irrevocably devoted to a use inconsistent with agricultural uses, and that has a high potential for returning to commercial agriculture.

Sec. 8. RCW 84.34.065 and 1997 c 429 s 33 are each amended to read as follows:

The true and fair value of farm and agricultural land, including land classified under section 2 of this act, shall be determined by consideration of the earning or productive capacity of comparable lands from crops grown most typically in the area averaged over not less than five years, capitalized at indicative rates. The earning or productive capacity of farm and agricultural lands shall be the "net cash rental", capitalized at a "rate of interest" charged on long term loans secured by a mortgage on farm or agricultural land plus a component for property taxes. The current use value of land under RCW 84.34.020(2)(d) shall be established as: The prior year's average value of open space farm and agricultural land used in the county plus the value of land improvements such as septic, water, and power used to serve the residence. This shall not be interpreted to require the assessor to list improvements to the land with the value of the land.

~~((In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen space uses within five years after the sale.))~~

For the purposes of the above computation:

(1) The term "net cash rental" shall mean the average rental paid on an annual basis, in cash, for the land being appraised and other farm and agricultural land of similar quality and similarly situated that is available for lease for a period of at least three years to any reliable person without unreasonable restrictions on its use for production of agricultural crops. There shall be allowed as a deduction from the rental received or computed any costs of crop production charged against the landlord if the costs are such as are customarily paid by a landlord. If "net cash rental" data is not available, the earning or productive capacity of farm and agricultural lands shall be determined by the cash value of typical or usual crops grown on land of similar quality and similarly situated averaged over not less than five years. Standard costs of production shall be allowed as a deduction from the cash value of the crops.

The current "net cash rental" or "earning capacity" shall be determined by the assessor with the advice of the advisory committee as provided in RCW 84.34.145, and through a continuing internal study, assisted by studies of the department of revenue. This net cash rental figure as it applies to any farm and agricultural land may be challenged before the same boards or authorities as would be the case with regard to assessed values on general property.

(2) The term "rate of interest" shall mean the rate of interest charged by the farm credit administration and other large financial institutions regularly making loans secured by farm and agricultural lands through mortgages or similar legal instruments, averaged over the immediate past five years.

The "rate of interest" shall be determined annually by a rule adopted by the department of revenue and such rule shall be published in the state register not later than January 1 of each year for use in that assessment year. The department of revenue determination may be appealed to the state board of tax appeals within thirty days after the date of publication by any owner of farm or agricultural land or the assessor of any county containing farm and agricultural land.

(3) The "component for property taxes" shall be a figure obtained by dividing the assessed value of all property in the county into the property taxes levied within the county in the year preceding the assessment and multiplying the quotient obtained by one hundred.

Sec. 9. RCW 84.40.030 and 1997 c 429 s 34 (Referendum Bill No. 47), 1997 c 134 s 1, and 1997 c 3 s 104 are each reenacted and amended to read as follows:

All personal property shall be valued at one hundred percent of its true and fair value in money and assessed on the same basis unless specifically provided otherwise by law.

All real property shall be appraised at one hundred percent of its true and fair value in money and assessed as provided in RCW 84.40.0305 unless specifically provided otherwise by law.

Taxable leasehold estates shall be valued at such price as they would bring at a fair, voluntary sale for cash without any deductions for any indebtedness owed including rentals to be paid.

The true and fair value of real property for taxation purposes (including property upon which there is a coal or other mine, or stone or other quarry) shall be based upon the following criteria:

(1) Any sales of the property being appraised or similar properties with respect to sales made within the past five years. The appraisal shall be consistent with the comprehensive land use plan, development regulations under chapter 36.70A RCW, zoning, and any other governmental policies or practices in effect at the time of appraisal that affect the use of property, as well as physical and environmental influences. An assessment may not be determined by a method that assumes a land usage not permitted, for that property being appraised, under existing zoning or land use planning ordinances or statutes. The appraisal shall also take into account: (a) In the use of sales by real estate contract as similar sales, the extent, if any, to which the stated selling price has been increased by reason of the down payment, interest rate, or other financing terms; and (b) the extent to which the sale of a similar property actually represents the general effective market demand for property of such type, in the geographical area in which such property is located. Sales involving deed releases or similar seller-developer financing arrangements shall not be used as sales of similar property.

(2) In addition to sales as defined in subsection (1) of this section, consideration may be given to cost, cost less depreciation, reconstruction cost less depreciation, or capitalization of income that would be derived from prudent use of the property. In the case of property of a complex nature, or being used under terms of a franchise from a public agency, or operating as a public utility, or

property not having a record of sale within five years and not having a significant number of sales of similar property in the general area, the provisions of this subsection ((2)) shall be the dominant factors in valuation. When provisions of this subsection ((2)) are relied upon for establishing values the property owner shall be advised upon request of the factors used in arriving at such value.

(3) In valuing any tract or parcel of real property, the true and fair value of the land, exclusive of structures thereon shall be determined; also the true and fair value of structures thereon, but the appraised valuation shall not exceed the true and fair value of the total property as it exists. In valuing agricultural land, growing crops shall be excluded.

~~((4) In valuing any tract or parcel of real property designated and zoned under a comprehensive plan adopted under chapter 36.70A RCW as agricultural, forest, or open space land, the appraisal shall not be based on similar sales of parcels that have been converted to nonagricultural, nonforest, or nonopen space uses within five years after the sale:))~~

**Sec. 10. RCW 36.70B.230 and 1996 c 254 s 6 are each amended to read as follows:*

By July 31, ~~((1997, a local government))~~ 1998, every county or city planning under RCW 36.70A.040 shall provide to the county assessor a copy of ~~((the local government's))~~ its comprehensive plan and development regulations in effect on July 1st of that year and shall thereafter provide any amendments to the plan and regulations that were adopted before July 31st of each following year. The plans and regulations provided to the assessor must include the agricultural land designated under RCW 36.70A.170 and the regulations adopted under RCW 36.70A.060 conserving the designated land.

A county or city that initially plans under RCW 36.70A.040 after the effective date of this section shall provide a copy of its comprehensive plan and development regulations to the county assessor by July 31st of the year immediately following the year the county or city initially became subject to RCW 36.70A.040.

*Sec. 10 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 11. The following acts or parts of acts are each repealed:*

- (1) RCW 35.63.240 and 1996 c 254 s 3;
- (2) RCW 35A.63.260 and 1996 c 254 s 4; and
- (3) RCW 36.70.495 and 1996 c 254 s 5.

*Sec. 11 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 12. RCW 36.70B.230, as amended by this act, is recodified as a new section in chapter 36.70A RCW.*

*Sec. 12 was vetoed. See message at end of chapter.

**NEW SECTION. Sec. 13. Sections 1 through 5 of this act constitute a new chapter in Title 84 RCW.*

*Sec. 13 was vetoed. See message at end of chapter.

Passed the House February 17, 1998.

Passed the Senate March 12, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 1 through 6 and 10 through 13, Engrossed Substitute House Bill No. 2871 entitled:

"AN ACT Relating to current use valuation;"

Sections 1 through 6 and 10 through 13 of Engrossed Substitute House Bill No. 2871 would create a new current use property tax valuation program for "agricultural lands of long-term commercial significance." County assessors would automatically classify or reclassify land meeting the requirements of the bill. Removing land from this classification would trigger a penalty equal to seven years of back-taxes, reduced by one year for every year the land remains in the classification.

I believe that the program would set a bad precedent by allowing certain property owners to avoid paying several years of taxes, and pay no back-taxes if the land is later developed for non-agricultural purposes. The vetoed sections of this bill could also make planning under the Growth Management Act more contentious.

For these reasons, I have vetoed sections 1 through 6 and 10 through 13 of Engrossed Substitute House Bill No. 2871.

With the exception of sections 1 through 6 and 10 through 13, Engrossed Substitute House Bill No. 2871 is approved."

CHAPTER 321

[Engrossed House Bill 2894]

REALLOCATION OF RESOURCES FOR TRANSPORTATION FUNDING, LOCAL CRIMINAL JUSTICE FUNDING, AND TAX REDUCTION

AN ACT Relating to the reallocation of motor vehicle excise tax and general fund resources for the purpose of providing transportation funding, local criminal justice funding, and tax reduction; amending RCW 82.44.020, 82.44.041, 82.44.110, 82.44.150, 82.14.045, 82.14.200, 82.14.310, 82.14.330, 43.135.060, 82.50.410, 82.50.510, 35.58.273, 35.58.410, 43.160.070, 43.160.076, 43.160.080, 46.16.068, 70.94.015, 81.100.060, 82.08.020, 82.14.046, 82.44.023, 82.44.025, 82.44.155, 82.44.180, and 84.44.050; amending 1997 c 367 s 10 (uncodified); reenacting and amending RCW 82.14.320, 43.160.210, and 81.104.160; adding a new section to chapter 82.44 RCW; adding a new section to chapter 43.160 RCW; adding a new section to chapter 82.14 RCW; adding a new section to chapter 43.135 RCW; adding new sections to chapter 47.10 RCW; creating new sections; providing effective dates; providing contingent effective dates; providing for submission of certain sections of this act to a vote of the people; and declaring an emergency.

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

NEW SECTION. Sec. 1. The purpose of this act is to reallocate the general fund portion of the state's motor vehicle excise tax revenues among the taxpayers, local governments, and the state's transportation programs. By reallocating motor vehicle excise taxes, the state revenue portion can be dedicated to increased transportation funding purposes. Since the general fund currently has a budget surplus, due to a strong economy, the legislature feels that this reallocation is an appropriate short-term solution to the state's transportation needs and is a first step in meeting longer-term transportation funding needs. These reallocated funds

must be used to provide relief from traffic congestion, improve freight mobility, and increase traffic safety.

In reallocating general fund resources, the legislature also ensures that other programs funded from the general fund are not adversely impacted by the reallocation of surplus general fund revenues. The legislature also adopts this act to continue the general fund revenue and expenditure limitations contained in chapter 43.135 RCW after this one-time transfer of funds.

In order to develop a long-term and comprehensive solution to the state's transportation problems, a joint committee will be created to study the state's transportation needs and the appropriate sources of revenue necessary to implement the state's long-term transportation needs as provided in section 22 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 82.44 RCW to read as follows:

(1) Beginning with motor vehicle registrations that are due or become due in July 1999, a credit is authorized against the tax imposed under RCW 82.44.020(1) on each personal-use motor vehicle equal to the lesser of the tax otherwise due under RCW 82.44.020(1) or thirty dollars.

(2) For the purposes of this section, "personal-use motor vehicle" means a vehicle registered to a private individual, not owned by a business, and designated in one of the following use classes: (a) Passenger; (b) truck with a weight not to exceed six thousand pounds; or (c) motorcycle.

Sec. 3. RCW 82.44.020 and 1993 sp.s. c 23 s 61 are each amended to read as follows:

(1) An excise tax is imposed for the privilege of using in the state any motor vehicle, except those operated under reciprocal agreements, the provisions of RCW 46.16.160 (~~as now or hereafter amended~~), or dealer's licenses. The annual amount of such excise tax shall be two and two-tenths percent of the value of such vehicle.

~~(2) ((An additional excise tax is imposed, in addition to any other tax imposed by this section, for the privilege of using in the state any such motor vehicle, and the annual amount of such additional excise shall be two-tenths of one percent of the value of such vehicle.~~

~~—(3) Effective with October 1992 motor vehicle registration expirations,)) A clean air excise tax is imposed in addition to any other tax imposed by this section for the privilege of using in the state any motor vehicle as defined in RCW 82.44.010, except that farm vehicles as defined in RCW 46.04.181 shall not be subject to the tax imposed by this subsection. The ((annual amount of the additional excise tax shall be two dollars and twenty-five cents. Effective with July 1994 motor vehicle registration expirations, the)) annual amount of additional excise tax shall be two dollars.~~

~~((4))~~ (3) An additional excise tax is imposed on truck-type power units that are used in combination with a trailer to transport loads in excess of forty

thousand pounds combined gross weight. The annual amount of such additional excise tax shall be fifty-eight one-hundredths of one percent of the value of the vehicle.

The department shall distribute the additional tax collected under this subsection as follows:

(a) For each trailing unit subject to subsection ~~((5))~~ (4) of this section, an amount equal to the clean air excise tax prescribed in subsection ~~((3))~~ (2) of this section shall be distributed in the manner prescribed in RCW 82.44.110~~((3))~~ (2);

(b) ~~((f))~~ The remainder of the additional excise tax collected under this subsection~~((, ten percent shall be distributed in the manner prescribed in RCW 82.44.110(2) and ninety percent))~~ shall be distributed in the manner prescribed in RCW 82.44.110(1). This tax shall not apply to power units used exclusively for hauling logs.

~~((5))~~ (4) The excise taxes imposed by subsections (1) ~~((through (3)))~~ and (2) of this section shall not apply to trailing units which are used in combination with a power unit subject to the additional excise tax imposed by subsection ~~((4))~~ (3) of this section. This subsection shall not apply to trailing units used for hauling logs.

~~((6))~~ (5) In no case shall the total tax be less than two dollars except for proportionally registered vehicles and except for vehicles on which a credit is granted under section 2 of this act.

~~((7))~~ (6) Washington residents, as defined in RCW 46.16.028, who license motor vehicles in another state or foreign country and avoid Washington motor vehicle excise taxes are liable for such unpaid excise taxes. The department of revenue may assess and collect the unpaid excise taxes under chapter 82.32 RCW, including the penalties and interest provided therein.

Sec. 4. RCW 82.44.041 and 1990 c 42 s 303 are each amended to read as follows:

(1) For the purpose of determining the tax under this chapter, the value of a truck-type power or trailing unit shall be the latest purchase price of the vehicle, excluding applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the following percentage based on year of service of the vehicle since last sale. The latest purchase year shall be considered the first year of service.

YEAR OF SERVICE	PERCENTAGE
1	100
2	90
3	83
4	75
5	67
6	59
7	52
8	44

9	36
10	28
11	21
12	13
13 or older	10

(2) The reissuance of title and registration for a truck-type power or trailing unit because of the installation of body or special equipment shall be treated as a sale, and the value of the truck-type power or trailing unit at that time, as determined by the department from such information as may be available, shall be considered the latest purchase price.

(3) For the purpose of determining the tax under this chapter, the value of a motor vehicle other than a truck-type power or trailing unit shall be the manufacturer's base suggested retail price of the vehicle when first offered for sale as a new vehicle, excluding any optional equipment, applicable federal excise taxes, state and local sales or use taxes, transportation or shipping costs, or preparatory or delivery costs, multiplied by the applicable percentage listed in this subsection based on year of service of the vehicle.

If the manufacturer's base suggested retail price is unavailable or otherwise unascertainable at the time of initial registration in this state, the department shall determine a value equivalent to a manufacturer's base suggested retail price as follows:

(a) The department shall determine a value using any information that may be available, including any guidebook, report, or compendium of recognized standing in the automotive industry or the selling price and year of sale of the vehicle. The department may use an appraisal by the county assessor. In valuing a vehicle for which the current value or selling price is not indicative of the value of similar vehicles of the same year and model, the department shall establish a value that more closely represents the average value of similar vehicles of the same year and model.

(b) The value determined in (a) of this subsection shall be divided by the applicable percentage listed in this subsection to establish a value equivalent to a manufacturer's base suggested retail price. The applicable percentage shall be based on the year of service of the vehicle for which the value is determined.

YEAR OF SERVICE	PERCENTAGE
1	100
2	((100)) 95
3	((95)) 89
4	83
5	74
6	65
7	57
8	48
9	40

10	31
11	22
12	14
13 or older	10

(4) For purposes of this chapter, value shall exclude value attributable to modifications of a motor vehicle and equipment that are designed to facilitate the use or operation of the motor vehicle by a handicapped person.

Sec. 5. RCW 82.44.110 and 1997 c 338 s 68 are each amended to read as follows:

The county auditor shall regularly, when remitting license fee receipts, pay over and account to the director of licensing for the excise taxes collected under the provisions of this chapter. The director shall forthwith transmit the excise taxes to the state treasurer.

(1) The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(1) as follows:

(a) ~~((1.60))~~ 1.455 percent into the motor vehicle fund through June 30, 1999, and 1.71 percent beginning July 1, 1999, to defray administrative and other expenses incurred by the department in the collection of the excise tax.

(b) ~~((8.15))~~ 7.409 percent into the Puget Sound capital construction account in the motor vehicle fund through June 30, 1999, and 8.712 percent beginning July 1, 1999.

(c) ~~((4.07))~~ 3.70 percent into the Puget Sound ferry operations account in the motor vehicle fund through June 30, 1999, and 4.351 percent beginning July 1, 1999.

(d) ~~((5.88))~~ 5.345 percent into the ~~((general fund to be distributed))~~ city police and fire protection assistance account under RCW 82.44.155 through June 30, 1999, and 6.286 percent beginning July 1, 1999.

(e) ~~((4.75))~~ 4.318 percent into the municipal sales and use tax equalization account ~~((in the general fund))~~ created in RCW 82.14.210 through June 30, 1999, and 5.628 percent beginning July 1, 1999.

(f) ~~((1.60))~~ 1.455 percent into the county sales and use tax equalization account ~~((in the general fund))~~ created in RCW 82.14.200 through June 30, 1999, and 1.71 percent beginning July 1, 1999.

(g) ~~((62.6440))~~ 13.573 percent into the general fund through June 30, ~~((1995; and 57.6440 percent into the general fund beginning July 1, 1995))~~ 1999.

(h) ~~((5))~~ 43.605 percent into the transportation fund created in RCW 82.44.180 through June 30, 1999, and 51.203 percent beginning July 1, ((1995)) 1999.

(i) ~~((5.9686))~~ 5.426 percent into the county criminal justice assistance account created in RCW 82.14.310 through June 30, 1999, and 3.892 percent beginning July 1, 1999.

(j) ~~((1-1937))~~ 1.085 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.320 through June 30, 1999, and 0.778 percent beginning July 1, 1999.

(k) ~~((1-1937))~~ 1.085 percent into the municipal criminal justice assistance account for distribution under RCW 82.14.330 through June 30, 1999, and 0.778 percent beginning July 1, 1999.

(l) ~~((2-95))~~ 2.682 percent into the county public health account created in RCW 70.05.125 through June 30, 1999, and 3.153 percent beginning July 1, 1999.

(m) 8.862 percent into the motor vehicle fund through June 30, 1999, and 10.422 percent beginning July 1, 1999.

(n) 1.377 percent into the distressed county assistance account under section 10 of this act beginning July 1, 1999.

Notwithstanding (i) through (k) of this subsection, ~~((no more than sixty million dollars shall be deposited into the accounts specified in (i) through (k) of this subsection for the period January 1, 1994, through June 30, 1995. Not more than five percent of the funds deposited to these accounts shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Motor vehicle excise tax funds appropriated for such enhancements shall not supplant existing funds from the state general fund. For the fiscal year ending June 30, 1998, and))~~ for each fiscal year ~~((thereafter))~~ through fiscal year 1999, the amounts deposited into the accounts specified in (i) through (k) of this subsection shall not increase by more than the amounts deposited into those accounts in the previous fiscal year increased by the implicit price deflator for the previous fiscal year. Any revenues in excess of this amount shall be deposited into the violence reduction and drug enforcement account.

(2) ~~((The state treasurer shall deposit the excise taxes collected under RCW 82.44.020(2) into the transportation fund:~~

~~—(3)))~~ The state treasurer shall deposit the excise tax imposed by RCW 82.44.020~~((3))~~ (2) into the air pollution control account ~~created by RCW 70.94.015.~~

Sec. 6. RCW 82.44.150 and 1995 2nd sp.s. c 14 s 538 are each amended to read as follows:

(1) The director of licensing shall, on the twenty-fifth day of February, May, August, and November of each year, advise the state treasurer of the total amount of motor vehicle excise taxes imposed by RCW 82.44.020 (1) ~~((and (2)))~~ remitted to the department during the preceding calendar quarter ending on the last day of March, June, September, and December, respectively, except for those payable under RCW 82.44.030, from motor vehicle owners residing within each municipality which has levied a tax under RCW 35.58.273, which amount of excise taxes shall be determined by the director as follows:

The total amount of motor vehicle excise taxes remitted to the department, except those payable under RCW 82.44.020~~((3))~~ (2) and 82.44.030, from each county shall be multiplied by a fraction, the numerator of which is the population

of the municipality residing in such county, and the denominator of which is the total population of the county in which such municipality or portion thereof is located. The product of this computation shall be the amount of excise taxes from motor vehicle owners residing within such municipality or portion thereof. Where the municipality levying a tax under RCW 35.58.273 is located in more than one county, the above computation shall be made by county, and the combined products shall provide the total amount of motor vehicle excise taxes from motor vehicle owners residing in the municipality as a whole. Population figures required for these computations shall be supplied to the director by the office of financial management, who shall adjust the fraction annually.

(2) On the first day of the months of January, April, July, and October of each year, the state treasurer based upon information provided by the department shall, from motor vehicle excise taxes deposited in the ~~((general fund, under RCW 82.44.110(1)(g)))~~ transportation fund under RCW 82.44.110, make the following deposits:

(a) To the high capacity transportation account created in RCW 47.78.010, a sum equal to four and five-tenths percent of the special excise tax levied under RCW 35.58.273 by those municipalities authorized to levy a special excise tax within each county that has a population of one hundred seventy-five thousand or more and has an interstate highway within its borders; except that in a case of a municipality located in a county that has a population of one hundred seventy-five thousand or more that does not have an interstate highway located within its borders, that sum shall be deposited in the passenger ferry account;

(b) To the central Puget Sound public transportation account created in RCW 82.44.180, ~~((for revenues distributed after December 31, 1992,))~~ within a county with a population of one million or more and a county with a population of from two hundred thousand to less than one million bordering a county with a population of one million or more, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(b) applies; however, any transfer under this subsection (2)(b) must be greater than zero; and

(c) To the public transportation systems account created in RCW 82.44.180, ~~((for revenues distributed after December 31, 1992,))~~ within counties not described in (b) of this subsection, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise

tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent and been able to match with locally generated tax revenues, other than the excise tax imposed under RCW 35.58.273, budgeted for any public transportation purpose. Before this deposit, the sum shall be reduced by an amount equal to the amount distributed under (a) of this subsection for each of the municipalities within the counties to which this subsection (2)(c) applies; however, any transfer under this subsection (2)(c) must be greater than zero(—and ~~—(d) To the general fund, for revenues distributed after June 30, 1993, and to the transportation fund, for revenues distributed after June 30, 1995, a sum equal to the difference between (i) the special excise tax levied and collected under RCW 35.58.273 by those municipalities authorized to levy and collect a special excise tax subject to the requirements of subsections (3) and (4) of this section and (ii) the special excise tax that the municipality would otherwise have been eligible to levy and collect at a tax rate of .815 percent notwithstanding the requirements set forth in subsections (3) through (6) of this section, reduced by an amount equal to distributions made under (a), (b), and (c) of this subsection and RCW 82.14.046).~~).

(3) On the first day of the months of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, shall remit motor vehicle excise tax revenues imposed and collected under RCW 35.58.273 as follows:

(a) The amount required to be remitted by the state treasurer to the treasurer of any municipality levying the tax shall not exceed in any calendar year the amount of locally-generated tax revenues, excluding (i) the excise tax imposed under RCW 35.58.273 for the purposes of this section, which shall have been budgeted by the municipality to be collected in such calendar year for any public transportation purposes including but not limited to operating costs, capital costs, and debt service on general obligation or revenue bonds issued for these purposes; and (ii) the sales and use tax equalization distributions provided under RCW 82.14.046; and

(b) In no event may the amount remitted in a single calendar quarter exceed the amount collected on behalf of the municipality under RCW 35.58.273 during the calendar quarter next preceding the immediately preceding quarter, excluding the sales and use tax equalization distributions provided under RCW 82.14.046.

(4) At the close of each calendar year accounting period, but not later than April 1, each municipality that has received motor vehicle excise taxes under subsection (3) of this section shall transmit to the director of licensing and the state auditor a written report showing by source the previous year's budgeted tax revenues for public transportation purposes as compared to actual collections. Any municipality that has not submitted the report by April 1 shall cease to be eligible to receive motor vehicle excise taxes under subsection (3) of this section until the report is received by the director of licensing. If a municipality has received more or less money under subsection (3) of this section for the period covered by the report than it is entitled to receive by reason of its locally-

generated collected tax revenues, the director of licensing shall, during the next ensuing quarter that the municipality is eligible to receive motor vehicle excise tax funds, increase or decrease the amount to be remitted in an amount equal to the difference between the locally-generated budgeted tax revenues and the locally-generated collected tax revenues. In no event may the amount remitted for a calendar year exceed the amount collected on behalf of the municipality under RCW 35.58.273 during that same calendar year excluding the sales and use tax equalization distributions provided under RCW 82.14.046. At the time of the next fiscal audit of each municipality, the state auditor shall verify the accuracy of the report submitted and notify the director of licensing of any discrepancies.

(5) The motor vehicle excise taxes imposed under RCW 35.58.273 and required to be remitted under this section and RCW 82.14.046 shall be remitted without legislative appropriation.

(6) Any municipality levying and collecting a tax under RCW 35.58.273 which does not have an operating, public transit system or a contract for public transportation services in effect within one year from the initial effective date of the tax shall return to the state treasurer all motor vehicle excise taxes received under subsection (3) of this section.

Sec. 7. RCW 82.14.045 and 1991 c 363 s 158 are each amended to read as follows:

(1) The legislative body of any city pursuant to RCW 35.92.060, of any county which has created an unincorporated transportation benefit area pursuant to RCW 36.57.100 and 36.57.110, of any public transportation benefit area pursuant to RCW 36.57A.080 and 36.57A.090, of any county transportation authority established pursuant to chapter 36.57 RCW, and of any metropolitan municipal corporation within a county with a population of one million or more pursuant to chapter 35.58 RCW, may, by resolution or ordinance for the sole purpose of providing funds for the operation, maintenance, or capital needs of public transportation systems and in lieu of the excise taxes authorized by RCW 35.95.040, submit an authorizing proposition to the voters or include such authorization in a proposition to perform the function of public transportation and if approved by a majority of persons voting thereon, fix and impose a sales and use tax in accordance with the terms of this chapter: **PROVIDED**, That no such legislative body shall impose such a sales and use tax without submitting such an authorizing proposition to the voters and obtaining the approval of a majority of persons voting thereon: **PROVIDED FURTHER**, That where such a proposition is submitted by a county on behalf of an unincorporated transportation benefit area, it shall be voted upon by the voters residing within the boundaries of such unincorporated transportation benefit area and, if approved, the sales and use tax shall be imposed only within such area. Notwithstanding any provisions of this section to the contrary, any county in which a county public transportation plan has been adopted pursuant to RCW 36.57.070 and the voters of such county have authorized the imposition of a sales and use tax pursuant to the provisions of section 10, chapter 167, Laws of 1974 ex. sess., prior to July 1, 1975, shall be

authorized to fix and impose a sales and use tax as provided in this section at not to exceed the rate so authorized without additional approval of the voters of such county as otherwise required by this section.

The tax authorized pursuant to this section shall be in addition to the tax authorized by RCW 82.14.030 and shall be collected from those persons who are taxable by the state pursuant to chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within such city, public transportation benefit area, county, or metropolitan municipal corporation as the case may be. The rate of such tax shall be one-tenth, two-tenths, three-tenths, four-tenths, five-tenths, or six-tenths of one percent of the selling price (in the case of a sales tax) or value of the article used (in the case of a use tax). The rate of such tax shall not exceed the rate authorized by the voters unless such increase shall be similarly approved.

(2)(a) In the event a metropolitan municipal corporation shall impose a sales and use tax pursuant to this chapter no city, county which has created an unincorporated transportation benefit area, public transportation benefit area authority, or county transportation authority wholly within such metropolitan municipal corporation shall be empowered to levy and/or collect taxes pursuant to RCW 35.58.273, 35.95.040, and/or 82.14.045, but nothing herein shall prevent such city or county from imposing sales and use taxes pursuant to any other authorization.

(b) In the event a county transportation authority shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, public transportation benefit area, or metropolitan municipal corporation, located within the territory of the authority, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(c) In the event a public transportation benefit area shall impose a sales and use tax pursuant to this section, no city, county which has created an unincorporated transportation benefit area, or metropolitan municipal corporation, located wholly or partly within the territory of the public transportation benefit area, shall be empowered to levy or collect taxes pursuant to RCW 35.58.273, 35.95.040, or 82.14.045.

(3) Any local sales and use tax revenue collected pursuant to this section by any city or by any county for transportation purposes pursuant to RCW 36.57.100 and 36.57.110 shall not be counted as locally generated tax revenues for the purposes of apportionment and distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized pursuant to RCW 35.58.273, except that the local sales and use tax revenue collected under this section by a city with a population greater than sixty thousand that as of January 1, 1998, owns and operates a municipal public transportation system shall be counted as locally generated tax revenues for the purposes of apportionment and distribution, in the manner prescribed by chapter 82.44 RCW, of the proceeds of the motor vehicle excise tax authorized under RCW 35.58.273 as follows:

(a) For fiscal year 2000, revenues collected under this section shall be counted as locally generated tax revenues for up to 25 percent of the tax collected under RCW 35.58.273;

(b) For fiscal year 2001, revenues collected under this section shall be counted as locally generated tax revenues for up to 50 percent of the tax collected under RCW 35.58.273;

(c) For fiscal year 2002, revenues collected under this section shall be counted as locally generated tax revenues for up to 75 percent of the tax collected under RCW 35.58.273; and

(d) For fiscal year 2003 and thereafter, revenues collected under this section shall be counted as locally generated tax revenues for up to 100 percent of the tax collected under RCW 35.58.273.

Sec. 8. RCW 82.14.200 and 1997 c 333 s 2 are each amended to read as follows:

There is created in the state treasury a special account to be known as the "county sales and use tax equalization account." Into this account shall be placed a portion of all motor vehicle excise tax receipts as provided in RCW 82.44.110(~~(+)(f)~~). Funds in this account shall be allocated by the state treasurer according to the following procedure:

(1) Prior to April 1st of each year the director of revenue shall inform the state treasurer of the total and the per capita levels of revenues for the unincorporated area of each county and the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties imposing the sales and use tax authorized under RCW 82.14.030(1) for the previous calendar year.

(2) At such times as distributions are made under RCW 82.44.150, (~~as now or hereafter amended;~~) the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than one hundred fifty thousand dollars from the tax for the previous calendar year, an amount from the county sales and use tax equalization account sufficient, when added to the amount of revenues received the previous calendar year by the county, to equal one hundred fifty thousand dollars.

The department of revenue shall establish a governmental price index as provided in this subsection. The base year for the index shall be the end of the third quarter of 1982. Prior to November 1, 1983, and prior to each November 1st thereafter, the department of revenue shall establish another index figure for the third quarter of that year. The department of revenue may use the implicit price deflators for state and local government purchases of goods and services calculated by the United States department of commerce to establish the governmental price index. Beginning on January 1, 1984, and each January 1st thereafter, the one hundred fifty thousand dollar base figure in this subsection shall be adjusted in direct proportion to the percentage change in the governmental price index from 1982 until the year before the adjustment.

Distributions made under this subsection for 1984 and thereafter shall use this adjusted base amount figure.

(3) Subsequent to the distributions under subsection (2) of this section and at such times as distributions are made under RCW 82.44.150, (~~as now or hereafter amended;~~) the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(1) at the maximum rate and receiving less than seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties as determined by the department of revenue under subsection (1) of this section, an amount from the county sales and use tax equalization account sufficient, when added to the per capita level of revenues for the unincorporated area received the previous calendar year by the county, to equal seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties determined under subsection (1) of this section, subject to reduction under subsections (6) and (7) of this section. When computing distributions under this section, any distribution under subsection (2) of this section shall be considered revenues received from the tax imposed under RCW 82.14.030(1) for the previous calendar year.

(4) Subsequent to the distributions under subsection (3) of this section and at such times as distributions are made under RCW 82.44.150, (~~as now or hereafter amended;~~) the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (2) of this section, a third distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (2) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the total distribution under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(5) Subsequent to the distributions under subsection (4) of this section and at such times as distributions are made under RCW 82.44.150, (~~as now or hereafter amended;~~) the state treasurer shall apportion to each county imposing the sales and use tax under RCW 82.14.030(2) at the maximum rate and receiving a distribution under subsection (3) of this section, a fourth distribution from the county sales and use tax equalization account. The distribution to each qualifying county shall be equal to the distribution to the county under subsection (3) of this section, subject to the reduction under subsections (6) and (7) of this section. To qualify for the distributions under this subsection, the county must impose the tax under RCW 82.14.030(2) for the entire calendar year. Counties imposing the tax for less than the full year shall qualify for prorated allocations under this subsection proportionate to the number of months of the year during which the tax is imposed.

(6) Revenues distributed under subsections (2) through (5) of this section in any calendar year shall not exceed an amount equal to seventy percent of the state-wide weighted average per capita level of revenues for the unincorporated areas of all counties during the previous calendar year. If distributions under subsections (3) through (5) of this section cannot be made because of this limitation, then distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties.

(7) If inadequate revenues exist in the county sales and use tax equalization account to make the distributions under subsections (3) through (5) of this section, then the distributions under subsections (3) through (5) of this section shall be reduced ratably among the qualifying counties. At such time during the year as additional funds accrue to the county sales and use tax equalization account, additional distributions shall be made under subsections (3) through (5) of this section to the counties.

(8) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) of this section, at such times as distributions are made under RCW 82.44.150, the state treasurer shall apportion an amount to the county public health account created in RCW 70.05.125 equal to the adjustment under RCW 70.05.125(2)(b).

(9) If the level of revenues in the county sales and use tax equalization account exceeds the amount necessary to make the distributions under subsections (2) through (5) and (8) of this section, then the additional revenues shall be credited and transferred ~~((to the state general fund))~~ as follows:

(a) Fifty percent to the public facilities construction loan revolving account under RCW 43.160.080; and

(b) Fifty percent to the distressed county public facilities construction loan account under section 9 of this act, or so much thereof as will not cause the balance in the account to exceed twenty-five million dollars. Any remaining funds shall be deposited into the public facilities construction loan revolving account.

NEW SECTION. Sec. 9. A new section is added to chapter 43.160 RCW to read as follows:

The distressed county public facilities construction loan account is created in the state treasury. All funds provided under RCW 82.14.200 shall be deposited in the account. Moneys in the account may be spent only after appropriation. Moneys in the account shall only be used to provide financial assistance under this chapter to distressed counties that have experienced extraordinary costs due to the location of a major new business facility or the substantial expansion of an existing business facility in the county.

For purposes of this section, the term "distressed counties" includes any county in which the average level of unemployment for the three years before the year in which an application for financial assistance is filed exceeds the average state employment for those years by twenty percent.

NEW SECTION. **Sec. 10.** A new section is added to chapter 82.14 RCW 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 in the same proportions as distributions of the tax imposed under RCW 82.14.370 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.

Sec. 11. RCW 82.14.310 and 1995 c 398 s 11 are each amended to read as follows:

(1) The county criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall transfer into the county criminal justice assistance account from the general fund the sum of twenty-three million two hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) The moneys deposited in the county criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under ~~((RCW 82.44.110))~~ subsection (4) of this section, shall be distributed at such times as distributions are made under RCW 82.44.150 and on the relative basis of each county's funding factor as determined under this subsection.

(a) A county's funding factor is the sum of:

(i) The population of the county, divided by one thousand, and multiplied by two-tenths;

(ii) The crime rate of the county, multiplied by three-tenths; and

(iii) The annual number of criminal cases filed in the county superior court, for each one thousand in population, multiplied by five-tenths.

(b) Under this section and RCW 82.14.320 and 82.14.330:

(i) The population of the county or city shall be as last determined by the office of financial management;

(ii) The crime rate of the county or city is the annual occurrence of specified criminal offenses, as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs, for each one thousand in population;

(iii) The annual number of criminal cases filed in the county superior court shall be determined by the most recent annual report of the courts of Washington, as published by the office of the administrator for the courts;

(iv) Distributions and eligibility for distributions in the 1989-91 biennium shall be based on 1988 figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection. Future distributions shall be based on the most recent figures for both the crime rate as described under (ii) of this subsection and the annual number of criminal cases that are filed as described under (iii) of this subsection.

(3) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(4) Not more than five percent of the funds deposited to the county criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund.

Sec. 12. RCW 82.14.320 and 1995 c 398 s 12 and 1995 c 312 s 84 are each reenacted and amended to read as follows:

(1) The municipal criminal justice assistance account is created in the state treasury. Beginning in fiscal year 2000, the state treasurer shall transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year.

(2) No city may receive a distribution under this section from the municipal criminal justice assistance account unless:

(a) The city has a crime rate in excess of one hundred twenty-five percent of the state-wide average as calculated in the most recent annual report on crime in Washington state as published by the Washington association of sheriffs and police chiefs;

(b) The city has levied the tax authorized in RCW 82.14.030(2) at the maximum rate or the tax authorized in RCW 82.46.010(3) at the maximum rate; and

(c) The city has a per capita yield from the tax imposed under RCW 82.14.030(1) at the maximum rate of less than one hundred fifty percent of the state-wide average per capita yield for all cities from such local sales and use tax.

(3) The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under ~~((RCW 82.44.110))~~ subsection (7) of this section, shall be distributed at such times as distributions are made under RCW 82.44.150. The distributions shall be made as follows:

(a) Unless reduced by this subsection, thirty percent of the moneys shall be distributed ratably based on population as last determined by the office of financial management to those cities eligible under subsection (2) of this section that have a crime rate determined under subsection (2)(a) of this section which is greater than one hundred seventy-five percent of the state-wide average crime rate. No city may receive more than fifty percent of any moneys distributed under this subsection (a) but, if a city distribution is reduced as a result of exceeding the fifty percent limitation, the amount not distributed shall be distributed under (b) of this subsection.

(b) The remainder of the moneys, including any moneys not distributed in subsection (2)(a) of this section, shall be distributed to all cities eligible under subsection (2) of this section ratably based on population as last determined by the office of financial management.

(4) No city may receive more than thirty percent of all moneys distributed under subsection (3) of this section.

(5) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(6) Moneys distributed under this section shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020, and publications and public educational efforts designed to provide information and assistance to parents in dealing with runaway or at-risk youth. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for

criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(7) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund.

Sec. 13. RCW 82.14.330 and 1995 c 398 s 13 are each amended to read as follows:

(1) Beginning in fiscal year 2000, the state treasurer shall transfer into the municipal criminal justice assistance account for distribution under this section from the general fund the sum of four million six hundred thousand dollars divided into four equal deposits occurring on July 1, October 1, January 1, and April 1. For each fiscal year thereafter, the state treasurer shall increase the total transfer by the fiscal growth factor, as defined in RCW 43.135.025, forecast for that fiscal year by the office of financial management in November of the preceding year. The moneys deposited in the municipal criminal justice assistance account for distribution under this section, less any moneys appropriated for purposes under (~~RCW 82.44.110~~) subsection (4) of this section, shall be distributed to the cities of the state as follows:

(a) Twenty percent appropriated for distribution shall be distributed to cities with a three-year average violent crime rate for each one thousand in population in excess of one hundred fifty percent of the state-wide three-year average violent crime rate for each one thousand in population. The three-year average violent crime rate shall be calculated using the violent crime rates for each of the preceding three years from the annual reports on crime in Washington state as published by the Washington association of sheriffs and police chiefs. Moneys shall be distributed under this subsection (1)(a) ratably based on population as last determined by the office of financial management, but no city may receive more than one dollar per capita. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

(b) Sixteen percent shall be distributed to cities ratably based on population as last determined by the office of financial management, but no city may receive less than one thousand dollars.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection shall be distributed at such times as distributions are made under RCW 82.44.150.

Moneys distributed under this subsection shall be expended exclusively for criminal justice purposes and shall not be used to replace or supplant existing funding. Criminal justice purposes are defined as activities that substantially

assist the criminal justice system, which may include circumstances where ancillary benefit to the civil justice system occurs, and which includes domestic violence services such as those provided by domestic violence programs, community advocates, and legal advocates, as defined in RCW 70.123.020. Existing funding for purposes of this subsection is defined as calendar year 1989 actual operating expenditures for criminal justice purposes. Calendar year 1989 actual operating expenditures for criminal justice purposes exclude the following: Expenditures for extraordinary events not likely to reoccur, changes in contract provisions for criminal justice services, beyond the control of the local jurisdiction receiving the services, and major nonrecurring capital expenditures.

(2) In addition to the distributions under subsection (1) of this section:

(a) Fourteen percent shall be distributed to cities that have initiated innovative law enforcement strategies, including alternative sentencing and crime prevention programs. No city may receive more than one dollar per capita under this subsection (2)(a).

(b) Twenty percent shall be distributed to cities that have initiated programs to help at-risk children or child abuse victim response programs. No city may receive more than fifty cents per capita under this subsection (2)(b).

(c) Twenty percent shall be distributed to cities that have initiated programs designed to reduce the level of domestic violence within their jurisdictions or to provide counseling for domestic violence victims. No city may receive more than fifty cents per capita under this subsection (2)(c).

(d) Ten percent shall be distributed to cities that contract with another governmental agency for a majority of the city's law enforcement services.

Moneys distributed under this subsection shall be distributed to those cities that submit funding requests under this subsection to the department of community, trade, and economic development based on criteria developed under RCW 82.14.335. Allocation of funds shall be in proportion to the population of qualified jurisdictions, but the distribution to a city shall not exceed the amount of funds requested. Cities shall submit requests for program funding to the department of community, trade, and economic development by November 1 of each year for funding the following year. The department shall certify to the state treasurer the cities eligible for funding under this subsection and the amount of each allocation.

The moneys deposited in the municipal criminal justice assistance account for distribution under this subsection, less any moneys appropriated for purposes under ~~((RCW 82.44.110))~~ subsection (4) of this section, shall be distributed at the times as distributions are made under RCW 82.44.150. Moneys remaining undistributed under this subsection at the end of each calendar year shall be distributed to the criminal justice training commission to reimburse participating city law enforcement agencies with ten or fewer full-time commissioned patrol officers the cost of temporary replacement of each officer who is enrolled in basic law enforcement training, as provided in RCW 43.101.200.

If a city is found by the state auditor to have expended funds received under this subsection in a manner that does not comply with the criteria under which the moneys were received, the city shall be ineligible to receive future distributions under this subsection until the use of the moneys are justified to the satisfaction of the director or are repaid to the state general fund. The director may allow noncomplying use of moneys received under this subsection upon a showing of hardship or other emergent need.

(3) Notwithstanding other provisions of this section, the distributions to any city that substantially decriminalizes or repeals its criminal code after July 1, 1990, and that does not reimburse the county for costs associated with criminal cases under RCW 3.50.800 or 3.50.805(2), shall be made to the county in which the city is located.

(4) Not more than five percent of the funds deposited to the municipal criminal justice assistance account shall be available for appropriations for enhancements to the state patrol crime laboratory system and the continuing costs related to these enhancements. Funds appropriated from this account for such enhancements shall not supplant existing funds from the state general fund.

NEW SECTION. Sec. 14. A new section is added to chapter 43.135 RCW to read as follows:

(1) Initiative Measure No. 601 (chapter 43.135 RCW, as amended by chapter . . . , Laws of 1998 (this act) and the amendatory changes enacted by section 6, chapter 2, Laws of 1994) is hereby reenacted and reaffirmed. The legislature also adopts this act to continue the general fund revenue and expenditure limitations contained in this chapter 43.135 RCW after this one-time transfer of funds.

(2) RCW 43.135.035(4) does not apply to sections 5 through 13, chapter . . . , Laws of 1998 (sections 5 through 13 of this act).

Sec. 15. RCW 43.135.060 and 1994 c 2 s 5 are each amended to read as follows:

(1) After July 1, 1995, the legislature shall not impose responsibility for new programs or increased levels of service under existing programs on any political subdivision of the state unless the subdivision is fully reimbursed (~~by specific appropriation~~) by the state for the costs of the new programs or increases in service levels. Reimbursement by the state may be made by: (a) A specific appropriation; or (b) increases in state distributions of revenue to political subdivisions occurring after January 1, 1998.

(2) If by order of any court, or legislative enactment, the costs of a federal or local government program are transferred to or from the state, the otherwise applicable state expenditure limit shall be increased or decreased, as the case may be, by the dollar amount of the costs of the program.

(3) The legislature, in consultation with the office of financial management or its successor agency, shall determine the costs of any new programs or increased levels of service under existing programs imposed on any political subdivision or transferred to or from the state.

(4) Subsection (1) of this section does not apply to the costs incurred for voting devices or machines under RCW 29.04.200.

NEW SECTION. Sec. 16. In order to provide funds necessary for the location, design, right of way, and construction of state and local highway improvements, there shall be issued and sold upon the request of the Washington state transportation commission a maximum of one billion nine hundred million dollars of general obligation bonds of the state of Washington.

NEW SECTION. Sec. 17. Upon the request of the transportation commission, the state finance committee shall supervise and provide for the issuance, sale, and retirement of the bonds authorized by sections 16 through 21 of this act in accordance with chapter 39.42 RCW. Bonds authorized by sections 16 through 21 of this act shall be sold in such manner, at such time or times, in such amounts, and at such price as the state finance committee shall determine. No such bonds may be offered for sale without prior legislative appropriation of the net proceeds of the sale of the bonds.

The state finance committee shall consider the issuance of short-term obligations in lieu of long-term obligations for the purposes of more favorable interest rates, lower total interest costs, and increased marketability and for the purpose of retiring the bonds during the life of the project for which they were issued.

NEW SECTION. Sec. 18. The proceeds from the sale of bonds authorized by sections 16 through 21 of this act shall be deposited in the motor vehicle fund. The proceeds shall be available only for the purposes enumerated in section 16 of this act, for the payment of bond anticipation notes, if any, and for the payment of bond issuance costs, including the costs of underwriting.

NEW SECTION. Sec. 19. Bonds issued under the authority of sections 16 through 21 of this act shall distinctly state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay such principal and interest as the same shall become due. The principal and interest on the bonds shall be first payable in the manner provided in sections 16 through 21 of this act from the proceeds of the state excise taxes on motor vehicle and special fuels imposed by chapters 82.36 and 82.38 RCW. Proceeds of such excise taxes are hereby pledged to the payment of any bonds and the interest thereon issued under the authority of sections 16 through 21 of this act, and the legislature agrees to continue to impose these excise taxes on motor vehicle and special fuels in amounts sufficient to pay, when due, the principal and interest on all bonds issued under the authority of sections 16 through 21 of this act.

NEW SECTION. Sec. 20. Both principal and interest on the bonds issued for the purposes of sections 16 through 21 of this act shall be payable from the highway bond retirement fund. The state finance committee may provide that a

special account be created in the fund to facilitate payment of the principal and interest. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required for principal and interest on the bonds in accordance with the bond proceedings. The state treasurer shall withdraw revenues from the motor vehicle fund and deposit in the highway bond retirement fund, or a special account in the fund, such amounts, and at such times, as are required by the bond proceedings.

Any funds required for bond retirement or interest on the bonds authorized by sections 16 through 21 of this act shall 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 which is, or may be, appropriated to the department of transportation for state highway purposes. Funds required shall never constitute a charge against any other allocations of motor vehicle fuel and special fuel tax revenues to the state, counties, cities and towns unless the amount arising from excise taxes on motor vehicle and special fuels distributed to the state in the motor vehicle fund proves insufficient to meet the requirements for bond retirement or interest on any such bonds.

Any payments for bond retirement or interest on the bonds taken from other revenues from the motor vehicle fuel or special fuel taxes that are distributable to the state, counties, cities, and towns, shall be repaid from the first revenues from the motor vehicle fuel or special fuel taxes distributed to the motor vehicle fund not required for bond retirement or interest on the bonds.

NEW SECTION. Sec. 21. Bonds issued under the authority of sections 16 through 20 of this act and this section and any other general obligation bonds of the state of Washington that have been or that may be authorized and that pledge motor vehicle and special fuels excise taxes for the payment of principal and interest thereon shall be an equal charge against the revenues from such motor vehicle and special fuels excise taxes.

***NEW SECTION.** Sec. 22. (1) *A joint committee is created to study the long-term transportation funding needs in the state. The committee shall consist of twenty members as follows:*

(a) The chairpersons of the house transportation policy and budget committee and the senate transportation committee shall each appoint four of the members of their respective committees to serve on the joint committee. Of these, the chairpersons shall each appoint two members to represent the majority caucus and two members to represent the minority caucus. The chairpersons of the senate ways and means committee and the house appropriations committee shall each appoint one of the members of their respective committees to serve on the joint committee.

(b) The governor shall appoint one member to serve on the joint committee.

(c) The association of Washington counties shall appoint two members to the committee. One member shall be appointed to represent small counties and one member shall be appointed to represent large counties.

(d) The association of Washington cities shall appoint two members to the committee. One member shall be appointed to represent small cities and towns and one member shall be appointed to represent large cities.

(e) The majority and minority leaders of the house of representatives and the senate shall each appoint one member to represent business and the governor shall appoint one member to represent business for a total of five members representing business.

The members of the joint committee shall elect a chairperson from the membership of the committee.

(2) The committee shall study the transportation needs of state and local government with the objective of developing a fair and predictable long-term funding system for state and local transportation needs, including any appropriate reforms and reprioritizations. The study may address differential funding sources for urban congestion districts, local option funding including possible modifications to the current local option taxing authority of counties and cities, public-private partnerships for new transportation projects, improvements to freight mobility, streamlining categorical funding mechanisms to emphasize high priority projects, and increased certainty from setting time limits on permitting processes.

(3) The office of financial management, the department of licensing, the department of community, trade, and economic development, and the department of transportation shall provide assistance to the joint committee as needed.

(4) The joint committee shall provide an interim progress report to the governor and the house and senate fiscal committees by December 1, 1998. The joint committee shall provide a final report of its findings and recommendations to the governor and the house and senate fiscal committees by December 1, 1999.

*Sec. 22 was vetoed. See message at end of chapter.

Sec. 23. RCW 82.50.410 and 1991 c 199 s 225 are each amended to read as follows:

The rate and measure of tax imposed by RCW 82.50.400 for each registration year shall be one and one-tenth percent (~~(, and a surcharge of one-tenth of one percent;)~~) of the value of the travel trailer or camper, as determined in the manner provided in this chapter: PROVIDED, That the excise tax upon a travel trailer or camper licensed for the first time in this state after the last day of any registration month may only be levied for the remaining months of the registration year including the month in which the travel trailer or camper is first licensed: PROVIDED FURTHER, That the minimum amount of tax payable shall be two dollars: PROVIDED FURTHER, That every dealer in mobile homes or travel trailers, for the privilege of using any mobile home or travel trailer eligible to be used under a dealer's license plate, shall pay an excise tax of two dollars, and such tax shall be collected upon the issuance of each original dealer's license plate, and also a similar tax shall be collected upon the issuance of each dealer's duplicate

license plate, which taxes shall be in addition to any tax otherwise payable under this chapter.

A travel trailer or camper shall be deemed licensed for the first time in this state when such vehicle was not previously licensed by this state for the registration year or any part thereof immediately preceding the registration year in which application for license is made or when it has been registered in another jurisdiction subsequent to any prior registration in this state.

Sec. 24. RCW 82.50.510 and 1991 c 199 s 227 are each amended to read as follows:

The county auditor shall regularly, when remitting motor vehicle excise taxes, pay to the state treasurer the excise taxes imposed by RCW 82.50.400. The treasurer shall then distribute such funds quarterly on the first day of the month of January, April, July and October of each year in the following amount:

(1) ~~((For the one percent tax imposed under RCW 82.50.410, fifteen))~~ 13.64 percent to cities and towns for the use thereof apportioned ratably among such cities and towns on the basis of population; ~~((fifteen))~~

(2) 13.64 percent to counties for the use thereof to be apportioned ratably among such counties on the basis of moneys collected in such counties from the excise taxes imposed under this chapter; ~~((and seventy))~~

(3) 63.64 percent for schools to be deposited in the state general fund; and ~~((2) for the one-tenth of one percent surcharge imposed under RCW 82.50.410, one hundred))~~ (4) 9.08 percent to the transportation fund created in RCW 82.44.180.

Sec. 25. RCW 35.58.273 and 1992 c 194 s 11 are each amended to read as follows:

(1) ~~((Through June 30, 1992, any municipality, as defined in this subsection, is authorized to levy and collect a special excise tax not exceeding .7824 percent and beginning July 1, 1992, .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one dollar and, subject to RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020(1). As used in this subsection, the term "municipality" means a municipality that is located within (a) each county with a population of two hundred ten thousand or more and (b) each county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand except for those counties that do not border a county with a population as described under subsection (a) of this subsection;~~

~~— (2) Through June 30, 1992, any other))~~ Δ municipality is authorized to levy and collect a special excise tax not exceeding ~~((.815 percent, and beginning July 1, 1992,))~~ .725 percent on the value, as determined under chapter 82.44 RCW, of every motor vehicle owned by a resident of such municipality for the privilege of using such motor vehicle provided that in no event shall the tax be less than one

dollar and, subject to RCW 82.44.150 (3) and (4), the amount of such tax shall be credited against the amount of the excise tax levied by the state under RCW 82.44.020(1). Before utilization of any excise tax moneys collected under authorization of this section for acquisition of right of way or construction of a mass transit facility on a separate right of way the municipality shall adopt rules affording the public an opportunity for "corridor public hearings" and "design public hearings" as herein defined, which rule shall provide in detail the procedures necessary for public participation in the following instances: (a) Prior to adoption of location and design plans having a substantial social, economic or environmental effect upon the locality upon which they are to be constructed or (b) on such mass rapid transit systems operating on a separate right of way whenever a substantial change is proposed relating to location or design in the adopted plan. In adopting rules the municipality shall adhere to the provisions of the Administrative Procedure Act.

~~((3))~~ (2) A "corridor public hearing" is a public hearing that: (a) Is held before the municipality is committed to a specific mass transit route proposal, and before a route location is established; (b) is held to afford an opportunity for participation by those interested in the determination of the need for, and the location of, the mass rapid transit system; (c) provides a public forum that affords a full opportunity for presenting views on the mass rapid transit system route location, and the social, economic and environmental effects on that location and alternate locations: PROVIDED, That such hearing shall not be deemed to be necessary before adoption of an overall mass rapid transit system plan by a vote of the electorate of the municipality.

~~((4))~~ (3) A "design public hearing" is a public hearing that: (a) Is held after the location is established but before the design is adopted; and (b) is held to afford an opportunity for participation by those interested in the determination of major design features of the mass rapid transit system; and (c) provides a public forum to afford a full opportunity for presenting views on the mass rapid transit system design, and the social, economic, environmental effects of that design and alternate designs.

~~((5))~~ (4) A municipality imposing a tax under subsection (1) ~~((or (2)))~~ of this section may also impose a sales and use tax, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the municipality that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 1.944 percent. The rate of tax imposed under this subsection shall bear the same ratio to the 1.944 percent rate authorized that the rate imposed under ((RCW 82.08.020(2) as the excise tax rate imposed under)) subsection (1) of this section bears to the ~~((excise tax))~~ rate ~~((imposed under RCW 82.44.020(1) and (2)))~~ authorized under subsection (1) of this section. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The tax imposed under this section shall be deducted from the amount of tax otherwise due under RCW 82.08.020(2). The revenue

collected under this subsection shall be distributed in the same manner as special excise taxes under subsection((s)) (1) (~~and (2)~~) of this section.

Sec. 26. RCW 35.58.410 and 1993 c 240 s 11 are each amended to read as follows:

(1) On or before the third Monday in June of each year, each metropolitan municipal corporation shall adopt a budget for the following calendar year. Such budget shall include a separate section for each authorized metropolitan function. Expenditures shall be segregated as to operation and maintenance expenses and capital and betterment outlays. Administrative and other expense general to the corporation shall be allocated between the authorized metropolitan functions. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The metropolitan council shall not be required to confine capital or betterment expenditures made from bond proceeds or emergency expenditures to items provided in the budget. The affirmative vote of three-fourths of all members of the metropolitan council shall be required to authorize emergency expenditures.

(2) Subsection (1) of this section shall not apply to a county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW. This subsection (2) shall apply only to each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW.

Each county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall, on or before the third Monday in June of each year, prepare an estimate of all revenues to be collected during the following calendar year, including any surplus funds remaining unexpended from the preceding year for each authorized metropolitan function.

By June 30 of each year, the county shall adopt the rate for sewage disposal that will be charged to component cities and sewer districts during the following budget year.

As long as any general obligation indebtedness remains outstanding that was issued by the metropolitan municipal corporation prior to the assumption by the county, the county shall continue to impose the taxes authorized by RCW 82.14.045 and 35.58.273(~~(5)~~) (4) at the maximum rates and on all of the taxable events authorized by law. If, despite the continued imposition of those taxes, the estimate of revenues made on or before the third Monday in June shows that estimated revenues will be insufficient to make all debt service payments falling due in the following calendar year on all general obligation indebtedness issued by the metropolitan municipal corporation prior to the assumption by the county of the rights, powers, functions, and obligations of the metropolitan municipal corporation, the remaining amount required to make the debt service payments shall be designated as "supplemental income" and shall be obtained from component cities and component counties as provided under RCW 35.58.420.

The county shall prepare and adopt a budget each year in accordance with applicable general law or county charter. If supplemental income has been designated under this subsection, the supplemental income shall be reflected in the budget that is adopted. If during the budget year the actual tax revenues from the taxes imposed under the authority of RCW 82.14.045 and 35.58.273~~(((\$)))~~ (4) exceed the estimates upon which the supplemental income was based, the difference shall be refunded to the component cities and component counties in proportion to their payments promptly after the end of the budget year. A county that has assumed the rights, powers, functions, and obligations of a metropolitan municipal corporation under chapter 36.56 RCW shall not be required to confine capital or betterment expenditures for authorized metropolitan functions from bond proceeds or emergency expenditures to items provided in the budget.

Sec. 27. RCW 43.160.070 and 1997 c 235 s 721 are each amended to read as follows:

Public facilities financial assistance, when authorized by the board, is subject to the following conditions:

(1) The moneys in the public facilities construction loan revolving ~~((fund)) account and the distressed county public facilities construction loan account~~ shall be used solely to fulfill commitments arising from financial assistance authorized in this chapter or, during the 1989-91 fiscal biennium, for economic development purposes as appropriated by the legislature. The total outstanding amount which the board shall dispense at any time pursuant to this section shall not exceed the moneys available from the ~~((fund)) accounts~~. The total amount of outstanding financial assistance in Pierce, King, and Snohomish counties shall never exceed sixty percent of the total amount of outstanding financial assistance disbursed by the board under this chapter without reference to financial assistance provided under section 9 of this act.

(2) On contracts made for public facilities loans the board shall determine the interest rate which loans shall bear. The interest rate shall not exceed ten percent per annum. The board may provide reasonable terms and conditions for repayment for loans as the board determines. The loans shall not exceed twenty years in duration.

(3) Repayments of loans made from the public facilities construction loan revolving account under the contracts for public facilities construction loans shall be paid into the public facilities construction loan revolving ~~((fund)) account~~. Repayments of loans made from the distressed county public facilities construction loan account under the contracts for public facilities construction loans shall be paid into the distressed county public facilities construction loan account. Repayments of loans from moneys from the new appropriation from the public works assistance account for the fiscal biennium ending June 30, 1999, shall be paid into the public works assistance account.

(4) When every feasible effort has been made to provide loans and loans are not possible, the board may provide grants upon finding that unique circumstances exist.

Sec. 28. RCW 43.160.076 and 1997 c 367 s 9 are each amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance in a biennium under this chapter without reference to financial assistance provided under section 9 of this act, the board shall spend at least seventy-five percent for financial assistance for projects in distressed counties or rural natural resources impact areas. For purposes of this section, the term "distressed counties" includes any county, in which the average level of unemployment for the three years before the year in which an application for financial assistance is filed, exceeds the average state employment for those years by twenty percent.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties or rural natural resources impact areas are clearly insufficient to use up the seventy-five percent allocation under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance to projects not located in distressed counties or rural natural resources impact areas.

Sec. 29. 1997 c 367 s 10 (uncodified) is amended to read as follows:

RCW 43.160.076 and section 28 of this act, 1997 c 367 s 9, 1996 c 51 s 7, 1995 c 226 s 15, 1993 c 320 s 5, 1991 c 314 s 24, & 1985 c 446 s 6 are each repealed effective June 30, 2000.

Sec. 30. RCW 43.160.080 and 1992 c 235 s 10 are each amended to read as follows:

There shall be a fund in the state treasury known as the public facilities construction loan revolving account, which shall consist of all moneys collected under this chapter, except moneys of the board collected in connection with the issuance of industrial development revenue bonds and moneys deposited in the distressed county public facilities construction loan account under section 9 of this act, and any moneys appropriated to it by law: PROVIDED, That seventy-five percent of all principal and interest payments on loans made with the proceeds deposited in the account under section 901, chapter 57, Laws of 1983 1st ex. sess. shall be deposited in the general fund as reimbursement for debt service payments on the bonds authorized in RCW 43.83.184. Disbursements from the revolving account shall be on authorization of the board. In order to maintain an effective expenditure and revenue control, the public facilities construction loan revolving account shall be subject in all respects to chapter 43.88 RCW.

Sec. 31. RCW 43.160.210 and 1996 c 290 s 1 and 1996 c 51 s 10 are each reenacted and amended to read as follows:

(1) Except as authorized to the contrary under subsection (2) of this section, from all funds available to the board for financial assistance under this chapter without reference to financial assistance provided under section 9 of this act, the board shall designate at least twenty percent for financial assistance for projects

in distressed counties. For purposes of this section, the term "distressed counties" includes any county, in which: (a) The average level of unemployment for the three years before the year in which an application for financial assistance is filed, exceeds the average state employment for those years by twenty percent; or (b) a county that has a median household income that is less than seventy-five percent of the state median household income for the previous three years.

(2) If at any time during the last six months of a biennium the board finds that the actual and anticipated applications for qualified projects in distressed counties are clearly insufficient to use up the twenty percent allocation under subsection (1) of this section, then the board shall estimate the amount of the insufficiency and during the remainder of the biennium may use that amount of the allocation for financial assistance for projects not located in distressed counties.

Sec. 32. RCW 46.16.068 and 1993 c 123 s 4 are each amended to read as follows:

Trailing units which are subject to RCW 82.44.020(~~(5)~~) (4) shall, upon application, be issued a permanent license plate that is valid until the vehicle is sold, permanently removed from the state, or otherwise disposed of by the registered owner. The fee for this license plate is thirty-six dollars. Upon the sale, permanent removal from the state, or other disposition of a trailing unit bearing a permanent license plate the registered owner is required to return the license plate and registration certificate to the department. Violations of this section or misuse of a permanent license plate may subject the registered owner to prosecution or denial, or both, of future permanent registration of any trailing units. This section does not apply to any trailing units subject to the annual excise taxes prescribed in RCW 82.44.020. The department is authorized to adopt rules to implement this section for leased vehicles and other applications as necessary.

Sec. 33. RCW 70.94.015 and 1993 c 252 s 1 are each amended to read as follows:

(1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(I) and 70.94.154(7), and all receipts from RCW 70.94.650, 70.94.660, 82.44.020(~~(3)~~) (2), and 82.50.405 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation.

Sec. 34. RCW 81.100.060 and 1992 c 194 s 12 are each amended to read as follows:

A county with a population of one million or more and a county with a population of from two hundred ten thousand to less than one million that is adjoining a county with a population of one million or more, having within their boundaries existing or planned high occupancy vehicle lanes on the state highway system may, with voter approval, impose a local surcharge of not more than ((fifteen)) 13.64 percent on the state motor vehicle excise tax paid under RCW 82.44.020(1) on vehicles registered to a person residing within the county and on the state sales and use taxes paid under the rate in RCW 82.08.020(2) on retail car rentals within the county. No surcharge may be imposed on vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, ((46.16.080;)) 46.16.085, or 46.16.090.

Counties imposing a tax under this section shall contract, before the effective date of the resolution or ordinance imposing a surcharge, administration and collection to the state department of licensing, and department of revenue, as appropriate, which shall deduct an amount, as provided by contract, for administration and collection expenses incurred by the department. All administrative provisions in chapters 82.03, 82.32, and 82.44 RCW shall, insofar as they are applicable to state motor vehicle excise taxes, be applicable to surcharges imposed under this section. All administrative provisions in chapters 82.03, 82.08, 82.12, and 82.32 RCW shall, insofar as they are applicable to state sales and use taxes, be applicable to surcharges imposed under this section.

If the tax authorized in RCW 81.100.030 is also imposed by the county, the total proceeds from tax sources imposed under this section and RCW 81.100.030 each year shall not exceed the maximum amount which could be collected under this section.

Sec. 35. RCW 81.104.160 and 1992 c 194 s 13 and 1992 c 101 s 27 are each reenacted and amended to read as follows:

(1) Cities that operate transit systems, county transportation authorities, metropolitan municipal corporations, public transportation benefit areas, and regional transit authorities may submit an authorizing proposition to the voters, and if approved, may levy and collect an excise tax, at a rate approved by the voters, but not exceeding eighty one-hundredths of one percent on the value, under chapter 82.44 RCW, of every motor vehicle owned by a resident of the taxing district, solely for the purpose of providing high capacity transportation service. In any county imposing a motor vehicle excise tax surcharge pursuant to RCW 81.100.060, the maximum tax rate under this section shall be reduced to a rate equal to eighty one-hundredths of one percent on the value less the equivalent motor vehicle excise tax rate of the surcharge imposed pursuant to RCW 81.100.060. This rate shall not apply to vehicles licensed under RCW 46.16.070 except vehicles with an unladen weight of six thousand pounds or less, RCW 46.16.079, ~~((46.16.080;))~~ 46.16.085, or 46.16.090.

(2) An agency imposing a tax under subsection (1) of this section may also impose a sales and use tax solely for the purpose of providing high capacity transportation service, in addition to the tax authorized by RCW 82.14.030, upon retail car rentals within the agency's jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax shall not exceed 2.172 percent. The rate of tax imposed under this subsection shall bear the same ratio to the 2.172 percent rate authorized that ~~the rate imposed under ((RCW 82.08.020(2) as the excise tax rate imposed under))~~ subsection (1) of this section bears to the ~~((excise tax))~~ rate ((imposed under RCW 82.44.020 (1) and (2))) authorized under subsection (1) of this section. The base of the tax shall be the selling price in the case of a sales tax or the rental value of the vehicle used in the case of a use tax. The revenue collected under this subsection shall be used in the same manner as excise taxes under subsection (1) of this section.

Sec. 36. RCW 82.08.020 and 1992 c 194 s 9 are each amended to read as follows:

(1) There is levied and there shall be collected a tax on each retail sale in this state equal to six and five-tenths percent of the selling price.

(2) There is levied and there shall be collected an additional tax on each retail car rental, regardless of whether the vehicle is licensed in this state, equal to five and nine-tenths percent of the selling price. ~~((Ninety-one percent of))~~ The revenue collected under this subsection shall be deposited and distributed in the same manner as motor vehicle excise tax revenue collected under RCW 82.44.020(1). ~~((Nine percent of the revenue collected under this subsection shall be deposited in the transportation fund and distributed in the same manner as motor vehicle excise tax revenue collected under RCW 82.44.020(2).))~~

(3) The taxes imposed under this chapter shall apply to successive retail sales of the same property.

(4) The rates provided in this section apply to taxes imposed under chapter 82.12 RCW as provided in RCW 82.12.020.

Sec. 37. RCW 82.14.046 and 1995 c 298 s 1 are each amended to read as follows:

Beginning with distributions made to municipalities under RCW 82.44.150 on January 1, 1996, municipalities as defined in RCW 35.58.272 imposing local transit taxes, which for purposes of this section include the sales and use tax under RCW 82.14.045, the business and occupation tax under RCW 35.95.040, and excise taxes under RCW 35.95.040, shall be eligible for sales and use tax equalization payments from motor vehicle excise taxes distributed under RCW 82.44.150 as follows:

(1) Prior to January 1st of each year the department of revenue shall determine the total and the per capita levels of revenues for each municipality imposing local transit taxes and the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW for the previous calendar year calculated for a sales and use tax rate of one-tenth percent. For purposes of this section, the department of revenue shall determine a local transit tax rate for each municipality for the previous calendar year. The tax rate shall be equivalent to the sales and use tax rate for the municipality that would have generated an amount of revenue equal to the amount of local transit taxes collected by the municipality.

(2) For each tenth of one percent of the local transit tax rate, the state treasurer shall apportion to each municipality receiving less than eighty percent of the state-wide weighted average per capita level of sales and use tax revenues imposed under chapters 82.08 and 82.12 RCW as determined by the department of revenue under subsection (1) of this section, an amount when added to the per capita level of revenues received the previous calendar year by the municipality, to equal eighty percent of the state-wide weighted average per capita level of revenues determined under subsection (1) of this section. In no event may the sales and use tax equalization distribution to a municipality in a single calendar year exceed: (a) Fifty percent of the amount of local transit taxes collected during the prior calendar year; or (b) the maximum amount of revenue that could have been collected at a local transit tax rate of three-tenths percent in the prior calendar year.

(3) For a municipality established after January 1, 1995, sales and use tax equalization distributions shall be made according to the procedures in this subsection. Sales and use tax equalization distributions to eligible new municipalities shall be made at the same time as distributions are made under subsection (2) of this section. The department of revenue shall follow the estimating procedures outlined in this subsection until the new municipality has received a full year's worth of local transit tax revenues as of the January sales and use tax equalization distribution.

(a) Whether a newly established municipality determined to receive funds under this subsection receives its first equalization payment at the January, April, July, or October sales and use tax equalization distribution shall depend on the date the system first imposes local transit taxes.

(i) A newly established municipality imposing local transit taxes taking effect during the first calendar quarter shall be eligible to receive funds under this subsection beginning with the July sales and use tax equalization distribution of that year.

(ii) A newly established municipality imposing local transit taxes taking effect during the second calendar quarter shall be eligible to receive funds under this subsection beginning with the October sales and use tax equalization distribution of that year.

(iii) A newly established municipality imposing local transit taxes taking effect during the third calendar quarter shall be eligible to receive funds under this subsection beginning with the January sales and use tax equalization distribution of the next year.

(iv) A newly established municipality imposing local transit taxes taking effect during the fourth calendar quarter shall be eligible to receive funds under this subsection beginning with the April sales and use tax equalization distribution of the next year.

(b) For purposes of calculating the amount of funds the new municipality should receive under this subsection, the department of revenue shall:

(i) Estimate the per capita amount of revenues from local transit taxes that the new municipality would have received had the municipality received revenues from the tax the entire calendar year;

(ii) Calculate the amount provided under subsection (2) of this section based on the per capita revenues determined under (b)(i) of this subsection;

(iii) Prorate the amount determined under (b)(ii) of this subsection by the number of months the local transit taxes have been imposed.

(c) The department of revenue shall advise the state treasurer of the amounts calculated under (b) of this subsection and the state treasurer shall distribute these amounts to the new municipality from the motor vehicle excise tax ~~((distributed under RCW 82.44.150(2)(d)))~~ deposited into the transportation fund under RCW 82.44.110.

(4) A municipality whose governing body implements a tax change that reduces its local transit tax rate after January 1, 1994, may not receive distributions under this section.

Sec. 38. RCW 82.44.023 and 1994 c 227 s 3 are each amended to read as follows:

Rental cars as defined in RCW 46.04.465 are exempt from the taxes imposed in RCW 82.44.020(1) ~~((and (2)))~~. When a rental car ceases to be used for rental car purposes and at the time of its retail sale, the excise tax imposed in RCW 82.44.020(1) ~~((and (2)))~~ shall be imposed in an amount equal to one-twelfth of the annual excise tax then in effect, for each full month remaining in the vehicle's registration year.

Sec. 39. RCW 82.44.025 and 1996 c 139 s 3 are each amended to read as follows:

Motor vehicles licensed under RCW 46.16.374 are exempt from the ~~((taxes))~~ tax imposed in RCW 82.44.020(1) ~~((and (2)))~~. When the motor vehicle ceases to be used for the purposes of RCW 46.16.374 or at the time of its retail sale, the excise tax imposed in RCW 82.44.020(1) ~~((and (2)))~~ must be imposed for twelve full months from the date of application of the new owner.

Sec. 40. RCW 82.44.155 and 1993 c 492 s 254 are each amended to read as follows:

The city police and fire protection assistance account is created in the state treasury. When distributions are made under RCW 82.44.150, the state treasurer shall apportion and distribute the motor vehicle excise taxes deposited into the ~~((general fund))~~ city police and fire protection assistance account under RCW 82.44.110~~((+)(4))~~ to the cities and towns ratably on the basis of population as last determined by the office of financial management. When so apportioned, the amount payable to each such city and town shall be transmitted to the city treasurer thereof, and shall be used by the city or town for the purposes of police and fire protection in the city or town, and not otherwise. If it is adjudged that revenue derived from the excise ~~((taxes))~~ tax imposed by RCW 82.44.020(1) ~~((and (2)))~~ cannot lawfully be apportioned or distributed to cities or towns, all moneys directed by this section to be apportioned and distributed to cities and towns shall be credited and transferred to the state general fund.

Sec. 41. RCW 82.44.180 and 1995 c 269 s 2601 are each amended to read as follows:

(1) The transportation fund is created in the state treasury. Revenues under RCW ~~((82.44.020 (1) and (2);))~~ 82.44.110~~((;-82.44.150;))~~ and ~~((the surcharge under RCW))~~ 82.50.510 shall be deposited into the fund as provided in those sections.

Moneys in the fund may be spent only after appropriation. Expenditures from the fund may be used only for transportation purposes and activities and operations of the Washington state patrol not directly related to the policing of public highways and that are not authorized under Article II, section 40 of the state Constitution.

(2) There is hereby created the central Puget Sound public transportation account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(b) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects within the region from which the funds are derived, solely for:

- (a) Planning;
- (b) Development of capital projects;
- (c) Development of high capacity transportation systems as defined in RCW 81.104.015;
- (d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020; and

(e) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

(3) There is hereby created the public transportation systems account within the transportation fund. Moneys deposited into the account under RCW 82.44.150(2)(c) shall be appropriated to the transportation improvement board and allocated by the transportation improvement board to public transportation projects submitted by the public transportation systems from which the funds are derived, solely for:

(a) Planning;

(b) Development of capital projects;

(c) Development of high capacity transportation systems as defined in RCW 81.104.015;

(d) Development of high occupancy vehicle lanes and related facilities as defined in RCW 81.100.020;

(e) Other public transportation system-related roadway projects on state highways, county roads, or city streets; and

(f) Public transportation system contributions required to fund projects under federal programs and those approved by the transportation improvement board from other fund sources.

Sec. 42. RCW 84.44.050 and 1993 c 123 s 3 are each amended to read as follows:

The personal property of automobile transportation companies owning, controlling, operating or managing any motor propelled vehicle used in the business of transporting persons and/or property for compensation over any public highway in this state between fixed termini or over a regular route, shall be listed and assessed in the various counties where such vehicles are operated, in proportion to the mileage of their operations in such counties: PROVIDED, That vehicles subject to chapter 82.44 RCW and trailer units exempt under RCW 82.44.020(~~(5))~~ (4) shall not be listed or assessed for ad valorem taxation so long as chapter 82.44 RCW remains in effect. All vessels of every class which are by law required to be registered, licensed or enrolled, must be assessed and the taxes thereon paid only in the county of their actual situs: PROVIDED, That such interest shall be taxed but once. All boats and small craft not required to be registered must be assessed in the county of their actual situs.

****NEW SECTION. Sec. 43. Within ten days of the effective date of this section, the state treasurer shall lend twenty-five million dollars from the state general fund to the motor vehicle fund to be used for engineering, design, and right-of-way acquisition related to road construction projects. The loan shall be repaid by July 1, 2001, from motor vehicle excise tax revenues deposited into the motor vehicle fund.***

***Sec. 43 was vetoed. See message at end of chapter.**

NEW SECTION. **Sec. 44.** Sections 16 through 21 of this act are each added to chapter 47.10 RCW.

NEW SECTION. **Sec. 45.** 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. 46.** (1) Sections 1 through 3, 5 through 21, 44, and 45 of this act take effect January 1, 1999.

(2) Section 4 of this act takes effect July 1, 1999, and applies to registrations that are due or become due in July 1999, and thereafter.

***NEW SECTION.** **Sec. 47.** *(1) Section 22 of this act takes effect ninety days after the end of the legislative session as provided in Article 2, section 1 of the state Constitution.*

(2) Sections 23 through 30 and 32 through 42 of this act take effect January 1, 1999, and section 31 of this act takes effect June 30, 2000, if sections 1 through 21 and 44 through 46 of this act are validly submitted to and are approved and ratified by the voters at a general election held in November 1998. If sections 1 through 21 and 44 through 46 of this act are not approved and ratified, sections 23 through 42 of this act are null and void in their entirety.

**Sec. 47 was partially vetoed. See message at end of chapter.*

***NEW SECTION.** **Sec. 48.** *Section 43 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.*

**Sec. 48 was vetoed. See message at end of chapter.*

NEW SECTION. **Sec. 49.** The secretary of state shall submit sections 1 through 21 and 44 through 46 of this act to the people for their adoption and ratification, or rejection, at the next general election to be held in this state, in accordance with Article II, section 1 of the state Constitution and the laws adopted to facilitate its operation.

NEW SECTION. **Sec. 50.** Sections 23 through 42 of this act are technical only and do not result in any substantive change in the law. Therefore, to conserve costs, the secretary of state shall not publish sections 23 through 42 of this act in the voter's pamphlet in conjunction with sections 1 through 21 and 44 through 46 of this act.

Passed the House March 5, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 22, 43, 47(1) and 48, Engrossed House Bill No. 2894 entitled:

"AN ACT Relating to the reallocation of motor vehicle excise tax and general fund resources for the purpose of providing transportation funding;"

Engrossed House Bill No. 2894 is a measure which significantly reduces general fund revenues derived from the motor vehicle excise tax; transfers motor vehicle excise tax money to transportation and some local government purposes; reduces the motor vehicle excise tax \$30 per vehicle; and changes the depreciation schedule for vehicles. Most of the bill was placed on the ballot by the Legislature and must be approved by the people this November to take effect. However, several sections were not referred to the people.

Section 22 of EHB 2894 would create a joint committee to study long-term transportation funding needs in our state. I agree with the need for the study since the ballot measure does not address those needs. However, the composition of the committee would be unbalanced and not representative of our citizens. The time frame for completing the study would be too short and no money was provided to complete this important task. The committee provided for in Engrossed Substitute Senate Bill No. 6456, which I approved today, is fully funded and a better mechanism for looking at our long-term transportation needs. I have also vetoed section 47 (1) of EHB 2894 which establishes the effective date for section 22 and is unnecessary.

Section 43 of EHB 2894 would provide a highly unusual "loan" of \$25 million from the state general fund to the motor vehicle fund for certain engineering, design, and right-of-way acquisition costs related to road construction projects. Apparently, the money was for preliminary work on new projects in anticipation of the referendum's passage. The loan is unnecessary because the Department of Transportation can proceed with that type of work without a "loan". The loan was to be paid back by July 1, 2001; however, there is nothing to assure that it would ever be repaid. In addition, appropriation authority would be necessary to spend the "loan", but no authority was granted in this or other legislation. I have also vetoed section 48, which is an emergency clause for section 43 and is unnecessary.

For these reasons, I have vetoed sections 22, 43, 47 (1) and 48 of Engrossed House Bill No. 2894.

With the exception of sections 22, 43, 47 (1) and 48 (and the provisions which are submitted to the people) Engrossed House Bill No. 2894 is approved."

CHAPTER 322

[Engrossed Second Substitute House Bill 2935] NURSING HOME PAYMENT RATES

AN ACT Relating to nursing home payment rates; amending RCW 74.46.010, 74.46.020, 74.46.040, 74.46.050, 74.46.060, 74.46.080, 74.46.090, 74.46.100, 74.46.190, 74.46.220, 74.46.230, 74.46.270, 74.46.280, 74.46.300, 74.46.410, 74.46.475, 74.46.610, 74.46.620, 74.46.630, 74.46.640, 74.46.650, 74.46.660, 74.46.680, 74.46.690, 74.46.770, 74.46.780, 74.46.800, 74.46.820, 74.46.840, 74.09.120, and 72.36.030; adding new sections to chapter 74.46 RCW; adding a new section to chapter 70.38 RCW; creating new sections; repealing RCW 74.46.105, 74.46.115, 74.46.130, 74.46.150, 74.46.160, 74.46.170, 74.46.180, 74.46.210, 74.46.670, and 74.46.595; prescribing penalties; providing effective dates; and providing an expiration date.

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

Sec. 1. RCW 74.46.010 and 1980 c 177 s 1 are each amended to read as follows:

This chapter may be known and cited as the "~~nursing ((Homes Auditing and Cost Reimbursement Act of 1980))~~ facility medicaid payment system."

The purposes of this chapter are to specify the manner by which legislative appropriations for medicaid nursing facility services are to be allocated as payment rates among nursing facilities, and to set forth auditing, billing, and other administrative standards associated with payments to nursing home facilities.

Sec. 2. RCW 74.46.020 and 1995 1st sp.s. c 18 s 90 are each amended to read as follows:

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

~~(2) ("Ancillary care" means those services required by the individual, comprehensive plan of care provided by qualified therapists.~~

~~---~~(3)) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

~~((4))~~ (3) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

~~((5))~~ (4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

~~((6))~~ (5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) ~~("Beds" means the number of set-up beds in the facility, not to exceed the number of licensed beds.~~

~~---~~(8)) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to ~~((subparagraph))~~ (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in ~~((subparagraphs))~~ (c)(i), (ii), or (iii) of this ~~((subparagraph-(e)))~~ subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in ~~((subparagraph))~~ (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest;

or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

~~((9))~~ (8) "Capitalization" means the recording of an expenditure as an asset.

~~((10))~~ (9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Contractor" means ~~((an))~~ a person or entity ~~((which contracts))~~ licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to ~~((medical-care))~~ medicaid recipients residing in ~~((a))~~ the facility ~~((and which entity is responsible for operational decisions))~~.

~~((11))~~ (13) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(14) "Department" means the department of social and health services (DSHS) and its employees.

~~((12))~~ (15) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

~~((13))~~ (16) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(17) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct ~~((nursing and ancillary))~~ care of ~~((medical-care recipients))~~ a nursing facility's residents.

~~((14))~~ (18) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

~~((15))~~ (19) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

~~((16))~~ (20) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

~~((17))~~ (21) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

~~((18))~~ (22) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

~~((19))~~ (23) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

~~((20))~~ ~~"Generally accepted auditing standards" means auditing standards approved by the American institute of certified public accountants (AICPA).~~

~~((21))~~ (24) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all ~~((other))~~ net identifiable~~((:))~~ tangible~~((:))~~ and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

~~((22))~~ (25) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(26) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

~~((23))~~ (27) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

~~((24))~~ (28) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

~~((25))~~ (29) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on January 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

~~((26))~~ (30) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

~~((27))~~ (31) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided ~~((in))~~ under chapter 74.09 RCW.

~~((28))~~ (32) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

~~(33)~~ (33) "Net book value" means the historical cost of an asset less accumulated depreciation.

~~((29))~~ (34) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles, plus an allowance for working capital which shall be five percent of the product of the per patient day rate multiplied by the prior calendar year reported total patient days of each contractor.

~~((30))~~ (35) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

~~((31))~~ (36) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

~~((32))~~ (37) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

~~((33))~~ (38) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A ~~((client day))~~ medicaid day or "recipient day" means a calendar day of care provided to a ~~((medical care))~~ medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

~~((34))~~ (39) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

~~((35))~~ (40) "Qualified therapist" means:

(a) ~~((An activities specialist who has specialized education, training, or experience as 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;~~

~~—(e))~~ A mental health professional as defined by chapter 71.05 RCW;

~~((d))~~ (b) A mental retardation professional who is ~~((either a qualified therapist or))~~ a therapist approved by the department who has had specialized

training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

~~((e))~~ A social worker who is a graduate of a school of social work;

~~((f))~~ (c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

~~((g))~~ (d) A physical therapist as defined by chapter 18.74 RCW;

~~((h))~~ (e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

~~((i))~~ (f) A respiratory care practitioner certified under chapter 18.89 RCW.

~~((36))~~ "Questioned costs" means those costs which have been determined in accordance with generally accepted accounting principles but which may constitute disallowed costs or departures from the provisions of this chapter or rules and regulations adopted by the department.

~~((37))~~ (41) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in part E of this chapter.

(42) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(43) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost rebasing payment rate allocations under the provisions of this chapter.

~~((38))~~ (44) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

~~((39))~~ (45) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

~~((40))~~ (46) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(47) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive

nursing facility resident care planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(48) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(49) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(50) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

~~((41))~~ (51) "Secretary" means the secretary of the department of social and health services.

~~((42))~~ (52) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(53) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(54) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

~~((43) "Physical plant capital improvement" means a capitalized improvement that is limited to an improvement to the building or the related physical plant.)~~

Sec. 3. RCW 74.46.040 and 1985 c 361 s 4 are each amended to read as follows:

(1) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(2) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(3) Two extensions of not more than thirty days each may be granted by the department upon receipt of a written request setting forth the circumstances which prohibit the contractor from compliance with a report due date; except, that the ~~((secretary))~~ department shall establish the grounds for extension in rule ~~((and regulation))~~. Such request must be received by the department at least ten days prior to the due date.

Sec. 4. RCW 74.46.050 and 1985 c 361 s 5 are each amended to read as follows:

(1) If the cost report is not properly completed or if it is not received by the due date, all or part of any payments due under the contract may be withheld by

the department until such time as the required cost report is properly completed and received.

(2) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date. The department is authorized to adopt rules addressing fines and adverse rate actions including procedures, conditions, and the magnitude and frequency of fines.

Sec. 5. RCW 74.46.060 and 1985 c 361 s 6 are each amended to read as follows:

(1) Cost reports shall be prepared in a standard manner and form, as determined by the department (~~(, which shall provide for an itemized list of allowable costs and a preliminary settlement report)~~). Costs reported shall be determined in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules (~~(and regulations as are)~~) established by the (~~(secretary)~~) department. In the event of conflict, rules adopted and instructions issued by the department take precedence over generally accepted accounting principles.

(2) The records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those portions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due.

Sec. 6. RCW 74.46.080 and 1985 c 361 s 7 are each amended to read as follows:

(1) All records supporting the required cost reports, as well as trust funds established by RCW 74.46.700, shall be retained by the contractor for a period of four years following the filing of such reports at a location in the state of Washington specified by the contractor. (~~(All records supporting the cost reports and financial statements filed with the department before May 20, 1985, shall be retained by the contractor for four years following their filing.)~~)

(2) The department may direct supporting records to be retained for a longer period if there remain unresolved questions on the cost reports. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the United States department of health and human services.

~~((2))~~ (3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records within the state of Washington are assured.

Sec. 7. RCW 74.46.090 and 1985 c 361 s 8 are each amended to read as follows:

The department will retain the required cost reports for a period of one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided elsewhere in statute or by department rule.

Sec. 8. RCW 74.46.100 and 1985 c 361 s 9 are each amended to read as follows:

~~((The principles inherent within RCW 74.46.105 and 74.46.130 are))~~ (1) The purposes of department audits under this chapter are to ascertain, through department audit of the financial and statistical records of the contractor's nursing facility operation, that:

~~((1) To ascertain, through department audit, that the))~~ (a) Allowable costs for each year for each medicaid nursing facility are accurately reported~~((; thereby providing a valid basis for future rate determination));~~

~~((2) To ascertain, through department audits of the cost reports, that))~~ (b) Cost reports~~((properly))~~ accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor~~((; particularly as they pertain to related organizations and beneficial ownership, thereby providing a valid basis for the determination of return as specified by this chapter));~~

~~((3) To ascertain, through department audit that compliance with the accounting and auditing provisions of this chapter and the rules and regulations of the department as they pertain to these accounting and auditing provisions is proper and consistent))~~ (c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles; and

~~((4) To ascertain, through department audits, that))~~ (d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and rules as the department may adopt. The department shall determine the scope of the examination.

(3) If the examination finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under section 10 (3) and (4) of this act or in any component rate resulting from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments.

Adjustments shall be subject to review if desired by the contractor under the appeals or exception procedure established by the department.

(4) Examinations of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and rules adopted by the department.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with (i) applicable federal income and federal and state payroll tax returns; and (ii) the records for the period covered by the cost report;

(c) Make available to the department's auditor an individual or individuals to respond to questions and requests for information from the auditor. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

(10) Part B of this chapter, and rules adopted by the department pursuant thereto prior to January 1, 1998, shall continue to govern the medicaid nursing facility audit process for periods prior to January 1, 1997, as if these statutes and rules remained in full force and effect.

NEW SECTION. Sec. 9. (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for the preceding calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department, determined by the process of reconciliation, by the process of settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations, as authorized in this chapter, within sixty days after notification and demand for payment is sent to the contractor.

(3) The department shall make any payment due the contractor within sixty days after it determines the underpayment exists and notification is sent to the contractor.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification is sent to the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department is authorized to withhold funds from the contractor's payment for services, and to take all other actions authorized by law, to recover amounts due and payable from the contractor, including any accrued interest. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish in rule, nor commencement of judicial review as may be available to the contractor in law, to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor.

NEW SECTION. **Sec. 10.** (1) Contractors shall be required to submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and issue a revised settlement report if needed.

(2) Contractors shall not be required to refund payments made in the operations, property, and return on investment component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the audit and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed 1.0% of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time, during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each component rate, and neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. However, in computing a preliminary or final settlement, savings in the support services cost center may be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings. Not more than twenty percent of the rate in a cost center may be shifted.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and those rules as the department may adopt, shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(6) RCW 74.46.150 through 74.46.180, and rules adopted by the department prior to the effective date of this section, shall continue to govern the medicaid settlement process for periods prior to October 1, 1998, as if these statutes and rules remained in full force and effect.

(7) For calendar year 1998, the department shall calculate split settlements covering January 1, 1998, through September 30, 1998, and October 1, 1998, through December 31, 1998. For the period beginning October 1, 1998, rules specified in this chapter shall apply. The department shall, by rule, determine the division of calendar year 1998 adjusted costs for settlement purposes.

Sec. 11. RCW 74.46.190 and 1995 1st sp.s. c 18 s 96 are each amended to read as follows:

(1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly unallowable under this chapter or department rule, are to be allowable. Costs of providing ~~((ancillary))~~ therapy care are allowable, subject to any applicable ~~((cost-center))~~ limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

~~(3) ((Costs applicable to services, facilities, and supplies furnished to the provider by related organizations are allowable but at the cost to the related organization, provided they do not exceed the price of comparable services, facilities, or supplies that could be purchased elsewhere.~~

~~—(4) Beginning January 1, 1985,))~~ The payment for property usage is to be independent of ownership structure and financing arrangements.

~~((5) Beginning July 1, 1995,))~~ (4) Allowable costs shall not include costs reported by a ~~((nursing care provider))~~ contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

(5) Any costs deemed allowable under this chapter are subject to the provisions of section 18 of this act. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost.

Sec. 12. RCW 74.46.220 and 1980 c 177 s 22 are each amended to read as follows:

(1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the ~~((auditor at the time and place the records relating to the entity are audited))~~ department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented.

Sec. 13. RCW 74.46.230 and 1993 sp.s. c 13 s 3 are each amended to read as follows:

(1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insurance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the ~~((administrative))~~ operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the ~~((administrative))~~ operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

Sec. 14. RCW 74.46.270 and 1983 1st ex.s. c 67 s 13 are each amended to read as follows:

(1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs which represent allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) Such disclosure shall demonstrate that:

(a) The services involved are necessary and nonduplicative; and
(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) Such disclosure shall be made not later than September ~~((30, 1980;))~~ 30th for the following calendar year ~~((and not later than September 30th for each year thereafter))~~; except that a new contractor shall submit the first year's disclosure ~~((together with the submissions required by RCW 74.46.670. Where a contractor will make neither a change in the joint costs to be incurred nor in the allocation methodology, the contractor may certify that no change will be made in lieu of the disclosure required in subsection (1) of this section))~~ at least sixty days prior to the date the new contract becomes effective.

(4) The department shall ~~((approve such methodology not later than))~~ by December 31st, ~~((1980, and not later than December 31st for each year thereafter))~~ for all disclosures that are complete and timely submitted, either approve or reject the disclosure. The department may request additional information or clarification.

(5) Acceptance of a disclosure or approval of a joint cost methodology by the department may not be construed as a determination that the allocated costs are allowable in whole or in part. However, joint facility costs not disclosed, allocated, and reported in conformity with this section and department rules are unallowable.

(6) An approved methodology may be revised or amended subject to approval as provided in rules and regulations adopted by the department.

Sec. 15. RCW 74.46.280 and 1993 sp.s. c 13 s 4 are each amended to read as follows:

(1) Management fees will be allowed only if:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the services contracted for were actually delivered.

(2) To be allowable, fees must be for necessary, nonduplicative services.

(3) A management fee paid to or for the benefit of a related organization will be allowable to the extent it does not exceed the lower of the actual cost to the related organization of providing necessary services related to patient care under the agreement or the cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with RCW 74.46.270.

(4) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must also be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a

management agreement and more than thirty days prior to submitting an amendment.

(5) The scope of services to be performed under a management agreement cannot be so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility.

Sec. 16. RCW 74.46.300 and 1980 c 177 s 30 are each amended to read as follows:

Rental or lease costs under arm's-length operating leases of office equipment shall be allowable to the extent the cost is necessary and ordinary. The department may adopt rules to limit the allowability of office equipment leasing expenses.

Sec. 17. RCW 74.46.410 and 1995 1st sp.s. c 18 s 97 are each amended to read as follows:

(1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in ~~((care-services))~~ the medicaid per-resident day payment rate established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the ~~((cost-related reimbursement))~~ payment system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, televisions, radios, and similar appliances in patients' private accommodations;

(u) Federal, state, and other income taxes;

(v) Costs of special care services except where authorized by the department;

(w) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans ~~((not made available to all employees))~~;

(x) Expenses of profit-sharing plans;

(y) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(z) Personal expenses and allowances of owners or relatives;

(aa) All expenses of maintaining professional licenses or membership in professional organizations;

(bb) Costs related to agreements not to compete;

(cc) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(dd) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ee) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;

(ff) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(gg) Lease acquisition costs ~~((and)), goodwill, the cost of bed rights, or any other ((intangibles not related to patient care))~~ intangible assets;

(hh) All rental or lease costs other than those provided in RCW 74.46.300 on and after January 1, 1985;

(ii) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(jj) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(kk) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(ll) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(mm) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(nn) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(oo) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(pp) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(qq) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(rr) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(ss) Costs and fees associated with filing a petition for bankruptcy;

(tt) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(uu) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(vv) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(ww) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period; and

(xx) Tax expenses that a nursing facility has never incurred.

NEW SECTION. Sec. 18. A new section, to be codified as RCW 74.46.421, is added to chapter 74.46 RCW to read as follows:

(1) The purpose of part E of this chapter is to determine nursing facility medicaid payment rates that, in the aggregate for all participating nursing facilities, are in accordance with the biennial appropriations act.

(2)(a) The department shall use the nursing facility medicaid payment rate methodologies described in this chapter to determine initial component rate allocations for each medicaid nursing facility.

(b) The initial component rate allocations shall be subject to adjustment as provided in this section in order to assure that the state-wide average payment rate to nursing facilities is less than or equal to the state-wide average payment rate specified in the biennial appropriations act.

(3) Nothing in this chapter shall be construed as creating a legal right or entitlement to any payment that (a) has not been adjusted under this section or (b) would cause the state-wide average payment rate to exceed the state-wide average payment rate specified in the biennial appropriations act.

(4)(a) The state-wide average payment rate for any state fiscal year under the nursing facility medicaid payment system, weighted by patient days, shall not exceed the annual state-wide weighted average nursing facility payment rate identified for that fiscal year in the biennial appropriations act.

(h) If the department determines that the weighted average nursing facility payment rate calculated in accordance with this chapter is likely to exceed the weighted average nursing facility payment rate identified in the biennial appropriations act, then the department shall adjust all nursing facility payment rates proportional to the amount by which the weighted average rate allocations would otherwise exceed the budgeted rate amount. Any such adjustments shall only be made prospectively, not retrospectively, and shall be applied proportionately to each component rate allocation for each facility.

NEW SECTION. Sec. 19. (1) Effective October 1, 1998, nursing facility medicaid payment rate allocations shall be facility-specific and shall have six components: Direct care, therapy care, support services, operations, property, and return on investment. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) All component rate allocations shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2004, direct care component rate allocations.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in section 25(5)(k) of this act.

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in section 25(5)(k) of this act.

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2004, therapy care component rate allocations.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be

used for July 1, 2001, through June 30, 2004, support services component rate allocations.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2004, operations component rate allocations.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of five dollars and fifteen cents per hour or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of section 18 of this act.

NEW SECTION. Sec. 20. The department shall disclose to any member of the public all rate-setting information consistent with requirements of state and federal laws.

Sec. 21. RCW 74.46.475 and 1985 c 361 s 13 are each amended to read as follows:

(1) The department shall analyze the submitted cost report or a portion thereof of each contractor for each report period to determine if the information is correct, complete, ~~((and))~~ reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and such rules ~~((and regulations))~~ as the ~~((secretary))~~ department may adopt. If the analysis finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing ~~((reimbursement))~~ payment rate(s) allocations. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the adjustment. Adjustments shall be subject to review and appeal as provided in this chapter.

(2) The department shall accumulate data from properly completed cost reports, in addition to assessment data on each facility's resident population characteristics, for use in:

- (a) Exception profiling; and
- (b) Establishing rates.

(3) The department may further utilize such accumulated data for analytical, statistical, or informational purposes as necessary.

NEW SECTION. Sec. 22. (1) The department shall employ the resource utilization group III case mix classification methodology. The department shall use the forty-four group index maximizing model for the resource utilization group III grouper version 5.10, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements.

(2) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department.

NEW SECTION. Sec. 23. (1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the health care financing administration of the United States department of health and human services 1995 nursing facility staff time

measurement study stemming from its multistate nursing home case mix and quality demonstration project. Those minutes shall be weighted by state-wide ratios of registered nurse to certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on 1995 cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group III classification system by multiplying the wage weight for each worker classification by the average number of minutes that classification of worker spends caring for a resident in that resource utilization group III classification group, and summing the products;

(c) Assign a case mix weight of 1.000 to the resource utilization group III classification group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the health care financing administration updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased every three years as provided in section 19(4)(a) of this act.

NEW SECTION. **Sec. 24.** (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4)(a) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as follows:

(i) If a resident's initial assessment for a first stay or a return stay in the nursing facility is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the later of either the first day of the quarter or the resident's facility admission or readmission date;

(ii) If a resident's significant change, quarterly, or annual assessment is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the date the assessment is completed;

(iii) If a resident's significant change, quarterly, or annual assessment is not timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the due date for the assessment.

(b) If state or federal rules require more frequent assessment, the same principles for determining the start date of a resident's classification in a particular case mix group set forth in subsection (4)(a) of this section shall apply.

(c) In calculating the number of days a resident is classified into a particular case mix group, the department shall determine an end date for calculating case mix grouping periods as follows:

(i) If a resident is discharged before the end of the applicable quarter, the end date shall be the day before discharge;

(ii) If a resident is not discharged before the end of the applicable quarter, the end date shall be the last day of the quarter;

(iii) If a new assessment is due for a resident or a new assessment is completed and transmitted to the department, the end date of the previous assessment shall be the earlier of either the day before the assessment is due or the day before the assessment is completed by the nursing facility.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6) A threshold of ninety percent, as described and calculated in this subsection, shall be used to determine the case mix index each quarter. The threshold shall also be used to determine which facilities' costs per case mix unit are included in determining the ceiling, floor, and price. If the facility does not

meet the ninety percent threshold, the department may use an alternate case mix index to determine the facility average and medicaid average case mix indexes for the quarter. The threshold is a count of unique minimum data set assessments, and it shall include resident assessment instrument tracking forms for residents discharged prior to completing an initial assessment. The threshold is calculated by dividing the count of unique minimum data set assessments by the average census for each facility. A daily census shall be reported by each nursing facility as it transmits assessment data to the department. The department shall compute a quarterly average census based on the daily census. If no census has been reported by a facility during a specified quarter, then the department shall use the facility's licensed beds as the denominator in computing the threshold.

(7)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the facility average case mix index will be used only every three years in combination with cost report data as specified by sections 19 and 25 of this act, to establish a facility's allowable cost per case mix unit. A facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate quarterly.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes.

(i) For October 1, 1998, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1997.

(ii) For July 1, 2001, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1999.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate quarterly shall be from the calendar quarter commencing six months prior to the effective date of the quarterly rate. For example, October 1, 1998, through December 31, 1998, direct care component rates shall utilize case mix averages from the April 1, 1998, through June 30, 1998, calendar quarter, and so forth.

NEW SECTION. Sec. 25. (1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary

corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be 1996 and 1999, for rate periods as specified in section 19(4)(a) of this act.

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in section 19 of this act, adjust its direct care component rate allocation for economic trends and conditions as described in section 19 of this act, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in section 19(4)(a) of this act to reflect any department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in section 19(4) (b) and (c) of this act to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by section 24(7)(b) of this act to derive the facility's allowable direct care cost per case mix unit;

(e) Divide nursing facilities into two peer groups: Those located in metropolitan statistical areas as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government, and those not located in a metropolitan statistical area;

(f) Array separately the allowable direct care cost per case mix unit for all metropolitan statistical area and for all nonmetropolitan statistical area facilities, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (k) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this

subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(h) Except as provided in (k) of this subsection, from July 1, 2000, through June 30, 2002, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(i) From July 1, 2002, through June 30, 2004, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred five percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred five percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(iii) Any facility whose allowable cost per case mix unit is between ninety-five and one hundred five percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in section 24(7)(c) of this act;

(j) Beginning July 1, 2004, determine each facility's quarterly direct care component rate by multiplying the facility's peer group median allowable direct care cost per case mix unit by that facility's medicaid average case mix index from the applicable quarter as specified in section 24(7)(c) of this act.

(k)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on June 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in section 19 of this act. A facility shall receive the higher of the two rates;

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates.

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. Sec. 26. (1) The therapy care component rate allocation corresponds to the provision of medicaid one-on-one therapy provided by a qualified therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2004, shall be based on adjusted therapy costs and days from calendar year 1999. The therapy care component rate shall be adjusted for economic trends and conditions as specified in section 19(5)(b) of this act, and shall be determined in accordance with this section.

(2) In rebasing, as provided in section 19(5)(a) of this act, the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within a metropolitan statistical area; and

(b) Those not located in a metropolitan statistical area.

Metropolitan statistical areas and nonmetropolitan statistical areas shall be as determined by the United States office of management and budget or other applicable federal office. The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of therapy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) The total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. **Sec. 27.** (1) The support services component rate allocation corresponds to the provision of food, food preparation, dietary, housekeeping, and laundry services for one resident for one day.

(2) Beginning October 1, 1998, the department shall determine each medicaid nursing facility's support services component rate allocation using cost report data specified by section 19(6) of this act.

(3) To determine each facility's support services component rate allocation, the department shall:

(a) Array facilities' adjusted support services costs per adjusted resident day for each facility from facilities' cost reports from the applicable report year, for facilities located within a metropolitan statistical area, and for those not located in any metropolitan statistical area and determine the median adjusted cost for each peer group;

(b) Set each facility's support services component rate at the lower of the facility's per resident day adjusted support services costs from the applicable cost report period or the adjusted median per resident day support services cost for that

facility's peer group, either metropolitan statistical area or nonmetropolitan statistical area, plus ten percent; and

(c) Adjust each facility's support services component rate for economic trends and conditions as provided in section 19(6) of this act.

(4) The support services component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. Sec. 28. (1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, and return on investment.

(2) Beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by section 19(7)(a) of this act.

(3) To determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day for each facility from facilities' cost reports from the applicable report year, for facilities located within a metropolitan statistical area and for those not located in a metropolitan statistical area and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of the facility's per resident day adjusted operations costs from the applicable cost report period or the adjusted median per resident day general operations cost for that facility's peer group, metropolitan statistical area or nonmetropolitan statistical area; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in section 19(7)(b) of this act.

(4) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. Sec. 29. (1) The property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on eighty-five percent facility occupancy. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st or October 1st as applicable, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) For the purpose of calculating a nursing facility's property component rate, if a contractor elects to bank licensed beds or to convert banked beds to active service, under chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion.

(5) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. Sec. 30. (1) The department shall establish for each medicaid nursing facility a return on investment component rate allocation composed of two parts: A financing allowance and a variable return allowance. The financing allowance part of a facility's return on investment component rate shall be rebased annually, effective July 1st, in accordance with the provisions of this section and this chapter.

(a) The financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on eighty-five percent facility occupancy. If a capitalized

addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing and variable return allowances shall be adjusted to the anticipated resident day level.

(b) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of providing resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(c) In determining the variable return allowance:

(i) For the October 1, 1998, rate setting, the department, without utilizing peer groups, shall first rank all facilities in numerical order from highest to lowest according to their per resident day adjusted or audited, or both, allowable costs for nursing services, food, administration, and operational costs combined for the 1996 calendar year cost report period.

(ii) The department shall then compute the variable return allowance by multiplying the appropriate percentage amounts, which shall not be less than one percent and not greater than four percent, by the sum of the facility's nursing services, food, administrative, and operational rate components. The percentage amounts will be based on groupings of facilities according to the rankings prescribed in (c)(i) of this subsection. Those groups of facilities with lower per diem costs shall receive higher percentage amounts than those with higher per diem costs.

(d) The sum of the financing allowance and the variable return allowance shall be the return on investment rate for each facility, and shall be added to the prospective rates of each contractor as determined in sections 19 through 29 of this act.

(e) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate allocation determined according to section 29

of this act, is more than the return on investment rate determined according to (d) of this subsection, the following shall apply:

(i) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such a determination is shown to be arbitrary and capricious.

(ii) The sum of the financing allowance computed under (e)(i) of this subsection and the variable allowance shall be compared to the annualized lease payment, plus any interest and depreciation associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate determined according to section 29 of this act. The lesser of the two amounts shall be called the alternate return on investment rate.

(iii) The return on investment rate determined according to (d) of this subsection or the alternate return on investment rate, whichever is greater, shall be the return on investment rate for the facility and shall be added to the prospective rates of the contractor as determined in sections 19 through 29 of this act.

(f) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended under a provision of the lease, the treatment provided in (e) of this subsection shall be applied, except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(2) For the purpose of calculating a nursing facility's return on investment component rate, if a contractor elects to bank beds or to convert banked beds to active service, under chapter 70.38 RCW, the department shall use the facility's anticipated resident occupancy level subsequent to the decrease or increase in licensed bed capacity. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion.

(3) Each biennium the secretary shall review the adequacy of return on investment rates in relation to anticipated requirements for maintaining, reducing, or expanding nursing care capacity. The secretary shall report the results of a such review to the legislature and make recommendations for adjustments in the return on investment rates utilized in this section, if appropriate.

(4) The return or investment component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with section 18 of this act. If the department determines that the weighted

average rate allocations for all rate components for all facilities is likely to exceed the weighted average total rate specified in the state biennial appropriations act, the department shall adjust the rate allocations calculated in this section proportional to the amount by which the total weighted average rate allocations would otherwise exceed the budgeted level. Such adjustments shall only be made prospectively, not retrospectively.

NEW SECTION. Sec. 31. (1) The department may adjust component rates for errors or omissions made in establishing component rates and determine amounts either overpaid to the contractor or underpaid by the department.

(2) A contractor may request the department to adjust its component rates because of:

- (a) An error or omission the contractor made in completing a cost report; or
- (b) An alleged error or omission made by the department in determining one or more of the contractor's component rates.

(3) A request for a rate adjustment made on incorrect cost reporting must be accompanied by the amended cost report pages prepared in accordance with the department's written instructions and by a written explanation of the error or omission and the necessity for the amended cost report pages and the rate adjustment.

(4) The department shall review a contractor's request for a rate adjustment because of an alleged error or omission, even if the time period has expired in which the contractor must appeal the rate when initially issued, pursuant to rules adopted by the department under RCW 74.46.780. If the request is received after this time period, the department has the authority to correct the rate if it agrees an error or omission was committed. However, if the request is denied, the contractor shall not be entitled to any appeals or exception review procedure that the department may adopt under RCW 74.46.780.

(5) The department shall notify the contractor of the amount of the overpayment to be recovered or additional payment to be made to the contractor reflecting a rate adjustment to correct an error or omission. The recovery from the contractor of the overpayment or the additional payment to the contractor shall be governed by the reconciliation, settlement, security, and recovery processes set forth in this chapter and by rules adopted by the department in accordance with this chapter.

(6) Component rate adjustments approved in accordance with this section are subject to the provisions of section 18 of this act.

Sec. 32. RCW 74.46.610 and 1983 1st ex.s. c 67 s 33 are each amended to read as follows:

(1) A contractor shall bill the department each month by completing and returning a facility billing statement as provided by the department (~~which shall include, but not be limited to:~~

- (a) Billing by cost center;
- (b) Total patient days; and

~~—(c) Patient days for medical care recipients).~~

The statement shall be completed and filed in accordance with rules ~~((and regulations))~~ established by the ~~((secretary))~~ department.

(2) A facility shall not bill the department for service provided to a recipient until an award letter of eligibility of such recipient under rules established under chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

(3) Billing shall cover the patient days of care.

Sec. 33. RCW 74.46.620 and 1980 c 177 s 62 are each amended to read as follows:

(1) The department will ~~((reimburse))~~ pay a contractor for service rendered under the facility contract and billed in accordance with RCW 74.46.610.

(2) The amount paid will be computed using the appropriate rates assigned to the contractor.

(3) For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of ~~((patient))~~ medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by RCW 74.46.630.

Sec. 34. RCW 74.46.630 and 1980 c 177 s 63 are each amended to read as follows:

(1) The department will notify a contractor of the amount each medical care recipient is required to pay for care provided under the contract and the effective date of such required contribution. It is the contractor's responsibility to collect that portion of the cost of care from the patient, and to account for any authorized reduction from his or her contribution in accordance with rules ~~((and regulations))~~ established by the ~~((secretary))~~ department.

(2) If a contractor receives documentation showing a change in the income or resources of a recipient which will mean a change in his or her contribution toward the cost of care, this shall be reported in writing to the department within seventy-two hours and in a manner specified by rules ~~((and regulations))~~ established by the ~~((secretary))~~ department. If necessary, appropriate corrections will be made in the next facility statement, and a copy of documentation supporting the change will be attached. If increased funds for a recipient are received by a contractor, an amount determined by the department shall be allowed for clothing and personal and incidental expense, and the balance applied to the cost of care.

(3) The contractor shall accept the ~~((reimbursement))~~ payment rates established by the department as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services.

Sec. 35. RCW 74.46.640 and 1995 1st sp.s. c 18 s 112 are each amended to read as follows:

(1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a (~~preliminary or final~~) settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service (~~under~~) prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending (~~final~~) settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by (~~preliminary settlement, final~~) settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding, except that neither a timely filed request to pursue (~~the~~) any administrative appeals or exception procedure that the department may establish(~~ed~~) by (~~the department in~~) rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment.

Sec. 36. RCW 74.46.650 and 1980 c 177 s 65 are each amended to read as follows:

All payments to a contractor will end no later than sixty days after any of the following occurs:

- (1) A contract (~~expires;~~) is terminated, assigned, or is not renewed;
- (2) A facility license is revoked; or
- (3) A facility is decertified as a Title XIX facility; except that, in situations where the (~~secretary~~) department determines that residents must remain in such

facility for a longer period because of the resident's health or safety, payments for such residents shall continue.

Sec. 37. RCW 74.46.660 and 1992 c 215 s 1 are each amended to read as follows:

In order to participate in the ~~((prospective cost-related reimbursement))~~ nursing facility medicaid payment system established by this chapter, the person or legal ~~((organization))~~ entity responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter;

(5) Comply with all provisions of the contract and all ~~((application))~~ applicable regulations, including but not limited to the provisions of this chapter; and

(6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds. ~~((Until June 1, 1993, the department may grant exemptions from the medicare certification requirements of this subsection to nursing facilities that are making good faith efforts to obtain medicare certification.))~~

Sec. 38. RCW 74.46.680 and 1985 c 361 s 2 are each amended to read as follows:

(1) On the effective date of a change of ownership the department's contract with the old owner shall be ~~((terminated))~~ automatically assigned to the new owner, unless: (a) The new owner does not desire to participate in medicaid as a nursing facility provider; (b) the department elects not to continue the contract with the new owner for good cause; or (c) the new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such ~~((termination))~~ intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of ~~((termination))~~ intent to change ownership and assign.

(2) If the new owner desires to participate in the ~~((cost-related reimbursement))~~ nursing facility medicaid payment system, it shall meet the conditions specified in RCW 74.46.660 ~~((and shall submit a projected budget in accordance with RCW 74.46.670 no later than sixty days before the date of the change of ownership)).~~ The facility contract with the new owner shall be effective as of the date of the change of ownership.

Sec. 39. RCW 74.46.690 and 1995 1st sp.s. c 18 s 113 are each amended to read as follows:

(1) When ~~((a facility contract is terminated))~~ there is a change of ownership for any reason, ~~((the old contractor shall submit))~~ final reports shall be submitted as required by RCW 74.46.040.

(2) Upon a notification of ~~((a contract termination))~~ intent to change ownership, the department shall determine by ~~((preliminary or final settlement calculations))~~ settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If ~~((preliminary or final))~~ settlements are unavailable for any period up to the date of ~~((contract termination))~~ assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) ~~((The old))~~ For all cost reports filed after December 31, 1997, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all ((other)) debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

(a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated; ~~((or))~~

(b) ~~((A surety bond issued by a bonding company acceptable to the department; or~~

~~((c))~~ An assignment of funds to the department; ~~((or~~

~~((d))~~ Collateral acceptable to the department; ~~or~~

~~((e))~~ A purchaser's) (c) The new contractor's assumption of liability for the prior contractor's ((overpayment)) debt or potential debt;

(d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;

~~((f))~~ (e) A promissory note secured by a deed of trust; or

~~((g))~~ Any combination of (a), (b), (c), (d), (e), or (f) of this subsection) (f) Other collateral or security acceptable to the department.

(4) ~~((A surety bond or))~~ An assignment of funds shall:

(a) Be at least equal ~~((in)) to the~~ amount ~~((to)) of~~ determined or estimated ~~((overpayments, whether or not the subject of good faith dispute;)) debt or potential debt~~ minus withheld payments or other security provided; and

(b) ~~((Be issued or accepted by a bonding company or financial institution licensed to transact business in Washington state;~~

~~— (c) Be for a term, as determined by the department, sufficient to ensure effectiveness after final settlement and the exhaustion of any administrative appeals or exception procedure and judicial remedies, as may be available to and sought by the contractor, regarding payment, settlement, civil fine, interest assessment, or other debt issues: PROVIDED, That the bond or assignment shall initially be for a term of at least five years, and shall be forfeited if not renewed thereafter in an amount equal to any remaining combined overpayment and debt liability as determined by the department;~~

~~— (d) Provide that the full amount of the bond or assignment, or both, shall be paid to the department if a properly completed final cost report is not filed in accordance with this chapter, or if financial records supporting this report are not preserved and made available to the auditor; and~~

~~— (e)) Provide that an amount equal to any recovery the department determines is due from the contractor from ~~((settlement or from)) any ((other)) source of debt to the department, but not exceeding the amount of the ((bond and assignment)) assigned funds, shall be paid to the department if the contractor does not pay the ~~((refund and)) debt~~ within sixty days following receipt of written demand for payment from the department to the contractor.~~~~

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated ~~((overpayments)) debt~~.

(6) If the total of withheld payments~~((, bonds;)) and ((assignments)) assigned funds~~ is less than the total of determined and estimated ~~((overpayments)) debt~~, the unsecured amount of such ~~((overpayments)) debt~~ shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) ~~((The contractor shall file)) A~~ properly completed final cost report shall be filed in accordance with the requirements of ~~((this chapter)) RCW 74.46.040~~, which shall be ~~((audited)) examined~~ by the department in accordance with the requirements of RCW 74.46.100. ~~((A final settlement shall be determined within ninety days following completion of the audit process, including completion of any administrative appeals or exception procedure review of the audit requested by the contractor, but not including completion of any judicial review available to and commenced by the contractor.))~~

(8) ~~((Following determination of settlement for all periods;)) Security~~ held pursuant to this section shall be released to the contractor after all ~~((overpayments, erroneous payments, and)) debts ~~((determined in connection with~~~~

~~final settlement, or otherwise)), including accumulated interest owed the department, have been paid by the ((contractor)) old owner.~~

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to ~~((terminate its medicaid contracts))~~ change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by ~~((preliminary settlement, final))~~ settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department. ~~((This subsection shall apply to all overpayments and erroneous payments determined by preliminary or final settlements issued on or after July 1, 1995, regardless of what payment periods the settlements may cover and shall apply to all debts owed the department from any source, including interest debts, which become due on or after July 1, 1995.))~~

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department.

Sec. 40. RCW 74.46.770 and 1995 1st sp.s. c 18 s 114 are each amended to read as follows:

(1) ~~((For all nursing facility medicaid payment rates effective on or after July 1, 1995, and for all settlements and audits issued on or after July 1, 1995, regardless of what periods the settlements or audits may cover,))~~ If a contractor wishes to contest the way in which a rule relating to the medicaid payment ~~((rate))~~ system was applied to the contractor by the department, it shall pursue ~~((the))~~ any

appeals or exception procedure (~~((established by))~~) that the department may establish in rule authorized by RCW 74.46.780.

(2) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, (~~((including but not limited to issues of procedural or substantive compliance with the federal medicaid minimum payment standard for long-term care facility services, the))~~) any appeals or exception procedure (~~((established by))~~) that the department may establish in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law.

Sec. 41. RCW 74.46.780 and 1995 1st sp.s. c 18 s 115 are each amended to read as follows:

~~((For all nursing facility medicaid payment rates effective on or after July 1, 1995, and for all audits completed and settlements issued on or after July 1, 1995, regardless of what periods the payment rates, audits, or settlements may cover;))~~
The department shall establish in rule, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing care providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate.

Sec. 42. RCW 74.46.800 and 1980 c 177 s 80 are each amended to read as follows:

(1) The department shall have authority to adopt, (~~((promulgate,))~~) amend, and rescind such administrative rules and definitions as (~~((are))~~) it deems necessary to carry out the policies and purposes of this chapter and to resolve issues and develop procedures that it deems necessary to implement, update, and improve the case mix elements of the nursing facility medicaid payment system. (~~((In addition, at least annually the department shall review changes to generally accepted accounting principles and generally accepted auditing standards as approved by the financial accounting standards board, and the American institute of certified public accountants, respectively. The department shall adopt by administrative rule those approved changes which it finds to be consistent with the policies and purposes of this chapter.))~~)

(2) Nothing in this chapter shall be construed to require the department to adopt or employ any calculations, steps, tests, methodologies, alternate methodologies, indexes, formulas, mathematical or statistical models, concepts, or procedures for medicaid rate setting or payment that are not expressly called for in this chapter.

Sec. 43. RCW 74.46.820 and 1985 c 361 s 14 are each amended to read as follows:

(1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter 42.17 RCW. ~~((Notwithstanding any other provision of law, cost report schedules showing information on rental or lease of assets, the facility or corporate balance sheet, schedule of changes in financial position, statement of changes in equity fund balances, notes to financial statements, and any accompanying schedules summarizing the adjustments to a contractor's financial records, reports on review of internal control and accounting procedures, and letters of comments or recommendations relating to suggested improvements in internal control or accounting procedures which are prepared pursuant to the requirements of this chapter shall be exempt from public disclosure:~~

~~— This))~~ (2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

~~((2))~~ (3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof.

Sec. 44. RCW 74.46.840 and 1983 1st ex.s. c 67 s 42 are each amended to read as follows:

If any part of this chapter ~~((and))~~ or RCW 18.51.145 ~~((and))~~ or 74.09.120 is found by an agency of the federal government to be in conflict with federal requirements ~~((which))~~ that are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter ~~((and))~~ or RCW 18.51.145 ~~((and))~~ or 74.09.120 is ~~((hereby))~~ declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter ~~((and))~~ or RCW 18.51.145 ~~((and))~~ or 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter ~~((and))~~ or RCW 18.51.145 ~~((and))~~ or 74.09.120 is found to be in conflict with federal requirements ~~((which))~~ that are a prescribed condition to the receipt of federal funds, the secretary, to the extent that the secretary finds it to be consistent with the general policies and intent of chapters 18.51, 74.09, and 74.46 RCW, may adopt such rules as to resolve a specific conflict and ~~((which))~~ that do meet minimum federal requirements. In addition, the secretary shall submit to the next regular session of the legislature a summary of the specific rule changes made and recommendations for statutory resolution of the conflict.

Sec. 45. RCW 74.09.120 and 1993 sp.s. c 3 s 8 are each amended to read as follows:

The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800. (~~The department shall establish regulations for reasonable nursing home accounting and reimbursement systems which shall provide that~~) No payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the ((establishment of such a system)) regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs(~~The department shall establish rules for reasonable accounting and reimbursement systems for such care~~) and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

The department may purchase care in institutions for the mentally retarded, also known as intermediate care facilities for the mentally retarded. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for the mentally retarded include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less, and hospital facilities certified as intermediate care facilities for the mentally retarded under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for mentally retarded individuals or persons with related conditions and includes in the program "active treatment" as federally defined.

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

The department may purchase all other services provided under this chapter by contract or at rates established by the department.

NEW SECTION. **Sec. 46.** (1) Payment for direct care at the pilot nursing facility in King county designed to meet the service needs of residents living with AIDS, as defined in RCW 70.24.017, and as specifically authorized for this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be exempt from case mix methods of rate determination set forth in this chapter and shall be exempt

from the direct care metropolitan statistical area peer group cost limitation set forth in this chapter.

(2) Direct care component rates at the AIDS pilot facility shall be based on direct care reported costs at the pilot facility, utilizing the same three-year, rate-setting cycle prescribed for other nursing facilities, and as supported by a staffing benchmark based upon a department-approved acuity measurement system.

(3) The provisions of section 18 of this act and all other rate-setting principles, cost lids, and limits, including settlement as provided in section 10 of this act shall apply to the AIDS pilot facility.

(4) This section applies only to the AIDS pilot nursing facility.

NEW SECTION. Sec. 47. (1) By December 1, 1998, the department of social and health services shall study and provide recommendations to the chairs of the house of representatives appropriations and health care committees, and the senate ways and means and health and long-term care committees, concerning options for changing the method for paying facilities for capital and property related expenses.

(2) The department of social and health services shall contract with an independent and recognized organization to study and evaluate the impacts of chapter 74.46 RCW implementation on access, quality of care, quality of life for nursing facility residents, and the wage and benefit levels of all nursing facility employees. The department shall require, and the contractor shall submit, a report with the results of this study and evaluation, including their findings, to the governor and legislature by December 1, 2001.

(3) The department of social and health services shall study and, as needed, specify additional case mix groups and appropriate case mix weights to reflect the resource utilization of residents whose care needs are not adequately identified or reflected in the resource utilization group III grouper version 5.10. At a minimum, the department shall study the adequacy of the resource utilization group III grouper version 5.10, including the minimum data set, for capturing the care and resource utilization needs of residents with AIDS, residents with traumatic brain injury, and residents who are behaviorally challenged. The department shall report its findings to the chairs of the house of representatives health care committee and the senate health and long-term care committee by December 12, 2002.

(4) By December 12, 2002, the department of social and health services shall report to the legislature and provide an evaluation of the fiscal impact of rebasing future payments at different intervals, including the impact of averaging two years' cost data as the basis for rebasing. This report shall include the fiscal impact to the state and the fiscal impact to nursing facility providers.

NEW SECTION. Sec. 48. By December 12, 1998, the department of social and health services shall study and provide recommendation to appropriate committees of the legislature on the appropriateness of extending case-mix reimbursement to home and community services providers, as defined in chapter

74.39A RCW. The department shall invite stakeholders to participate in this study.

Sec. 49. RCW 72.36.030 and 1993 sp.s. c 3 s 5 are each amended to read as follows:

All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to support themselves and their families may be admitted to a state veterans' home under rules as may be adopted by the director of the department, unless sufficient facilities and resources are not available to accommodate these people:

(1)(a) All honorably discharged veterans of a branch of the armed forces of the United States or merchant marines; (b) members of the state militia disabled while in the line of duty; ~~((and))~~ (c) Filipino World War II veterans who swore an oath to American authority and who participated in military engagements with American soldiers; and (d) the spouses of these veterans, merchant marines, and members of the state militia. However, it is required that the spouse was married to and living with the veteran three years prior to the date of application for admittance, or, if married to him or her since that date, was also a resident of a state veterans' home in this state or entitled to admission thereto;

(2)(a) The spouses of: (i) All honorably discharged veterans of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who were disabled while in the line of duty and who were residents of a state veterans' home in this state or were entitled to admission to one of this state's state veteran homes at the time of death; (b) the spouses of: (i) All honorably discharged veterans of a branch of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who would have been entitled to admission to one of this state's state veterans' homes at the time of death, but for the fact that the spouse was not indigent, but has since become indigent and unable to support himself or herself and his or her family. However, the included spouse shall be at least fifty years old and have been married to and living with their husband or wife for three years prior to the date of their application. The included spouse shall not have been married since the death of his or her husband or wife to a person who is not a resident of one of this state's state veterans' homes or entitled to admission to one of this state's state veterans' homes; and

(3) All applicants for admission to a state veterans' home shall apply for all federal and state benefits for which they may be eligible, including medical assistance under chapter 74.09 RCW.

NEW SECTION. Sec. 50. A new section is added to chapter 70.38 RCW to read as follows:

(1) A change in bed capacity at a residential hospice care center shall not be subject to certificate of need review under this chapter if the department determined prior to June 1994 that the construction, development, or other establishment of the residential hospice care center was not subject to certificate of need review under this chapter.

(2) For purposes of this section, a "residential hospice care center" means any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death.

NEW SECTION. Sec. 51. (1) A facility's nursing services, food, administrative, and operational component rates, existing on June 30, 1998, weighted by medicaid resident days, and adjusted by a factor specified in the biennial appropriations act, shall be the facility's nursing services, food, administrative, and operational component rates for the period July 1, 1998, through September 30, 1998.

(2) A facility's return on investment and property component rates existing on June 30, 1998, or as subsequently adjusted or revised, shall be the facility's return on investment and property component rates for the period July 1, 1998, through September 30, 1998, with no increase for the period July 1, 1998, through September 30, 1998.

NEW SECTION. Sec. 52. The following acts or parts of acts are each repealed:

(1) RCW 74.46.105 and 1995 1st sp.s. c 18 s 91, 1985 c 361 s 10, & 1983 1st ex.s. c 67 s 5;

(2) RCW 74.46.115 and 1995 1st sp.s. c 18 s 92 & 1983 1st ex.s. c 67 s 6;

(3) RCW 74.46.130 and 1985 c 361 s 11, 1983 1st ex.s. c 67 s 7, & 1980 c 177 s 13;

(4) RCW 74.46.150 and 1983 1st ex.s. c 67 s 8 & 1980 c 177 s 15;

(5) RCW 74.46.160 and 1995 1st sp.s. c 18 s 93, 1985 c 361 s 12, 1983 1st ex.s. c 67 s 9, & 1980 c 177 s 16;

(6) RCW 74.46.170 and 1995 1st sp.s. c 18 s 94, 1983 1st ex.s. c 67 s 10, & 1980 c 177 s 17;

(7) RCW 74.46.180 and 1995 1st sp.s. c 18 s 95 & 1993 sp.s. c 13 s 2;

(8) RCW 74.46.210 and 1991 sp.s. c 8 s 14 & 1980 c 177 s 21; and

(9) RCW 74.46.670 and 1983 1st ex.s. c 67 s 35 & 1980 c 177 s 67.

NEW SECTION. Sec. 53. RCW 74.46.595 and 1995 1st sp.s. c 18 s 98 are each repealed effective July 2, 1998.

NEW SECTION. Sec. 54. The following acts or parts of acts are each repealed, effective June 30, 1999:

(1) 1998 c . . . s 29 (section 29 of this act) (uncodified); and

(2) 1998 c . . . s 30 (section 30 of this act) (uncodified).

NEW SECTION. Sec. 55. Sections 1 through 37, 40 through 49, and 52 through 54 of this act take effect July 1, 1998.

NEW SECTION. Sec. 56. 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. 57. (1) Sections 9, 10, 19, 20, 22 through 28, 31, and 46 of this act are each added to chapter 74.46 RCW.

(2) Sections 19, 20, 22 through 28, and 31 of this act shall be codified in part E of chapter 74.46 RCW.

NEW SECTION. Sec. 58. Section 51 of this act takes effect July 1, 1998, and expires October 1, 1998.

NEW SECTION. Sec. 59. Sections 38 and 39 of this act take effect October 1, 1998.

Passed the House March 12, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 323

[Substitute House Bill 3096]

STATE PREEMPTION OF THE FIELD OF EXCISE OR PRIVILEGE TAXES ON HEALTH CARE SERVICES

AN ACT Relating to declaring the state's preemption of the field of excise or privilege taxes on health maintenance organizations and health care service contractors; and amending RCW 48.14.0201.

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

Sec. 1. RCW 48.14.0201 and 1997 c 154 s 1 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, or a health care service contractor, as defined in RCW 48.44.010.

(2) Each taxpayer shall 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 be equal to the total amount of all premiums and prepayments for health care services received by the taxpayer during the preceding calendar year multiplied by the rate of two percent.

(3) Taxpayers shall prepay their tax obligations under this section. The minimum amount of the prepayments shall be 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 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 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, or certified health plan's prepayment obligations for the current tax year.

(5) Moneys collected under this section shall be deposited in the general fund through March 31, 1996, and in the health services account under RCW 43.72.900 after March 31, 1996.

(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 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.

(7) Beginning January 1, 2000, the state does hereby preempt the field of imposing excise or privilege taxes upon taxpayers and no county, city, town, or other municipal subdivision shall have the right to impose any such taxes upon such taxpayers. This subsection shall be limited to premiums and payments for health benefit plans offered by health care service contractors under chapter 48.44 RCW and health maintenance organizations under chapter 48.46 RCW. The preemption authorized by this subsection shall 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.

Passed the House March 9, 1998.

Passed the Senate March 3, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 324

[Senate Bill 5631]

**EDUCATION LOAN GUARANTEE SERVICES—
BUSINESS AND OCCUPATION TAX EXEMPTION**

AN ACT Relating to imposition of the business and occupation tax on education loan guarantee services; and amending RCW 82.04.367.

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

Sec. 1. RCW 82.04.367 and 1987 c 433 s 1 are each amended to read as follows:

This chapter does not apply to gross income received by nonprofit organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code of 1954, as amended, that:

(1) Are guarantee agencies under the federal guaranteed student loan program or that issue debt to provide or acquire student loans; or

(2) Provide guarantees for student loans made through programs other than the federal guaranteed student loan program.

Passed the Senate February 11, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 325

[Substitute Senate Bill 6077]

NONPROFIT HOSPICE AGENCIES—BUSINESS AND OCCUPATION TAX EXEMPTIONS

AN ACT Relating to the business and occupation taxation of nonprofit organizations providing care for the terminally ill; and amending RCW 82.04.4289.

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

Sec. 1. RCW 82.04.4289 and 1993 c 492 s 305 are each amended to read as follows:

This chapter does not apply to amounts derived as compensation for services rendered to patients or from sales of prescription drugs as defined in RCW 82.08.0281 furnished as an integral part of services rendered to patients by a kidney dialysis facility operated as a nonprofit corporation, a nonprofit hospice agency licensed under chapter 70.127 RCW, and nursing homes(;) and homes for unwed mothers operated as religious or charitable organizations, but only if no part of the net earnings received by such an institution inures directly or indirectly, to any person other than the institution entitled to deduction hereunder.

Passed the Senate February 4, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 326

[Substitute Senate Bill 6119]

ASSUMPTION OF WATER-SEWER DISTRICTS BY MUNICIPALITIES—REVISIONS

AN ACT Relating to voter approval of a city assumption of a water-sewer district; amending RCW 35.13A.010 and 35.13A.020; creating a new section; and declaring an emergency.

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

Sec. 1. RCW 35.13A.010 and 1971 ex.s. c 95 s 1 are each amended to read as follows:

Whenever used in this chapter, the following words shall have the following meanings:

(1) The words "district," "water district," and "sewer district" shall mean a ~~((water district or sewer district as indicated by the context of the section in which used))~~ "water-sewer district" as that term is used in Title 57 RCW.

(2) The word "city" shall mean a city or town of any class and shall also include any code city as defined in chapter 35A.01 RCW.

(3) ~~((The words "included with" shall mean the inclusion of all or part of the territory of a district, as indicated by the context, within the corporate limits of a city either by incorporation of a city, annexation to a city, consolidation of cities or any combination thereof.~~

~~—(4))~~ The word "indebtedness" shall include general obligation, revenue, and special indebtedness and temporary, emergency, and interim loans.

Sec. 2. RCW 35.13A.020 and 1971 ex.s. c 95 s 2 are each amended to read as follows:

(1) Whenever all of the territory of a water ~~((district or))~~ sewer district is included within the corporate boundaries of a city, ~~((and))~~ the city legislative body ~~((has elected by))~~ may adopt a resolution or ordinance to assume jurisdiction ~~((thereof))~~ over all of the district.

(2) Upon the assumption, all real and personal property, franchises, rights, assets, taxes levied but not collected for the district for other than indebtedness, water ~~((and)),~~ sewer ~~((lines)),~~ and drainage facilities, and all other facilities and equipment of the district shall become the property of ~~((such))~~ the city subject to all financial, statutory, or contractual obligations of the district for the security or performance of which ~~((such))~~ the property may have been pledged. ~~((Such))~~ The city, in addition to its other powers, shall have the power to manage, control, maintain, and operate ~~((such))~~ the property, facilities and equipment and to fix and collect service and other charges from owners and occupants of properties so served by the city, subject, however, to any outstanding indebtedness, bonded or otherwise, of the district payable from taxes, assessments, or revenues of any kind or nature and to any other contractual obligations of the district.

~~((Such))~~ (3) The city may by resolution or ordinance of its legislative body, assume the obligation of paying such district indebtedness and of levying and of collecting or causing to be collected ~~((such))~~ the district taxes, assessments, and utility rates and charges of any kind or nature to pay and secure the payment of ~~((such))~~ the indebtedness, according to all of the terms, conditions and covenants incident to ~~((such))~~ the indebtedness, and shall assume and perform all other outstanding contractual obligation of the district in accordance with all of ~~((its))~~ their terms, conditions, and covenants. ~~((No such))~~ An assumption shall not be deemed to impair the obligation of any indebtedness or other contractual obligation ~~((entered into after August 9, 1971)).~~ During the period until the outstanding indebtedness of the district has been discharged, the territory of the district and the owners and occupants of property therein, shall continue to be liable for its and their proportionate share of ~~((such))~~ the indebtedness, including

any outstanding assessments levied within any local improvement district or utility local improvement district thereof. The city shall assume the obligation of causing the payment of ~~((such))~~ the district's indebtedness, collecting ~~((such))~~ the district's taxes, assessments, and charges, and observing and performing the other district contractual obligations. The legislative body of the city shall act as the officers of the district for the purpose of certifying the amount of any property tax to be levied and collected therein, and causing service and other charges and assessments to be collected from ~~((such))~~ the property or owners or occupants thereof, enforcing ~~((such))~~ the collection and performing all other acts necessary to ~~((insure))~~ ensure performance of the district's contractual obligations in the same manner and by the same means as if the territory of the district had not been included within the boundaries of a city.

When a city assumes the obligation of paying the outstanding indebtedness, and if property taxes or assessments have been levied and service and other charges have accrued for ~~((such))~~ this purpose but have not been collected by the district prior to ~~((such election))~~ the assumption, the same when collected shall belong and be paid to the city and be used by ~~((such))~~ the city so far as necessary for payment of the indebtedness of the district existing and unpaid on the date ~~((such))~~ the city ~~((elects to))~~ assumes the indebtedness. Any funds received by the city which have been collected for the purpose of paying any bonded or other indebtedness of the district, shall be used for the purpose for which they were collected and for no other purpose. Any outstanding indebtedness shall be paid as provided in the ~~((bond))~~ terms, conditions, and covenants of the indebtedness. All funds of the district on deposit with the county treasurer at the time of title transfer shall be used by the city solely for the benefit of the assumed utility and shall not be transferred to or used for the benefit of the city's general fund.

NEW SECTION, Sec. 3. During the period commencing with the effective date of this act and running through July 1, 1999, a city may not assume jurisdiction of all or a portion of a water-sewer district under RCW 35.13A.030 or 35.13A.040, unless voters of the entire water-sewer district approve a ballot proposition authorizing the assumption under general election law with the city paying for the election costs, and during the same period a water-sewer district may not:

(1) Merge or consolidate with another water-sewer district unless each city that is partially included within any of the districts proposing to merge or consolidate indicates that it has no interest in assuming jurisdiction of the district; or

(2) Take any action that would establish different contractual obligations, requirements for retiring indebtedness, authority to issue debt in parity with the district's existing outstanding indebtedness, rates of compensation, or terms of employment contracts, if a city assumes jurisdiction of all or a portion of the district. Nothing in this subsection shall be construed to prevent a district from issuing obligations on a parity with its outstanding obligations, to repeat terms and conditions of obligations provided with respect to earlier parity obligations, or to

provide covenants that are customary for obligations of similar utilities whether those utilities are operated by cities or special purpose districts.

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

Passed the Senate March 11, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 327

[Engrossed Substitute Senate Bill 6205]

WAIVER OF INTEREST AND PENALTIES ON RESIDENTIAL PROPERTY TAXES DELINQUENT BECAUSE OF HARDSHIP

AN ACT Relating to waiver of interest on residential property taxes that are delinquent because of hardship due to the death of the taxpayer's spouse or parent; and amending RCW 84.56.025.

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

Sec. 1. RCW 84.56.025 and 1984 c 185 s 1 are each amended to read as follows:

(1) The interest and penalties for delinquencies on property taxes, which taxes are levied on real estate in the year of a conveyance of the real estate and which are collected in the following year, shall be waived by the county treasurer under the following circumstances:

((H)) (a) Records conveying the real estate were filed with the county auditor on or before November 30 of the year the taxes are levied;

((2)) (b) A grantee's name and address are included in the records; and

((3)) (c) The notice for these taxes due, as provided in RCW 84.56.050, was not sent to a grantee due to error by the county. Where such waiver of interest and penalties has occurred, the full amount of interest and penalties shall be reinstated if the grantee fails to pay the delinquent taxes within thirty days of receiving notice that the taxes are due. Each county treasurer shall, subject to guidelines prepared by the department of revenue, establish administrative procedures to determine if grantees are eligible for this waiver.

(2) In addition to the waiver under subsection (1) of this section, the interest and penalties for delinquencies on property taxes shall be waived by the county treasurer under the following circumstances:

(a) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer's personal residence because of hardship caused by the death of the taxpayer's spouse if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date; or

(b) The taxpayer fails to make one payment under RCW 84.56.020 by the due date on the taxpayer's parent's or stepparent's personal residence because of

hardship caused by the death of the taxpayer's parent or stepparent if the taxpayer notifies the county treasurer of the hardship within sixty days of the tax due date.

(3) Before allowing a hardship waiver under subsection (2) of this section, the county treasurer may require a copy of the death certificate along with an affidavit signed by the taxpayer.

Passed the Senate March 11, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 328

[Engrossed Substitute Senate Bill 6238]

DEPENDENT CHILDREN

AN ACT Relating to dependent children; and amending RCW 13.34.050, 13.34.060, 13.34.090, 13.34.120, 26.44.030, and 43.20A.870.

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

Sec. 1. RCW 13.34.050 and 1979 c 155 s 38 are each amended to read as follows:

(1) The court may enter an order directing a law enforcement officer, probation counselor, or child protective services official to take a child into custody if: (a) A petition is filed with the juvenile court alleging that the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody; (b) an affidavit or declaration is filed by the department in support of the petition setting forth specific factual information evidencing reasonable grounds that the child's health, safety, and welfare will be seriously endangered if not taken into custody and at least one of the grounds set forth demonstrates a risk of imminent harm to the child. "Imminent harm" for purposes of this section shall include, but not be limited to, circumstances of sexual abuse, or sexual exploitation as defined in RCW 26.44.020; and (c) the court finds reasonable grounds to believe the child is dependent and that the child's health, safety, and welfare will be seriously endangered if not taken into custody.

(2) Any petition that does not have the necessary affidavit or declaration demonstrating a risk of imminent harm requires notice and an opportunity to be heard by the parents.

(3) The petition and supporting documentation must be served on the parent and the entity with whom the child is in custody at the time the child is removed. Failure to effect service does not invalidate the petition if service was attempted and the parent could not be found.

Sec. 2. RCW 13.34.060 and 1990 c 246 s 1 are each amended to read as follows:

(1) A child taken into custody pursuant to RCW 13.34.050 or 26.44.050 shall be immediately placed in shelter care. A child taken by a relative of the child in violation of RCW 9A.40.060 or 9A.40.070 shall be placed in shelter care only when permitted under RCW 13.34.055. "Shelter care" means temporary physical care in a facility licensed pursuant to RCW 74.15.030 or in a home not required to be licensed pursuant to that section. Whenever a child is taken into such custody pursuant to this section, the supervising agency may authorize evaluations of the child's physical or emotional condition, routine medical and dental examination and care, and all necessary emergency care. In no case may a child who is taken into custody pursuant to RCW 13.34.055, 13.34.050, or 26.44.050 be detained in a secure detention facility. No child may be held longer than seventy-two hours, excluding Saturdays, Sundays and holidays, after such child is taken into custody unless a court order has been entered for continued shelter care. The child and his or her parent, guardian, or custodian shall be informed that they have a right to a shelter care hearing. The court shall hold a shelter care hearing within seventy-two hours after the child is taken into custody, excluding Saturdays, Sundays, and holidays. If a parent, guardian, or legal custodian desires to waive the shelter care hearing, the court shall determine, on the record and with the parties present, that such waiver is knowing and voluntary.

(2) Whenever a child is taken into custody by child protective services pursuant to a court order issued under RCW 13.34.050 or when child protective services is notified that a child has been taken into custody pursuant to RCW 26.44.050 or 26.44.056, child protective services shall make reasonable efforts to inform the parents, guardian, or legal custodian of the fact that the child has been taken into custody, the reasons why the child was taken into custody, and their legal rights under this title as soon as possible and in no event longer than twenty-four hours after the child has been taken into custody or twenty-four hours after child protective services has been notified that the child has been taken into custody. The notice of custody and rights may be given by any means reasonably certain of notifying the parents including, but not limited to, written, telephone, or in person oral notification. If the initial notification is provided by a means other than writing, child protective services shall make reasonable efforts to also provide written notification.

The written notice of custody and rights shall be in substantially the following form:

"NOTICE

Your child has been placed in temporary custody under the supervision of Child Protective Services (or other person or agency). You have important legal rights and you must take steps to protect your interests.

1. A court hearing will be held before a judge within 72 hours of the time your child is taken into custody. You should call the court at (insert appropriate phone number here) for specific information about the date, time, and location of the court hearing.

2. You have the right to have a lawyer represent you at the hearing. You have the right to records the department intends to rely upon. A lawyer can look at the files in your case, talk to child protective services and other agencies, tell you about the law, help you understand your rights, and help you at hearings. If you cannot afford a lawyer, the court will appoint one to represent you. To get a court-appointed lawyer you must contact: (explain local procedure).

3. At the hearing, you have the right to speak on your own behalf, to introduce evidence, to examine witnesses, and to receive a decision based solely on the evidence presented to the judge.

You should be present at this hearing. If you do not come, the judge will not hear what you have to say.

You may call the Child Protective Services' caseworker for more information about your child. The caseworker's name and telephone number are: (insert name and telephone number)."

Upon receipt of the written notice, the parent, guardian, or legal custodian shall acknowledge such notice by signing a receipt prepared by child protective services. If the parent, guardian, or legal custodian does not sign the receipt, the reason for lack of a signature shall be written on the receipt. The receipt shall be made a part of the court's file in the dependency action.

If after making reasonable efforts to provide notification, child protective services is unable to determine the whereabouts of the parents, guardian, or legal custodian, the notice shall be delivered or sent to the last known address of the parent, guardian, or legal custodian.

(3) If child protective services is not required to give notice under subsection (2) of this section, the juvenile court counselor assigned to the matter shall make all reasonable efforts to advise the parents, guardian, or legal custodian of the time and place of any shelter care hearing, request that they be present, and inform them of their basic rights as provided in RCW 13.34.090.

(4) Reasonable efforts to advise and to give notice, as required in subsections (2) and (3) of this section, shall include, at a minimum, investigation of the whereabouts of the parent, guardian, or legal custodian. If such reasonable efforts are not successful, or the parent, guardian, or legal custodian does not appear at the shelter care hearing, the juvenile court counselor or caseworker shall testify at the hearing or state in a declaration:

(a) The efforts made to investigate the whereabouts of, and to advise, the parent, guardian, or legal custodian; and

(b) Whether actual advice of rights was made, to whom it was made, and how it was made, including the substance of any oral communication or copies of written materials used.

(5) At the commencement of the shelter care hearing the court shall advise the parties of their basic rights as provided in RCW 13.34.090 and shall appoint counsel pursuant to RCW 13.34.090 if counsel has not been retained by the parent or guardian and if the parent or guardian is indigent, unless the court finds that the right to counsel has been expressly and voluntarily waived in court.

(6) The court shall hear evidence regarding notice given to, and efforts to notify, the parent, guardian, or legal custodian and shall examine the need for shelter care. The court shall make an express finding as to whether the notice required under subsections (2) and (3) of this section was given to the parent, guardian, or legal custodian. All parties have the right to present testimony to the court regarding the need or lack of need for shelter care. Hearsay evidence before the court regarding the need or lack of need for shelter care must be supported by sworn testimony, affidavit, or declaration of the person offering such evidence.

(7) The juvenile court probation counselor shall submit a recommendation to the court as to the further need for shelter care, except that such recommendation shall be submitted by the department of social and health services in cases where the petition alleging dependency has been filed by the department of social and health services, unless otherwise ordered by the court.

(8) The court shall release a child alleged to be dependent to the care, custody, and control of the child's parent, guardian, or legal custodian unless the court finds there is reasonable cause to believe that:

(a) After consideration of the specific services that have been provided, reasonable efforts have been made to prevent or eliminate the need for removal of the child from the child's home and to make it possible for the child to return home; and

(b)(i) The child has no parent, guardian, or legal custodian to provide supervision and care for such child; or

(ii) The release of such child would present a serious threat of substantial harm to such child; or

(iii) The parent, guardian, or custodian to whom the child could be released is alleged to have violated RCW 9A.40.060 or 9A.40.070.

If the court does not release the child to his or her parent, guardian, or legal custodian, the court shall order continued shelter care or order placement with another suitable person, and the court shall set forth its reasons for the order. The court shall enter a finding as to whether subsections (2) and (3) of this section have been complied with. If actual notice was not given to the parent, guardian, or legal custodian and the whereabouts of such person is known or can be ascertained, the court shall order the supervising agency or the department of social and health services to make reasonable efforts to advise the parent, guardian, or legal custodian of the status of the case, including the date and time of any subsequent hearings, and their rights under RCW 13.34.090.

(9) An order releasing the child on any conditions specified in this section may at any time be amended, with notice and hearing thereon, so as to return the child to shelter care for failure of the parties to conform to the conditions originally imposed.

The court shall consider whether nonconformance with any conditions resulted from circumstances beyond the control of the parent and give weight to that fact before ordering return of the child to shelter care.

(10) A shelter care order issued pursuant to this section may be amended at any time with notice and hearing thereon. The shelter care decision of placement shall be modified only upon a showing of change in circumstances. No child may be detained for longer than thirty days without an order, signed by the judge, authorizing continued shelter care.

(11) Any parent, guardian, or legal custodian who for good cause is unable to attend the initial shelter care hearing may request that a subsequent shelter care hearing be scheduled. The request shall be made to the clerk of the court where the petition is filed prior to the initial shelter care hearing. The hearing shall be held within seventy-two hours of the request, excluding Saturdays, Sundays, and holidays. The clerk shall notify all other parties of the hearing by any reasonable means.

Sec. 3. RCW 13.34.090 and 1990 c 246 s 4 are each amended to read as follows:

(1) Any party has a right to be represented by an attorney in all proceedings under this chapter, to introduce evidence, to be heard in his or her own behalf, to examine witnesses, to receive a decision based solely on the evidence adduced at the hearing, and to an unbiased fact-finder.

(2) At all stages of a proceeding in which a child is alleged to be dependent ~~((pursuant to))~~ as defined in RCW 13.34.030~~((2))~~ (4), the child's parent, guardian, or legal custodian has the right to be represented by counsel, and if indigent, to have counsel appointed for him or her by the court. Unless waived in court, counsel shall be provided to the child's parent, guardian, or legal custodian, if such person (a) has appeared in the proceeding or requested the court to appoint counsel and (b) is financially unable to obtain counsel because of indigency as defined in chapter 10.101 RCW.

(3) If a party to an action under this chapter is represented by counsel, no order shall be provided to that party for his or her signature without prior notice and provision of the order to counsel.

(4) Copies of department of social and health services or supervising agency records to which parents have legal access pursuant to chapter 13.50 RCW shall be given to the child's parent, guardian, legal custodian, or his or her legal counsel, prior to any shelter care hearing and within ~~((twenty))~~ fifteen days after the department or supervising agency receives a written request for such records from the parent, guardian, legal custodian, or his or her legal counsel. These records shall be provided to the child's parents, guardian, legal custodian, or legal counsel a reasonable period of time prior to the shelter care hearing in order to allow an opportunity to review the records prior to the hearing. These records shall be legible and shall be provided at no expense to the parents, guardian, legal custodian, or his or her counsel. When the records are served on legal counsel, legal counsel shall have the opportunity to review the records with the parents and shall review the records with the parents prior to the shelter care hearing.

Sec. 4. RCW 13.34.120 and 1996 c 249 s 14 are each amended to read as follows:

(1) To aid the court in its decision on disposition, a social study, consisting of a written evaluation of matters relevant to the disposition of the case, shall be made by the person or agency filing the petition. A parent may submit a counselor's or health care provider's evaluation of the parent, which shall either be included in the social study or considered in conjunction with the social study. The study shall include all social records and may also include facts relating to the child's cultural heritage, and shall be made available to the court. The court shall consider the social file, social study, guardian ad litem report, the court-appointed special advocate's report, if any, and any reports filed by a party at the disposition hearing in addition to evidence produced at the fact-finding hearing. At least ten working days before the disposition hearing, the department shall mail to the parent and his or her attorney a copy of the agency's social study and proposed service plan, which shall be in writing or in a form understandable to the parents or custodians. In addition, the department shall provide an opportunity for parents to review and comment on the plan at the community service office. If the parents disagree with the agency's plan or any part thereof, the parents shall submit to the court at least twenty-four hours before the hearing, in writing, or signed oral statement, an alternative plan to correct the problems which led to the finding of dependency. This section shall not interfere with the right of the parents or custodians to submit oral arguments regarding the disposition plan at the hearing.

(2) In addition to the requirements set forth in subsection (1) of this section, a predisposition study to the court in cases of dependency alleged pursuant to RCW 13.34.030(4) (b) or (c) shall contain the following information:

(a) A statement of the specific harm or harms to the child that intervention is designed to alleviate;

(b) A description of the specific programs, for both the parents and child, that are needed in order to prevent serious harm to the child; the reasons why such programs are likely to be useful; the availability of any proposed services; and the agency's overall plan for ensuring that the services will be delivered. The description shall identify services chosen and approved by the parent;

(c) If removal is recommended, a full description of the reasons why the child cannot be protected adequately in the home, including a description of any previous efforts to work with the parents and the child in the home; the in-home treatment programs which have been considered and rejected; the preventive services that have been offered or provided and have failed to prevent the need for out-of-home placement, unless the health, safety, and welfare of the child cannot be protected adequately in the home; and the parents' attitude toward placement of the child;

(d) A statement of the likely harms the child will suffer as a result of removal. This section should include an exploration of the nature of the parent-

child attachment and the meaning of separation and loss to both the parents and the child;

(e) A description of the steps that will be taken to minimize harm to the child that may result if separation occurs; and

(f) Behavior that will be expected before determination that supervision of the family or placement is no longer necessary.

Sec. 5. RCW 26.44.030 and 1997 c 386 s 25 are each amended to read as follows:

(1)(a) When any practitioner, county coroner or medical examiner, law enforcement officer, professional school personnel, registered or licensed nurse, social service counselor, psychologist, pharmacist, licensed or certified child care providers or their employees, employee of the department, juvenile probation officer, or state family and children's ombudsman or any volunteer in the ombudsman's office has reasonable cause to believe that a child or adult dependent or developmentally disabled person, has suffered abuse or neglect, he or she shall report such incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(b) The reporting requirement shall also apply to department of corrections personnel who, in the course of their employment, observe offenders or the children with whom the offenders are in contact. If, as a result of observations or information received in the course of his or her employment, any department of corrections personnel has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect, he or she shall report the incident, or cause a report to be made, to the proper law enforcement agency or to the department as provided in RCW 26.44.040.

(c) The reporting requirement shall also apply to any adult who has reasonable cause to believe that a child or adult dependent or developmentally disabled person, who resides with them, has suffered severe abuse, and is able or capable of making a report. For the purposes of this subsection, "severe abuse" means any of the following: Any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, could cause death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(d) The report shall be made at the first opportunity, but in no case longer than forty-eight hours after there is reasonable cause to believe that the child or adult has suffered abuse or neglect. The report shall include the identity of the accused if known.

(2) The reporting requirement of subsection (1) of this section does not apply to the discovery of abuse or neglect that occurred during childhood if it is discovered after the child has become an adult. However, if there is reasonable cause to believe other children, dependent adults, or developmentally disabled

persons are or may be at risk of abuse or neglect by the accused, the reporting requirement of subsection (1) of this section shall apply.

(3) Any other person who has reasonable cause to believe that a child or adult dependent or developmentally disabled person has suffered abuse or neglect may report such incident to the proper law enforcement agency or to the department of social and health services as provided in RCW 26.44.040.

(4) The department, upon receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means or who has been subjected to alleged sexual abuse, shall report such incident to the proper law enforcement agency. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the department shall notify the proper law enforcement agency within twenty-four hours after a report is received by the department. In all other cases, the department shall notify the law enforcement agency within seventy-two hours after a report is received by the department. If the department makes an oral report, a written report shall also be made to the proper law enforcement agency within five days thereafter.

(5) Any law enforcement agency receiving a report of an incident of alleged abuse or neglect pursuant to this chapter, involving a child or adult dependent or developmentally disabled person who has died or has had physical injury or injuries inflicted upon him or her other than by accidental means, or who has been subjected to alleged sexual abuse, shall report such incident in writing as provided in RCW 26.44.040 to the proper county prosecutor or city attorney for appropriate action whenever the law enforcement agency's investigation reveals that a crime may have been committed. The law enforcement agency shall also notify the department of all reports received and the law enforcement agency's disposition of them. In emergency cases, where the child, adult dependent, or developmentally disabled person's welfare is endangered, the law enforcement agency shall notify the department within twenty-four hours. In all other cases, the law enforcement agency shall notify the department within seventy-two hours after a report is received by the law enforcement agency.

(6) Any county prosecutor or city attorney receiving a report under subsection (5) of this section shall notify the victim, any persons the victim requests, and the local office of the department, of the decision to charge or decline to charge a crime, within five days of making the decision.

(7) The department may conduct ongoing case planning and consultation with those persons or agencies required to report under this section, with consultants designated by the department, and with designated representatives of Washington Indian tribes if the client information exchanged is pertinent to cases currently receiving child protective services or department case services for the developmentally disabled. Upon request, the department shall conduct such planning and consultation with those persons required to report under this section if the department determines it is in the best interests of the child or

developmentally disabled person. Information considered privileged by statute and not directly related to reports required by this section shall not be divulged without a valid written waiver of the privilege.

(8) Any case referred to the department by a physician licensed under chapter 18.57 or 18.71 RCW on the basis of an expert medical opinion that child abuse, neglect, or sexual assault has occurred and that the child's safety will be seriously endangered if returned home, the department shall file a dependency petition unless a second licensed physician of the parents' choice believes that such expert medical opinion is incorrect. If the parents fail to designate a second physician, the department may make the selection. If a physician finds that a child has suffered abuse or neglect but that such abuse or neglect does not constitute imminent danger to the child's health or safety, and the department agrees with the physician's assessment, the child may be left in the parents' home while the department proceeds with reasonable efforts to remedy parenting deficiencies.

(9) Persons or agencies exchanging information under subsection (7) of this section shall not further disseminate or release the information except as authorized by state or federal statute. Violation of this subsection is a misdemeanor.

(10) Upon receiving reports of alleged abuse or neglect, the department or law enforcement agency may interview children. The interviews may be conducted on school premises, at day-care facilities, at the child's home, or at other suitable locations outside of the presence of parents. Parental notification of the interview shall occur at the earliest possible point in the investigation that will not jeopardize the safety or protection of the child or the course of the investigation. Prior to commencing the interview the department or law enforcement agency shall determine whether the child wishes a third party to be present for the interview and, if so, shall make reasonable efforts to accommodate the child's wishes. Unless the child objects, the department or law enforcement agency shall make reasonable efforts to include a third party in any interview so long as the presence of the third party will not jeopardize the course of the investigation.

(11) Upon receiving a report of alleged child abuse and neglect, the department or investigating law enforcement agency shall have access to all relevant records of the child in the possession of mandated reporters and their employees.

(12) The department shall maintain investigation records and conduct timely and periodic reviews of all cases constituting abuse and neglect. The department shall maintain a log of screened-out nonabusive cases.

(13) The department shall use a risk assessment process when investigating alleged child abuse and neglect referrals. The department shall present the risk factors at all hearings in which the placement of a dependent child is an issue. Substance abuse must be a risk factor. The department shall, within funds appropriated for this purpose, offer enhanced community-based services to persons who are determined not to require further state intervention.

The department shall provide annual reports to the legislature on the effectiveness of the risk assessment process.

(14) Upon receipt of a report of alleged abuse or neglect the law enforcement agency may arrange to interview the person making the report and any collateral sources to determine if any malice is involved in the reporting.

(15) The department shall make reasonable efforts to learn the name, address, and telephone number of each person making a report of abuse or neglect under this section. The department shall provide assurances of appropriate confidentiality of the identification of persons reporting under this section. If the department is unable to learn the information required under this subsection, the department shall only investigate cases in which: (a) The department believes there is a serious threat of substantial harm to the child; (b) the report indicates conduct involving a criminal offense that has, or is about to occur, in which the child is the victim; or (c) the department has, after investigation, a report of abuse or neglect that has been founded with regard to a member of the household within three years of receipt of the referral.

**Sec. 6. RCW 43.20A.870 and 1997 c 386 s 47 are each amended to read as follows:*

(1) The department shall prepare an annual quality assurance report that shall include but is not limited to: ~~((1))~~ (a) Performance outcomes regarding health and safety of children in the children's services system; ~~((2))~~ (b) children's length of stay in out-of-home placement from each date of referral; ~~((3))~~ (c) adherence to permanency planning timelines; and ~~((4))~~ (d) the response time on child protective services investigations differentiated by risk level determined at intake. The report shall be provided to the governor and legislature not later than July 1.

(2) In cases where a dependency action has been initiated and in cases where a family has been referred to the alternative response system, the department shall report:

(a) The number of cases where substance abuse is an identified risk factor in the risk factor assessment;

(b) The number of cases where substance abuse is the factor or a primary factor in the risk assessment;

(c) The number of cases where substance abuse treatment is recommended for a parent;

(d) The period parent's referred to substance abuse treatment wait before entering substance abuse treatment;

(e) The number of cases where substance abuse is a factor and substance abuse treatment is provided;

(f) The number of cases where substance abuse is a factor and substance abuse treatment is not provided, including the reason why treatment was not provided; and

(g) The number of cases where no dependency is filed because a parent receives substance abuse treatment.

*Sec. 6 was vetoed. See message at end of chapter.

Passed the Senate March 12, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 6, Engrossed Substitute Senate Bill No. 6238 entitled:

"AN ACT Relating to dependent children;"

This bill requires the Department of Social and Health Services to specify, via affidavit, evidence that harm will come to a particular child if the child is not taken from his home. The affidavit must contain evidence of the risk of imminent harm. The bill also requires quicker access to information for parents, to help give them an adequate opportunity to make their case at the shelter care hearing. Under this legislation, parents will be able to become more engaged in the process of identifying the services they require to prevent serious harm to a child, were the child returned to them.

Section 6 of this legislation would require DSHS to publish a great deal of new information in its annual quality assurance report. The required information is not now collected, and there is no indication why DSHS should start collecting it, or what the usefulness of that information would be. And, no funding was provided for this purpose.

For these reasons, I have vetoed section 6 of Engrossed Substitute Senate Bill No. 6238.

With the exception of section 6, Engrossed Substitute Senate Bill No. 6238 is approved."

CHAPTER 329

[Senate Bill 6270]

INTERNAL DISTRIBUTIONS—ELIMINATION OF BUSINESS AND OCCUPATION TAX

AN ACT Relating to eliminating the business and occupation tax on internal distributions; amending RCW 82.04.270; and providing an effective date.

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

Sec. 1. RCW 82.04.270 and 1994 c 124 s 2 are each amended to read as follows:

~~(((1)))~~ Upon every person except persons taxable under ~~((subsections (1) or (8) of))~~ RCW 82.04.260 ~~(1) or (8)~~ engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent.

~~(((2)))~~ ~~The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets; where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales. The tax~~

~~designated in this section may not be assessed twice to the same person for the same article. The amount of the tax as to such persons shall be computed by multiplying 0.484 percent of the value of the article so distributed as of the time of such distribution. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers. Delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.))~~

NEW SECTION. Sec. 2. This act takes effect July 1, 1998.

Passed the Senate February 12, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 330

[Senate Bill 6348]

MANUFACTURING MACHINERY AND EQUIPMENT—ELIMINATING CERTIFICATE AND SUMMARY REQUIREMENTS FOR SALES AND USE TAX EXEMPTIONS

AN ACT Relating to eliminating requirements for filing certificates or annual summaries for sales and use tax exemptions on manufacturing machinery and equipment; amending RCW 82.12.02565; reenacting and amending RCW 82.08.02565; creating a new section; and providing an effective date.

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

Sec. 1. RCW 82.08.02565 and 1996 c 247 s 2 and 1996 c 173 s 3 are each reenacted and amended to read as follows:

(1) The tax levied by RCW 82.08.020 shall 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, 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 an exemption certificate in a form and manner prescribed by the department by rule (~~(, and the purchaser provides the department with a duplicate of the certificate or a summary of exempt sales as the department may require)~~). The seller shall 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 or research and development operation to prevent air pollution, water pollution, or contamination that might otherwise result from the manufacturing operation or research and development operation.

(b) "Machinery and equipment" does not include:

- (i) Hand 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 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 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;
- (iii) Controls, guides, measures, verifies, aligns, regulates, or tests tangible personal property;
- (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 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) "Manufacturing operation" means the manufacturing of articles, substances, or commodities for sale as tangible personal property. The manufacturing operation begins at the point where the raw materials enter the manufacturing site and ends at the point where the finished product leaves the manufacturing site. 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 or the preparation of food products on the premises of a person selling food products at retail.

(e) "Cogeneration" means the simultaneous generation of electrical energy and low-grade heat from the same fuel.

(f) "Research and development operation" means engaging in research and development as defined in RCW 82.63.010 by a manufacturer or processor for hire.

Sec. 2. RCW 82.12.02565 and 1996 c 247 s 3 are each amended to read as follows:

The provisions of this chapter shall not apply in respect to the use by a manufacturer or processor for hire of machinery and equipment used directly in a manufacturing operation or research and development operation(~~(-but only when the user provides the department with:~~

~~— (1) An exemption certificate in a form and manner prescribed by the department within sixty days of the first use of the machinery and equipment in this state; or~~

~~— (2) An annual summary listing the machinery and equipment by January 31 of the year following the calendar year in which the machinery and equipment is first used in this state).~~

****NEW SECTION. Sec. 3. The department shall not deny exemptions under RCW 82.08.02565 or 82.12.02565 solely on the basis of failure to comply with duplicate certificate or summary filing requirements. The amendments of RCW 82.08.02565 or 82.12.02565 in this act do not terminate requirements to file duplicate certificates or summaries in respect to exemptions claimed for periods before January 1, 1999.***

*Sec. 3 was vetoed. See message at end of chapter.

****NEW SECTION. Sec. 4. Sections 1 and 2 of this act take effect January 1, 1999.***

*Sec. 4 was vetoed. See message at end of chapter.

Passed the Senate March 9, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 3 and 4 of Senate Bill No. 6348 entitled:

"AN ACT Relating to eliminating requirements for filing certificates or annual summaries for sales and use tax exemptions on manufacturing machinery and equipment;"

Senate Bill No. 6348 amends the state retail sales and use tax statutes to relieve taxpayers of the burden of making reports and annual summaries of tax exempt purchases, for submission to the Department of Revenue.

One of my goals as Governor is the simplification of our tax system and the reduction of regulations for businesses. The Department of Revenue developed this legislation in an effort to reach that goal. The original intent of the bill was to immediately relieve taxpayers eligible for the machinery and equipment tax exemption from the burden of submitting duplicate exemption certificates or purchase summaries to the Department.

The Legislature amended the bill by adding sections 3 and 4. Section 4 would require taxpayers to submit, for an additional six months, reports of machinery and equipment purchases before qualifying for the sales and use tax exemption. However, section 3 would not require the Department to deny exemptions if the taxpayers did not send in reports. This would create conflicting policies and extend the period during which businesses must submit redundant paperwork to the Department. This is unnecessary, burdensome, and contrary to the bill's original purpose.

For these reasons, I have vetoed sections 3 and 4 of Senate Bill No. 6348.

With the exception of sections 3 and 4, Senate Bill No. 6348 is approved."

CHAPTER 331

[Senate Bill 6449]

ROYALTIES FOR THE USE OF INTANGIBLE RIGHTS—
BUSINESS AND OCCUPATION TAX RATE

AN ACT Relating to the business and occupation taxation of income in the nature of royalties for the use of intangible rights; amending RCW 82.04.290; adding a new section to chapter 82.04 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 82.04 RCW to read as follows:

Upon every person engaging within this state in the business of receiving income from royalties or charges in the nature of royalties for the granting of intangible rights, such as copyrights, licenses, patents, or franchise fees, the amount of tax with respect to such business shall be equal to the gross income from royalties or charges in the nature of royalties from the business multiplied by the rate of 0.484 percent.

"Royalties" means compensation for the use of intangible property, such as copyrights, patents, licenses, franchises, trademarks, trade names, and similar items. It does not include compensation for any natural resource.

Sec. 2. RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, ~~((and))~~ 82.04.280, section 1 of this act, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

NEW SECTION. Sec. 3. This act takes effect July 1, 1998.

Passed the Senate February 13, 1998.
Passed the House March 10, 1998.
Approved by the Governor April 3, 1998.
Filed in Office of Secretary of State April 3, 1998.

CHAPTER 332

[Engrossed Substitute Senate Bill 6470]

CANNED AND CUSTOM SOFTWARE—TAX TREATMENT

AN ACT Relating to the tax treatment of canned and custom software; amending RCW 82.04.050, 82.04.060, and 82.12.020; reenacting and amending RCW 82.04.190; adding new sections to chapter 82.04 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that the creation and customization of software is an area not fully addressed in our excise tax statutes, and that certainty of tax treatment is essential to the industry and consumers. Therefore, the intent of this act is to make the tax treatment of software clear and certain for developers, programmers, and consumers.

Sec. 2. RCW 82.04.050 and 1997 c 127 s 1 are each amended to read as follows:

(1) "Sale at retail" or "retail sale" means every sale of tangible personal property (including articles produced, fabricated, or imprinted) to all persons irrespective of the nature of their business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than a sale to a person who presents a resale certificate under RCW 82.04.470 and who:

(a) Purchases for the purpose of resale as tangible personal property in the regular course of business without intervening use by such person; or

(b) Installs, repairs, cleans, alters, imprints, improves, constructs, or decorates real or personal property of or for consumers, if such tangible personal property becomes an ingredient or component of such real or personal property without intervening use by such person; or

(c) Purchases for the purpose of consuming the property purchased in producing for sale a new article of tangible personal property or substance, of which such property becomes an ingredient or component or is a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale; or

(d) Purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon; or

(e) Purchases for the purpose of providing the property to consumers as part of competitive telephone service, as defined in RCW 82.04.065. The term shall

include every sale of tangible personal property which is used or consumed or to be used or consumed in the performance of any activity classified as a "sale at retail" or "retail sale" even though such property is resold or utilized as provided in (a), (b), (c), (d), or (e) of this subsection following such use. The term also means every sale of tangible personal property to persons engaged in any business which is taxable under RCW 82.04.280 (2) and (7) and 82.04.290.

(2) The term "sale at retail" or "retail sale" shall include the sale of or charge made for tangible personal property consumed and/or for labor and services rendered in respect to the following:

(a) The installing, repairing, cleaning, altering, imprinting, or improving of tangible personal property of or for consumers, including charges made for the mere use of facilities in respect thereto, but excluding sales of laundry service to members by nonprofit associations composed exclusively of nonprofit hospitals, and excluding services rendered in respect to live animals, birds and insects;

(b) The constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for consumers, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation, and shall also include the sale of services or charges made for the clearing of land and the moving of earth excepting the mere leveling of land used in commercial farming or agriculture;

(c) The charge for labor and services rendered in respect to constructing, repairing, or improving any structure upon, above, or under any real property owned by an owner who conveys the property by title, possession, or any other means to the person performing such construction, repair, or improvement for the purpose of performing such construction, repair, or improvement and the property is then reconveyed by title, possession, or any other means to the original owner;

(d) The sale of or charge made for labor and services rendered in respect to the cleaning, fumigating, razing or moving of existing buildings or structures, but shall not include the charge made for janitorial services; and for purposes of this section the term "janitorial services" shall mean those cleaning and caretaking services ordinarily performed by commercial janitor service businesses including, but not limited to, wall and window washing, floor cleaning and waxing, and the cleaning in place of rugs, drapes and upholstery. The term "janitorial services" does not include painting, papering, repairing, furnace or septic tank cleaning, snow removal or sandblasting;

(e) The sale of or charge made for labor and services rendered in respect to automobile towing and similar automotive transportation services, but not in respect to those required to report and pay taxes under chapter 82.16 RCW;

(f) The sale of and charge made for the furnishing of lodging and all other services by a hotel, rooming house, tourist court, motel, trailer camp, and the granting of any similar license to use real property, as distinguished from the renting or leasing of real property, and it shall be presumed that the occupancy of

real property for a continuous period of one month or more constitutes a rental or lease of real property and not a mere license to use or enjoy the same;

(g) The sale of or charge made for tangible personal property, labor and services to persons taxable under (a), (b), (c), (d), (e), and (f) of this subsection when such sales or charges are for property, labor and services which are used or consumed in whole or in part by such persons in the performance of any activity defined as a "sale at retail" or "retail sale" even though such property, labor and services may be resold after such use or consumption. Nothing contained in this subsection shall be construed to modify subsection (1) of this section and nothing contained in subsection (1) of this section shall be construed to modify this subsection.

(3) The term "sale at retail" or "retail sale" shall include the sale of or charge made for personal, business, or professional services including amounts designated as interest, rents, fees, admission, and other service emoluments however designated, received by persons engaging in the following business activities:

(a) Amusement and recreation services including but not limited to golf, pool, billiards, skating, bowling, ski lifts and tows, day trips for sightseeing purposes, and others, when provided to consumers;

(b) Abstract, title insurance, and escrow services;

(c) Credit bureau services;

(d) Automobile parking and storage garage services;

(e) Landscape maintenance and horticultural services but excluding (i) horticultural services provided to farmers and (ii) pruning, trimming, repairing, removing, and clearing of trees and brush near electric transmission or distribution lines or equipment, if performed by or at the direction of an electric utility;

(f) Service charges associated with tickets to professional sporting events; and

(g) The following personal services: Physical fitness services, tanning salon services, tattoo parlor services, steam bath services, turkish bath services, escort services, and dating services.

(4) The term shall also include the renting or leasing of tangible personal property to consumers and the rental of equipment with an operator.

(5) The term shall also include the providing of telephone service, as defined in RCW 82.04.065, to consumers.

(6) The term shall also include the sale of canned software other than a sale to a person who presents a resale certificate under RCW 82.04.470, regardless of the method of delivery to the end user, but shall not include custom software or the customization of canned software.

(7) The term shall not include the sale of or charge made for labor and services rendered in respect to the building, repairing, or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal

corporation or political subdivision of the state or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind.

~~((7))~~ (8) The term shall also not include sales of chemical sprays or washes to persons for the purpose of postharvest treatment of fruit for the prevention of scald, fungus, mold, or decay, nor shall it include sales of feed, seed, seedlings, fertilizer, agents for enhanced pollination including insects such as bees, and spray materials to: (a) Persons who participate in the federal conservation reserve program, the environmental quality incentives program, the wetlands reserve program, and the wildlife habitat incentives program, or their successors administered by the United States department of agriculture; (b) farmers for the purpose of producing for sale any agricultural product; and (c) farmers acting under cooperative habitat development or access contracts with an organization exempt from federal income tax under 26 U.S.C. Sec. 501(c)(3) or the Washington state department of fish and wildlife to produce or improve wildlife habitat on land that the farmer owns or leases.

~~((8))~~ (9) The term shall not include the sale of or charge made for labor and services rendered in respect to the constructing, repairing, decorating, or improving of new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW, including the installing, or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation. Nor shall the term include the sale of services or charges made for the clearing of land and the moving of earth of or for the United States, any instrumentality thereof, or a county or city housing authority. Nor shall the term include the sale of services or charges made for cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

NEW SECTION. Sec. 3. A new section is added to chapter 82.04 RCW, to be codified between RCW 82.04.020 and 82.04.220, to read as follows:

(1) "Canned software" means software that is created for sale to more than one person.

(2) "Custom software" means software created for a single person.

(3) "Customization of canned software" means any alteration, modification, or development of applications using or incorporating canned computer software for a specific person. "Customization of canned software" includes individualized configuration of software to work with other software and computer hardware but does not include routine installation. Customization of canned software does not change the underlying character or taxability of the original canned software.

(4) "Master copies" of software means copies of software from which a software developer, author, inventor, publisher, licensor, sublicensor, or distributor makes copies for sale or license.

(5) "Retained rights" means any and all rights, including intellectual property rights such as those rights arising from copyrights, patents, and trade secret laws, that are owned or are held under contract or license by a software developer, author, inventor, publisher, licensor, sublicensor, or distributor.

(6) "Software" means any information, program, or routine, or any set of one or more programs, routines, or collections of information used, or intended for use, to convey information that causes one or more computers or pieces of computer-related peripheral equipment, or any combination thereof, to perform a task or set of tasks. "Software" includes only those copies of such information, programs, or routines intended for use by an end user and specifically excludes retained rights in software and master copies of software. "Software" includes the associated documentation that describes the code and its use, operation, and maintenance and typically is delivered with the code to the consumer. All software is classified as either canned or custom.

NEW SECTION. Sec. 4. A new section is added to chapter 82.04 RCW to read as follows:

(1) The creation and distribution of custom software is a service taxable under RCW 82.04.290(2). Duplication of the software for the same person, or by the same person for its own use, does not change the character of the software.

(2) The customization of canned software is a service taxable under RCW 82.04.290(2).

Sec. 5. RCW 82.04.060 and 1996 c 148 s 3 are each amended to read as follows:

"Sale at wholesale" or "wholesale sale" means: (1) Any sale of tangible personal property((:); (2) any sale of amusement or recreation services as defined in RCW 82.04.050(3)(a)((:); (3) any sale of canned software; or (4) any sale of telephone service as defined in RCW 82.04.065, which is not a sale at retail and means any charge made for labor and services rendered for persons who are not consumers, in respect to real or personal property, if such charge is expressly defined as a retail sale by RCW 82.04.050 when rendered to or for consumers: PROVIDED, That the term "real or personal property" as used in this section shall not include any natural products named in RCW 82.04.100.

Sec. 6. RCW 82.04.190 and 1996 c 173 s 2, 1996 c 148 s 4, and 1996 c 112 s 2 are each reenacted and amended to read as follows:

"Consumer" means the following:

(1) Any person who purchases, acquires, owns, holds, or uses any article of tangible personal property irrespective of the nature of the person's business and including, among others, without limiting the scope hereof, persons who install, repair, clean, alter, improve, construct, or decorate real or personal property of or for consumers other than for the purpose (a) of resale as tangible personal property in the regular course of business or (b) of incorporating such property as an ingredient or component of real or personal property when installing, repairing, cleaning, altering, imprinting, improving, constructing, or decorating such real or

personal property of or for consumers or (c) of consuming such property in producing for sale a new article of tangible personal property or a new substance, of which such property becomes an ingredient or component or as a chemical used in processing, when the primary purpose of such chemical is to create a chemical reaction directly through contact with an ingredient of a new article being produced for sale or (d) purchases for the purpose of consuming the property purchased in producing ferrosilicon which is subsequently used in producing magnesium for sale, if the primary purpose of such property is to create a chemical reaction directly through contact with an ingredient of ferrosilicon;

(2)(a) Any person engaged in any business activity taxable under RCW 82.04.290; (b) any person who purchases, acquires, or uses any telephone service as defined in RCW 82.04.065, other than for resale in the regular course of business; ~~(and)~~ (c) any person who purchases, acquires, or uses any amusement and recreation service defined in RCW 82.04.050(3)(a), other than for resale in the regular course of business; and (d) any person who is an end user of software;

(3) Any person engaged in the business of contracting for the building, repairing or improving of any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state of Washington or by the United States and which is used or to be used primarily for foot or vehicular traffic including mass transportation vehicles of any kind as defined in RCW 82.04.280, in respect to tangible personal property when such person incorporates such property as an ingredient or component of such publicly owned street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle by installing, placing or spreading the property in or upon the right of way of such street, place, road, highway, easement, hridge, tunnel, or trestle or in or upon the site of such mass public transportation terminal or parking facility;

(4) Any person who is an owner, lessee or has the right of possession to or an easement in real property which is being constructed, repaired, decorated, improved, or otherwise altered by a person engaged in business, excluding only (a) municipal corporations or political subdivisions of the state in respect to labor and services rendered to their real property which is used or held for public road purposes, and (b) the United States, instrumentalities thereof, and county and city housing authorities created pursuant to chapter 35.82 RCW in respect to labor and services rendered to their real property. Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer";

(5) Any person who is an owner, lessee, or has the right of possession to personal property which is being constructed, repaired, improved, cleaned, imprinted, or otherwise altered by a person engaged in business;

(6) Any person engaged in the business of constructing, repairing, decorating, or improving new or existing buildings or other structures under, upon, or above real property of or for the United States, any instrumentality thereof, or a county

or city housing authority created pursuant to chapter 35.82 RCW, including the installing or attaching of any article of tangible personal property therein or thereto, whether or not such personal property becomes a part of the realty by virtue of installation; also, any person engaged in the business of clearing land and moving earth of or for the United States, any instrumentality thereof, or a county or city housing authority created pursuant to chapter 35.82 RCW. Any such person shall be a consumer within the meaning of this subsection in respect to tangible personal property incorporated into, installed in, or attached to such building or other structure by such person;

(7) Any person who is a lessor of machinery and equipment, the rental of which is exempt from the tax imposed by RCW 82.08.020 under RCW 82.08.02565, with respect to the sale of or charge made for tangible personal property consumed in respect to repairing the machinery and equipment, if the tangible personal property has a useful life of less than one year; and

(8) Any person engaged in the business of cleaning up for the United States, or its instrumentalities, radioactive waste and other byproducts of weapons production and nuclear research and development.

Nothing contained in this or any other subsection of this definition shall be construed to modify any other definition of "consumer."

Sec. 7. RCW 82.12.020 and 1996 c 148 s 5 are each amended to read as follows:

(1) There is hereby levied and there shall be collected from every person in this state a tax or excise for the privilege of using within this state as a consumer; (a) Any article of tangible personal property purchased at retail, or acquired by lease, gift, repossession, or bailment, or extracted or produced or manufactured by the person so using the same, or otherwise furnished to a person engaged in any business taxable under RCW 82.04.280 (2) or (7)((-)); (b) any canned software, regardless of the method of delivery, but excluding canned software that is either provided free of charge or is provided for temporary use in viewing information, or both; or (c) any amusement or recreation service defined as a retail sale in RCW 82.04.050(3)(a).

(2) This tax shall apply to the use of every service defined as a retail sale in RCW 82.04.050(3)(a) and the use of every article of tangible personal property, including property acquired at a casual or isolated sale, and including byproducts used by the manufacturer thereof, except as hereinafter provided, irrespective of whether the article or similar articles are manufactured or are available for purchase within this state.

(3) Except as provided in RCW 82.12.0252, payment by one purchaser or user of tangible personal property or service of the tax imposed by chapter 82.08 or 82.12 RCW shall not have the effect of exempting any other purchaser or user of the same property or service from the taxes imposed by such chapters.

(4) The tax shall be levied and collected in an amount equal to the value of the article used by the taxpayer multiplied by the rate in effect for the retail sales tax under RCW 82.08.020.

***NEW SECTION.** *Sec. 8. A new section is added to chapter 82.04 RCW to read as follows:*

(1) A credit is authorized against the tax otherwise due under this chapter for persons engaged in the business of the creation, distribution, wholesaling, or warehousing of canned or custom software in accordance with the terms of this section.

(2) To qualify for the credit, the principal place of business of the person must be located in a distressed county.

(3) For taxes payable on income received in the first thirty-six months in which the person is engaged in business in the distressed county, the amount of the credit shall be equal to one hundred percent of the amount of tax otherwise due under this chapter. For taxes payable on income received after the first thirty-six months in which the person is engaged in business in the distressed county, the amount of the credit shall equal ninety percent of the amount of tax otherwise due under this chapter for persons engaged in the business of the creation or distribution of canned or custom software and in the amount of seventy percent of the amount of tax otherwise due under this chapter for persons engaged in the business of the wholesaling or warehousing of canned or custom software.

(4) This section does not apply to the retail distribution or sale of canned or custom software.

(5) As used in this section, "distressed county" means any county in which the average level of unemployment for the previous three years exceeds the average state unemployment for those years by twenty percent.

**Sec. 8 was vetoed. See message at end of chapter.*

NEW SECTION. *Sec. 9. This act takes effect July 1, 1998.*

Passed the Senate March 12, 1998.

Passed the House March 12, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 8, Engrossed Substitute Senate Bill No. 6470 entitled:

"AN ACT Relating to the tax treatment of canned and custom software;"

Sections 1 through 7 of ESSB 6470 specify that the sale of custom software is the provision of a service, as is the customization of canned software, and is taxable under the service classification of the business and occupation (B&O) tax.

Section 8 of this bill would provide a B&O tax credit for software businesses that have their principal place of business in a distressed county. However, the bill as written, would allow a qualifying software company with headquarters in a distressed county to also exempt from the B&O tax all its operations located in a non-distressed county. This could lead to a business establishing only a small office with few employees in the distressed county, defeating the purpose of the legislation. While Section 8 was intended to provide an innovative approach to rural economic development, this language results in a significant tax loophole that will not benefit the citizens of rural distressed counties.

I proposed several economic development packages for distressed counties in the 1998 legislative session, and I strongly agree with the concept presented in section 8 of this bill. However, section 8 of this bill would have unintended consequences. I would support a more finely crafted bill.

For these reasons, I have vetoed section 8 of Engrossed Substitute Senate Bill No. 6470.

With the exception of section 8, Engrossed Substitute Senate Bill No. 6470 is approved."

CHAPTER 333

[Engrossed Substitute Senate Bill 6533]

PROPERTY TAX EXEMPTIONS AND DEFERRALS FOR SENIOR CITIZENS AND PERSONS RETIRED FOR REASONS OF PHYSICAL DISABILITY

AN ACT Relating to property tax exemptions and deferrals for senior citizens and persons retired for reasons of physical disability; amending RCW 84.36.381, 84.36.383, and 84.38.020; and creating a new section.

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

Sec. 1. RCW 84.36.381 and 1996 c 146 s 1 are each amended to read as follows:

A person shall be exempt from any legal obligation to pay all or a portion of the amount of excess and regular real property taxes due and payable in the year following the year in which a claim is filed, and thereafter, in accordance with the following:

(1) The property taxes must have been imposed upon a residence which was occupied by the person claiming the exemption as a principal place of residence as of the time of filing: PROVIDED, That any person who sells, transfers, or is displaced from his or her residence may transfer his or her exemption status to a replacement residence, but no claimant shall receive an exemption on more than one residence in any year: PROVIDED FURTHER, That confinement of the person to a hospital or nursing home shall not disqualify the claim of exemption if:

- (a) The residence is temporarily unoccupied;
- (b) The residence is occupied by a spouse and/or a person financially dependent on the claimant for support; or
- (c) The residence is rented for the purpose of paying nursing home or hospital costs;

(2) The person claiming the exemption must have owned, at the time of filing, in fee, as a life estate, or by contract purchase, the residence on which the property taxes have been imposed or if the person claiming the exemption lives in a cooperative housing association, corporation, or partnership, such person must own a share therein representing the unit or portion of the structure in which he or she resides. For purposes of this subsection, a residence owned by a marital community or owned by cotenants shall be deemed to be owned by each spouse or cotenant, and any lease for life shall be deemed a life estate;

(3) The person claiming the exemption must be sixty-one years of age or older on December 31st of the year in which the exemption claim is filed, or must have been, at the time of filing, retired from regular gainful employment by reason of physical disability: PROVIDED, That any surviving spouse of a person who was receiving an exemption at the time of the person's death shall qualify if the surviving spouse is fifty-seven years of age or older and otherwise meets the requirements of this section;

(4) The amount that the person shall be exempt from an obligation to pay shall be calculated on the basis of combined disposable income, as defined in RCW 84.36.383. If the person claiming the exemption was retired for two months or more of the assessment year, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person during the months such person was retired by twelve. If the income of the person claiming exemption is reduced for two or more months of the assessment year by reason of the death of the person's spouse, or when other substantial changes occur in disposable income that are likely to continue for an indefinite period of time, the combined disposable income of such person shall be calculated by multiplying the average monthly combined disposable income of such person after such occurrences by twelve. If it is necessary to estimate income to comply with this subsection, the assessor may require confirming documentation of such income prior to May 31 of the year following application;

(5)(a) A person who otherwise qualifies under this section and has a combined disposable income of ~~((twenty-eight))~~ thirty thousand dollars or less shall be exempt from all excess property taxes; and

(b)(i) A person who otherwise qualifies under this section and has a combined disposable income of ~~((eighteen))~~ twenty-four thousand dollars or less but greater than ~~((fifteen))~~ eighteen thousand dollars shall be exempt from all regular property taxes on the greater of ~~((thirty))~~ forty thousand dollars or ~~((thirty))~~ thirty-five percent of the valuation of his or her residence, but not to exceed ~~((fifty))~~ sixty thousand dollars of the valuation of his or her residence; or

(ii) A person who otherwise qualifies under this section and has a combined disposable income of ~~((fifteen))~~ eighteen thousand dollars or less shall be exempt from all regular property taxes on the greater of ~~((thirty-four))~~ fifty thousand dollars or ~~((fifty))~~ sixty percent of the valuation of his or her residence; and

(6) For a person who otherwise qualifies under this section and has a combined disposable income of ~~((twenty-eight))~~ thirty thousand dollars or less, the valuation of the residence shall be the assessed value of the residence on the later of January 1, 1995, or January 1st of the assessment year the person first qualifies under this section. If the person subsequently fails to qualify under this section only for one year because of high income, this same valuation shall be used upon requalification. If the person fails to qualify for more than one year in succession because of high income or fails to qualify for any other reason, the valuation upon requalification shall be the assessed value on January 1st of the

assessment year in which the person requalifies. If the person transfers the exemption under this section to a different residence, the valuation of the different residence shall be the assessed value of the different residence on January 1st of the assessment year in which the person transfers the exemption.

In no event may the valuation under this subsection be greater than the true and fair value of the residence on January 1st of the assessment year.

This subsection does not apply to subsequent improvements to the property in the year in which the improvements are made. Subsequent improvements to the property shall be added to the value otherwise determined under this subsection at their true and fair value in the year in which they are made.

**Sec. 2. RCW 84.36.383 and 1995 1st sp.s. c 8 s 2 are each amended to read as follows:*

As used in RCW 84.36.381 through 84.36.389, except where the context clearly indicates a different meaning:

(1) The term "residence" shall mean a single family dwelling unit whether such unit be separate or part of a multiunit dwelling, including the land on which such dwelling stands not to exceed one acre, except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations. The term shall also include a share ownership in a cooperative housing association, corporation, or partnership if the person claiming exemption can establish that his or her share represents the specific unit or portion of such structure in which he or she resides. The term shall also include a single family dwelling situated upon lands the fee of which is vested in the United States or any instrumentality thereof including an Indian tribe or in the state of Washington, and notwithstanding the provisions of RCW 84.04.080 and 84.04.090, such a residence shall be deemed real property.

(2) The term "real property" shall also include a mobile home which has substantially lost its identity as a mobile unit by virtue of its being fixed in location upon land owned or leased by the owner of the mobile home and placed on a foundation (posts or blocks) with fixed pipe, connections with sewer, water, or other utilities: PROVIDED, That a mobile home located on land leased by the owner of the mobile home shall be subject, for tax billing, payment, and collection purposes, only to the personal property provisions of chapter 84.56 RCW and RCW 84.60.040.

(3) "Department" shall mean the state department of revenue.

(4) "Combined disposable income" means the disposable income of the person claiming the exemption, plus the disposable income of his or her spouse, and the disposable income of each cotenant occupying the residence for the assessment year, less amounts paid by the person claiming the exemption or his or her spouse during the assessment year for:

(a) Drugs supplied by prescription of a medical practitioner authorized by the laws of this state or another jurisdiction to issue prescriptions; ((and))

(b) *The treatment or care of either person received in the home or in a nursing home; and*

(c) *Health care insurance of either person, including any deduction for medicare under Title XVIII of the social security act.*

(5) *"Disposable income" means adjusted gross income as defined in the federal internal revenue code, as amended prior to January 1, 1989, or such subsequent date as the director may provide by rule consistent with the purpose of this section, plus all of the following items to the extent they are not included in or have been deducted from adjusted gross income:*

(a) *Capital gains, other than ((nonrecognized gain on the sale of a principal residence under section 1034 of the federal internal revenue code, or)) gain excluded from income under section 121 of the federal internal revenue code to the extent it is reinvested in a new principal residence;*

(b) *Amounts deducted for loss;*

(c) *Amounts deducted for depreciation;*

(d) *Pension and annuity receipts;*

(e) *Military pay and benefits other than attendant-care and medical-aid payments;*

(f) *Veterans benefits other than attendant-care and medical-aid payments and benefits for disabilities related to the performance of military duties;*

(g) *Federal social security act and railroad retirement benefits;*

(h) *Dividend receipts; and*

(i) *Interest received on state and municipal bonds.*

(6) *"Cotenant" means a person who resides with the person claiming the exemption and who has an ownership interest in the residence.*

*Sec. 2 was vetoed. See message at end of chapter.

*Sec. 3. *RCW 84.38.020 and 1997 c 93 s 1 are each amended to read as follows:*

Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) *"Claimant" means a person who either elects or is required under RCW 84.64.050 to defer payment of the special assessments and/or real property taxes accrued on the claimant's residence by filing a declaration to defer as provided by this chapter.*

When two or more individuals of a household file or seek to file a declaration to defer, they may determine between them as to who the claimant shall be.

(2) *"Department" means the state department of revenue.*

(3) *"Equity value" means the amount by which the fair market value of a residence as determined from the records of the county assessor exceeds the total amount of any liens or other obligations against the property.*

(4) *"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 assessments.

(5) "Real property taxes" means ad valorem property taxes levied on a residence in this state in the preceding calendar year.

(6) "Residence" has the meaning given in RCW 84.36.383(~~), except that a residence includes any additional property up to a total of five acres that comprises the residential parcel if this larger parcel size is required under land use regulations~~).

(7) "Special assessment" means the charge or obligation imposed by a local government upon property specially benefited.

*Sec. 3 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 4. This act applies to taxes levied for collection in 1999 and thereafter.

Passed the Senate March 11, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 2 and 3 of Engrossed Substitute Senate Bill No. 6533 entitled:

"AN ACT Relating to property tax exemptions and deferrals for senior citizens and persons retired for reasons of physical disability;"

In order to make property tax exemptions available to more of our senior citizens, ESSB 6533 raises the income levels below which a senior's income must be to qualify for the exemption. Under the bill, if a senior's annual income is \$18,000 or less, the senior is exempted from all excess levies and regular levies on the greater of \$50,000 or 60% of assessed valuation. For seniors with annual income of \$18,001 to \$24,000, the exemption is from all excess levies and regular levies on the greater of \$40,000 or 35% of assessed valuation. All seniors with annual income below \$30,000 are exempted from all excess levies. The income limit to qualify for the property assessment freeze is raised from \$28,000 to \$30,000.

I strongly support these increases to help our senior citizens cope with rising property values. However, section 2 of the bill would allow health care insurance and veterans' military disability benefits to be deducted from the calculation of disposable income. This disability provision would create a special and preferred source of income since other disabled seniors would not qualify. It would also represent a precedent that others would likely seek in the future. Section 2 also would change the definition of residence to include land up to five acres, if local land use regulations require. Section 3 of the bill contained a technical change in the definition of residence required by the amendment in section 2.

For these reasons, I have vetoed sections 2 and 3 of Engrossed Substitute Senate Bill No. 6533.

With the exception of sections 2 and 3, Engrossed Substitute Senate Bill No. 6533 is approved."

CHAPTER 334

[Senate Bill 6536]

EMPLOYER OBLIGATIONS TO FURNISH WEARING APPAREL

AN ACT Relating to employee wearing apparel; amending RCW 49.12.005; adding a new section to chapter 49.12 RCW; and creating a new section.

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

Sec. 1. RCW 49.12.005 and 1994 c 164 s 13 are each amended to read as follows:

For the purposes of this chapter:

(1) The term "department" means the department of labor and industries.
 (2) The term "director" means the director of the department of labor and industries, or the director's designated representative.

(3) The term "employer" means any person, firm, corporation, partnership, business trust, legal representative, or other business entity which engages in any business, industry, profession, or activity in this state and employs one or more employees and for the purposes of RCW 49.12.270 through 49.12.295 and section 2 of this act also includes the state, any state institution, any state agency, political subdivisions of the state, and any municipal corporation or quasi-municipal corporation.

(4) The term "employee" means an employee who is employed in the business of the employee's employer whether by way of manual labor or otherwise.

(5) The term "conditions of labor" shall mean and include the conditions of rest and meal periods for employees including provisions for personal privacy, practices, methods and means by or through which labor or services are performed by employees and includes bona fide physical qualifications in employment, but shall not include conditions of labor otherwise governed by statutes and rules and regulations relating to industrial safety and health administered by the department.

(6) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a minor is defined to be a person of either sex under the age of eighteen years.

NEW SECTION. **Sec. 2.** A new section is added to chapter 49.12 RCW to read as follows:

(1) Notwithstanding the provisions of chapter 49.46 RCW or other provisions of this chapter, the obligation of an employer to furnish or compensate an employee for apparel required during work hours shall be determined only under this section.

(2) Employers are not required to furnish or compensate employees for apparel that an employer requires an employee to wear during working hours unless the required apparel is a uniform.

(3) As used in this section, "uniform" means:

(a) Apparel of a distinctive style and quality that, when worn outside of the workplace, clearly identifies the person as an employee of a specific employer;

(b) Apparel that is specially marked with an employer's logo;
 (c) Unique apparel representing an historical time period or an ethnic tradition; or

(d) Formal apparel.

(4) Except as provided in subsection (5) of this section, if an employer requires an employee to wear apparel of a common color that conforms to a general dress code or style, the employer is not required to furnish or compensate an employee for that apparel. For the purposes of this subsection, "common color" is limited to the following colors or light or dark variations of such colors: White, tan, or blue, for tops; and tan, black, blue, or gray, for bottoms. An employer is permitted to require an employee to obtain two sets of wearing apparel to accommodate for the seasonal changes in weather which necessitate a change in wearing apparel.

(5) If an employer changes the color or colors of apparel required to be worn by any of his or her employees during a two-year period of time, the employer shall furnish or compensate the employees for the apparel. The employer shall be required to furnish or compensate only those employees who are affected by the change. The two-year time period begins on the date the change in wearing apparel goes into effect and ends two years from this date. The beginning and end of the two-year time period applies to all employees regardless of when the employee is hired.

(6) The department shall utilize negotiated rule making as defined by RCW 34.05.310(2)(a) in the development and adoption of rules defining apparel that conforms to a general dress code or style. This subsection expires January 1, 2000.

(7) For the purposes of this section, personal protective equipment required for employee protection under chapter 49.17 RCW is not deemed to be employee wearing apparel.

NEW SECTION. Sec. 3. Nothing in this act shall be construed to alter the terms, conditions, or practices contained in any collective bargaining agreement in effect at the time of the effective date of this act until the expiration date of such agreement.

Passed the Senate February 10, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 335

[Senate Bill 6552]

AD VALOREM TAXATION OF VESSELS OR FERRIES—REVISIONS

AN ACT Relating to the ad valorem taxation of vessels or ferries used for the conveyance for compensation of either persons or property, or both, between fixed termini or over a regular route; amending RCW 84.12.200, 84.12.280, 84.12.330, 84.12.360, 84.36.080, and 84.40.036; and providing an effective date.

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

Sec. 1. RCW 84.12.200 and 1994 c 124 s 13 are each amended to read as follows:

For the purposes of this chapter and unless otherwise required by the context:

(1) "Department" without other designation means the department of revenue of the state of Washington.

(2) "Railroad company" means and includes any person owning or operating a railroad, street railway, suburban railroad or interurban railroad in this state, whether its line of railroad be maintained at the surface, or above or below the surface of the earth, or by whatever power its vehicles are transported; or owning any station, depot, terminal or bridge for railroad purposes, as owner, lessee or otherwise.

(3) "Airplane company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by aircraft, and engaged in the business of transporting persons and/or property for compensation, as owner, lessee or otherwise.

(4) "Electric light and power company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the generation, transmission or distribution of electricity in this state, and engaged in the business of furnishing, transmitting, distributing or generating electrical energy for light, heat or power for compensation as owner, lessee or otherwise.

(5) "Telegraph company" means and includes any person owning, controlling, operating or managing any telegraph or cable line in this state, with appliances for the transmission of messages, and engaged in the business of furnishing telegraph service for compensation, as owner, lessee or otherwise.

(6) "Telephone company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the transmission of communication by telephone in this state-owned or controlled exchanges and/or switchboards, and engaged in the business of furnishing telephonic communication for compensation as owner, lessee or otherwise.

(7) "Gas company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the manufacture, transportation, or distribution of natural or manufactured gas in this state, and engaged for compensation in the business of furnishing gas for light, heat, power or other use, as owner, lessee or otherwise.

(8) "Pipe line company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance or transportation of oils, natural or manufactured gas and/or other substances, except water, by pipe line in this

state, and engaged in such business for compensation, as owner, lessee or otherwise.

~~(9) ("Steamboat company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of persons and/or property by vessel or ferry, upon the waters within this state, including the rivers and lakes and Puget Sound, between fixed termini or over a regular route, and engaged in the business of transporting persons and/or property for compensation as owner, lessee or otherwise.~~

~~—(10))~~ "Logging railroad company" means and includes any person owning, controlling, operating or managing real or personal property, used or to be used for or in connection with or to facilitate the conveyance and transportation of forest products by rail in this state, and engaged in the business of transporting forest products either as private carrier or carrier for hire.

~~((11))~~ (10) "Person" means and includes any individual, firm, copartnership, joint venture, association, corporation, trust, or any other group acting as a unit, whether mutual, cooperative or otherwise, and/or trustees or receivers appointed by any court.

~~((12))~~ (11) "Company" means and includes any railroad company, ~~((motor vehicle transportation company;))~~ airplane company, electric light and power company, telegraph company, telephone company, gas company, pipe line company, ~~((steamboat company;))~~ or logging railroad company; and the term "companies" means and includes all of such companies.

~~((13))~~ (12) "Operating property" means and includes all property, real and personal, owned by any company, or held by it as occupant, lessee or otherwise, including all franchises and lands, buildings, rights-of-way, water powers, motor vehicles, wagons, horses, aircraft, aerodromes, hangars, office furniture, water mains, gas mains, pipe lines, pumping stations, tanks, tank farms, holders, reservoirs, telephone lines, telegraph lines, transmission and distribution lines, dams, generating plants, poles, wires, cables, conduits, switch boards, devices, appliances, instruments, equipment, machinery, ~~((vessels, ferries;))~~ landing slips, docks, roadbeds, tracks, terminals, rolling stock equipment, appurtenances and all other property of a like or different kind, situate within the state of Washington, used by the company in the conduct of its operations; and, in case of personal property used partly within and partly without the state, it means and includes a proportion of such personal property to be determined as in this chapter provided.

~~((14))~~ (13) "Nonoperating property" means all physical property owned by any company, other than that used during the preceding calendar year in the conduct of its operations. It includes all lands and/or buildings wholly used by any person other than the owning company. In cases where lands and/or buildings are used partially by the owning company in the conduct of its operations and partially by any other person not assessable under this chapter under lease, sublease, or other form of tenancy, the operating and nonoperating property of the company whose property is assessed hereunder shall be determined by the

department of revenue in such manner as will, in its judgment, secure the separate valuation of such operating and nonoperating property upon a fair and equitable basis. The amount of operating revenue received from tenants or occupants of property of the owning company shall not be considered material in determining the classification of such property.

Sec. 2. RCW 84.12.280 and 1997 c 3 s 114 are each amended to read as follows:

(1) In making the assessment of the operating property of any railroad or logging railroad company and in the apportionment of the values and the taxation thereof, all land occupied and claimed exclusively as the right-of-way for railroads, with all the tracks and substructures and superstructures which support the same, together with all side tracks, second tracks, turn-outs, station houses, depots, round houses, machine shops, or other buildings belonging to the company, used in the operation thereof, without separating the same into land and improvements, shall be assessed as real property. And the rolling stock and other movable property belonging to any railroad or logging railroad company shall be considered as personal property and taxed as such: **PROVIDED**, That all of the operating property of street railway companies shall be assessed and taxed as personal property.

(2) All of the operating property of airplane companies, telegraph companies, pipe line companies, (~~water companies and toll bridge companies; the floating equipment of steamboat companies;~~) and all of the operating property other than lands and buildings of electric light and power companies, telephone companies, and gas companies (~~and heating companies~~) shall be assessed and taxed as personal property.

(3) Notwithstanding subsections (1) and (2) of this section, the limit provided under RCW 84.40.0305 shall be applied in the assessment of property under this section to the same extent as that limit is generally applied to property not assessed under this chapter.

Sec. 3. RCW 84.12.330 and 1997 c 3 s 116 are each amended to read as follows:

Upon the assessment roll shall be placed after the name of each company a general description of the operating property of the company, which shall be considered sufficient if described in the language of RCW 84.12.200(~~(+3)~~) (12), as applied to the company, following which shall be entered the assessed value of the operating property as determined by the department of revenue. No assessment shall be invalidated by reason of a mistake in the name of the company assessed, or the omission of the name of the owner or by the entry as owner of a name other than that of the true owner. When the department of revenue shall have prepared the assessment roll and entered thereon the assessed value of the operating property of the company, as herein required, it shall notify the company by mail of the valuation determined by it and entered upon the roll.

Sec. 4. RCW 84.12.360 and 1997 c 3 s 118 are each amended to read as follows:

The value of the operating property assessed to a company, as fixed and determined by the department of revenue, shall be apportioned by the department of revenue to the respective counties and to the taxing districts thereof wherein such property is located in the following manner:

(1) Property of all railroad companies other than street railroad companies, telegraph companies and pipe line companies—upon the basis of that proportion of the value of the total operating property within the state which the mileage of track, as classified by the department of revenue (in case of railroads), mileage of wire (in the case of telegraph companies), and mileage of pipe line (in the case of pipe line companies) within each county or taxing district bears to the total mileage thereof within the state, at the end of the calendar year last past. For the purpose of such apportionment the department may classify railroad track.

(2) Property of street railroad companies, telephone companies, electric light and power companies, and gas companies~~((, water companies, heating companies and toll bridge companies))~~—upon the basis of relative value of the operating property within each county and taxing district to the value of the total operating property within the state to be determined by such factors as the department of revenue shall deem proper.

(3) Planes or other aircraft of airplane companies ~~((and watercraft of steamboat companies))~~—upon the basis of such factor or factors of allocation, to be determined by the department of revenue, as will secure a substantially fair and equitable division between counties and other taxing districts.

All other property of airplane companies ~~((and steamboat companies))~~—upon the basis set forth in subsection (2) of this section.

The basis of apportionment with reference to all public utility companies above prescribed shall not be deemed exclusive and the department of revenue in apportioning values of such companies may also take into consideration such other information, facts, circumstances, or allocation factors as will enable it to make a substantially just and correct valuation of the operating property of such companies within the state and within each county thereof.

Sec. 5. RCW 84.36.080 and 1986 c 229 s 1 are each amended to read as follows:

(1) All ships and vessels which are exempt from excise tax under subsection (2) of RCW 82.49.020 and excepted from the registration requirements of subsection (10) of RCW 88.02.030 shall be and are hereby made exempt from all ad valorem taxes, except taxes levied for any state purpose.

(2) All ships and vessels listed in the state or federal register of historical places are exempt from all ad valorem taxes.

Sec. 6. RCW 84.40.036 and 1986 c 229 s 2 are each amended to read as follows:

(1) As used in this section, "apportionable vessel" means a ship or vessel (~~other than one operated by a steamboat company as defined in RCW 84.12.200;~~) which is:

- (a) Engaged in interstate commerce;
- (b) Engaged in foreign commerce; and/or
- (c) Engaged exclusively in fishing, tendering, harvesting, and/or processing seafood products on the high seas or waters under the jurisdiction of other states.

(2) The value of each apportionable vessel shall be apportioned to this state based on the number of days or fractions of days that the vessel is within this state during the preceding calendar year: PROVIDED, That if the total number of days the vessel is within the limits of the state does not exceed one hundred twenty for the preceding calendar year, no value shall be apportioned to this state. For the purposes of this subsection (2), a fraction of a day means more than sixteen hours in a calendar day.

(3) (~~Days~~) Time during which an apportionable vessel is in the state (~~exclusively~~) for one or more of the following purposes shall not be considered as (~~days~~) time within this state, if the length of time is reasonable for the purpose:

- (a) Undergoing repair or alteration;
- (b) Taking on or discharging cargo, passengers, or supplies; and
- (c) Serving as a tug for a vessel under (a) or (b) of this subsection.

(4) Days during which an apportionable vessel leaves this state only while navigating the high seas in order to travel between points in this state shall be considered as days within this state.

NEW SECTION. Sec. 7. This act takes effect January 1, 1999.

Passed the Senate February 14, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 336

[Senate Bill 6599]

FUND-RAISING ACTIVITIES BY NONPROFIT ORGANIZATIONS—TAX EXEMPTIONS

AN ACT Relating to fund-raising activities; adding a new section to chapter 82.04 RCW; adding a new section to chapter 82.08 RCW; creating a new section; and repealing RCW 82.04.365, 82.04.366, 82.08.02571, and 82.08.02572.

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

NEW SECTION. Sec. 1. The legislature finds that nonprofit educational, charitable, religious, scientific, and social welfare organizations provide many public benefits to the people of the state of Washington. Therefore, the legislature finds that it is in the best interests of the state of Washington to provide a limited excise tax exemption for fund-raising activities for certain nonprofit organizations.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by nonprofit organizations, as defined in subsection (2) of this section, for fund-raising activities.

(2) As used in this section, a "nonprofit organization" means:

(a) An organization exempt from tax under section 501(c) (3), (4), or (10) of the federal internal revenue code (26 U.S.C. Sec. 501(c) (3), (4), or (10));

(b) A nonprofit organization that would qualify under (a) of this subsection except that it is not organized as a nonprofit corporation; or

(c) A nonprofit organization that means all of the following criteria:

(i) The members, stockholders, officers, directors, or trustees of the organization do not receive any part of the organization's gross income, except as payment for services rendered;

(ii) The compensation received by any person for services rendered to the organization does not exceed an amount reasonable under the circumstances; and

(iii) The activities of the organization do not include a substantial amount of political activity, including but not limited to influencing legislation and participation in any campaign on behalf of any candidate for political office.

(3) As used in this section, the term "fund-raising activity" means both activities involving the direct solicitation of money or other property and the anticipated exchange of goods or services for money between the soliciting organization and the organization or person solicited, for the purpose of furthering the goals of the nonprofit organization. "Fund-raising activity" does not include the operation of a regular place of business in which sales are made during regular hours such as a bookstore, thrift shop, restaurant, or similar business.

NEW SECTION. Sec. 3. A new section is added to chapter 82.08 RCW to read as follows:

The tax levied by RCW 82.08.020 does not apply to a sale made by a nonprofit organization if the gross income from the sale is exempt under section 2 of this act.

NEW SECTION. Sec. 4. The following acts or parts of acts are each repealed:

(1) RCW 82.04.365 and 1995 2nd sp.s. c 11 s 1 & 1979 ex.s. c 196 s 7;

(2) RCW 82.04.366 and 1991 c 51 s 1;

(3) RCW 82.08.02571 and 1991 c 51 s 2; and

(4) RCW 82.08.02572 and 1995 2nd sp.s. c 11 s 2.

Passed the Senate February 12, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 337

[Engrossed Substitute Senate Bill 6622]

IMPLEMENTING THE FEDERAL COMMUNICATION ACT OF 1996

AN ACT Relating to the implementation of the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56); amending RCW 80.36.310, 80.36.320, and 80.36.330; adding new sections to chapter 80.36 RCW; and providing a contingent expiration date.

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

NEW SECTION. Sec. 1. (1) The commission shall plan and prepare to implement a program for the preservation and advancement of universal telecommunications service which shall not take effect until the legislature approves the program. The purpose of the universal service program is to benefit telecommunications ratepayers in the state by minimizing implicit sources of support and maximizing explicit sources of support that are specific, sufficient, competitively neutral, and technologically neutral to support basic telecommunications services for customers of telecommunications companies in high-cost locations.

(2) In preparing a universal service program for approval by the legislature, the commission shall:

(a) Estimate the cost of supporting all lines located in high-cost locations and the cost of supporting one primary telecommunications line for each residential or business customer located in high-cost locations;

(b) Determine the assessments that must be made on all telecommunications carriers, and the manner of collection, to provide support for:

(i) All residential and business lines located in high-cost locations;

(ii) Only one primary line for each residential or business customer located in high-cost locations;

(c) Designate those telecommunications carriers serving high-cost locations that are eligible to receive support for the benefit of their customers in those locations;

(d) Adopt or prepare to adopt all necessary rules for administration of the program; and

(e) Provide a schedule of all fees and payments proposed or expected to be proposed by the commission under subsection (4)(d) of this section.

(3) The commission shall report by November 1, 1998, to the legislature on these steps taken to prepare for implementation and shall inform the legislature of the estimated cost to support all lines located in high-cost locations and the estimated cost to support only one primary line for each residential or business customer located in high-cost locations under a universal service program.

(4) Once a program is approved by the legislature and subsequently established, the following provisions apply unless otherwise directed by the legislature:

(a) All transfers of money necessary to provide the support shall be outside the state treasury and not be subject to appropriation;

(b) The commission may delegate to the commission secretary or other staff the authority to resolve disputes or make other decisions necessary to the administration of the program;

(c) The commission may contract with an independent program administrator subject to the direction and control of the commission and may authorize the establishment of an account or accounts in independent financial institutions should that be necessary for administration of the program;

(d) The expenses of an independent program administrator shall be authorized by the commission and shall be paid out of contributions by the telecommunications carriers participating in the program;

(e) The commission may require the carriers participating in the program, as part of their contribution, to pay into the public service revolving fund the costs of the commission attributable to supervision and administration of the program that are not otherwise recovered through fees paid to the commission.

(5) The commission shall establish standards for review or testing of all telecommunications carriers' compliance with the program for the purpose of ensuring the support received by a telecommunications carrier is used only for the purposes of the program and that each telecommunications carrier is making its proper contribution to the program. The commission may conduct the review or test, or contract with an independent administrator or other person to conduct the review or test.

(6) The commission shall coordinate administration of the program with any federal universal service program and may administer the federal fund in conjunction with the state program if so authorized by federal law.

(7) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Telecommunications carrier" has the same meaning as defined in 47 U.S.C. Sec. 153(44).

(b) "Basic telecommunications services" means the following services:

- (i) Single-party service;
- (ii) Voice grade access to the public switched network;
- (iii) Support for local usage;
- (iv) Dual tone multifrequency signaling (touch-tone);
- (v) Access to emergency services (911);
- (vi) Access to operator services;
- (vii) Access to interexchange services;
- (viii) Access to directory assistance; and
- (ix) Toll limitation services.

(c) "High-cost location" means a location where the cost of providing telecommunications services is greater than a benchmark established by the commission by rule.

(8) Each telecommunications carrier that provides intrastate telecommunications services shall provide whatever information the commission may reasonably

require in order to fulfill the commission's responsibilities under subsection (2) of this section.

NEW SECTION. **Sec. 2.** (1) The commission is authorized to take actions, conduct proceedings, and enter orders as permitted or contemplated for a state commission under the federal telecommunications act of 1996, P.L. 104-104 (110 Stat. 56), but the commission's authority to either establish a new state program or to adopt new rules to preserve and advance universal service under section 254(f) of the federal act is limited to the actions expressly authorized by section 1 of this act. The commission may establish by rule fees to be paid by persons seeking commission action under the federal act, and by parties to proceedings under that act, to offset in whole or part the commission's expenses that are not otherwise recovered through fees in implementing the act, but new fees or assessments charged telecommunications carriers to either establish a state program or to adopt rules to preserve and advance universal service under section 254(f) of the federal act do not take effect until the legislature has approved a state universal service program.

(2) The legislature intends that under the future universal service program established in this state:

(a) Every telecommunications carrier that provides intrastate telecommunications services shall contribute, on an equitable and nondiscriminatory basis, to the preservation and advancement of universal service in the state;

(b) The contributions shall be competitively and technologically neutral; and

(c) The universal service program to be established in accordance with section 1 of this act shall not be inconsistent with the requirements of 47 U.S.C. Sec. 254.

NEW SECTION. **Sec. 3.** Any rules regarding universal service adopted by the utilities and transportation commission shall comply with the purpose, as stated in section 1 of this act, for establishing a program for the preservation and advancement of universal telecommunications service. Services to be supported are only those basic services defined in section 1(7) of this act.

Sec. 4. RCW 80.36.310 and 1989 c 101 s 14 are each amended to read as follows:

(1) Telecommunications companies may petition to be classified as competitive telecommunications companies under RCW 80.36.320 or to have services classified as competitive telecommunications services under RCW 80.36.330. The commission may initiate classification proceedings on its own motion. The commission may require all regulated telecommunications companies potentially affected by a classification proceeding to appear as parties for a determination of their classification.

(2) Any company petition or commission motion for competitive classification shall state an effective date not sooner than thirty days from the filing date. The company must provide notice and publication of the proposed competitive classification in the same manner as provided in RCW 80.36.110 for tariff

changes. The proposed classification shall take effect on the stated effective date unless suspended by the commission and set for hearing under chapter 34.05 RCW or set for a formal investigation and fact-finding under RCW 80.36.145. The commission shall enter its final order with respect to any suspended classification within ((ten)) six months from the date of filing of a company's petition or the commission's motion.

Sec. 5. RCW 80.36.320 and 1989 c 101 s 15 are each amended to read as follows:

(1) The commission shall classify a telecommunications company (~~(providing service in a relevant market)~~) as a competitive telecommunications company if ~~((it finds, after notice and hearing, that the telecommunications company has demonstrated that))~~ the services it offers are subject to effective competition. Effective competition means that the company's customers have reasonably available alternatives and that the company does not have a significant captive customer base. In determining whether a company is competitive, factors the commission shall consider include but are not limited to:

- (a) The number and sizes of alternative providers of service;
- (b) The extent to which services are available from alternative providers in the relevant market;
- (c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and
- (d) Other indicators of market power which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

The commission shall conduct the initial classification and any subsequent review of the classification in accordance with such procedures as the commission may establish by rule.

(2) Competitive telecommunications companies shall be subject to minimal regulation. Minimal regulation means that competitive telecommunications companies may file, instead of tariffs, price lists (~~(which)) that~~ shall be effective after ten days' notice to the commission and customers. The commission shall prescribe the form of notice. The commission may also waive other regulatory requirements under this title for competitive telecommunications companies when it determines that competition will serve the same purposes as public interest regulation. The commission may waive different regulatory requirements for different companies if such different treatment is in the public interest. A competitive telecommunications company shall at a minimum:

- (a) Keep its accounts according to regulations as determined by the commission;
- (b) File financial reports with the commission as required by the commission and in a form and at times prescribed by the commission;
- (c) Keep on file at the commission such current price lists and service standards as the commission may require; and
- (d) Cooperate with commission investigations of customer complaints.

(3) When a telecommunications company has demonstrated that the equal access requirements ordered by the federal district court in the case of *U.S. v. AT&T*, 552 F. Supp. 131 (1982), or in supplemental orders, have been met, the commission shall review the classification of telecommunications companies providing inter-LATA interexchange services. At that time, the commission shall classify all such companies as competitive telecommunications companies unless it finds that effective competition, as defined in subsection (1) of this section, does not then exist.

(4) The commission may revoke any waivers it grants and may reclassify any competitive telecommunications company if ~~((such))~~ the revocation or reclassification would protect the public interest.

(5) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a competitive telecommunications company if it finds that competition will serve the same purpose and protect the public interest.

Sec. 6. RCW 80.36.330 and 1989 c 101 s 16 are each amended to read as follows:

(1) The commission may classify a telecommunications service provided by a telecommunications company as a competitive telecommunications service if ~~((it finds, after notice and hearing, that))~~ the service is subject to effective competition. Effective competition means that customers of the service have reasonably available alternatives and that the service is not provided to a significant captive customer base. In determining whether a service is competitive, factors the commission shall consider include but are not limited to:

(a) The number and size of alternative providers of services;

(b) The extent to which services are available from alternative providers in the relevant market;

(c) The ability of alternative providers to make functionally equivalent or substitute services readily available at competitive rates, terms, and conditions; and

(d) Other indicators of market power, which may include market share, growth in market share, ease of entry, and the affiliation of providers of services.

(2) When the commission finds that a telecommunications company has demonstrated that a telecommunications service is competitive, the commission may permit the service to be provided under a price list effective on ten days notice to the commission and customers. The commission shall prescribe the form of notice. The commission may adopt procedural rules necessary to implement this section.

(3) Prices or rates charged for competitive telecommunications services shall cover their cost. The commission shall determine proper cost standards to implement this section, provided that in making any assignment of costs or allocating any revenue requirement, the commission shall act to preserve affordable universal telecommunications service.

(4) The commission may investigate prices for competitive telecommunications services upon complaint. In any complaint proceeding initiated by the commission, the telecommunications company providing the service shall bear the burden of proving that the prices charged cover cost, and are fair, just, and reasonable.

(5) Telecommunications companies shall provide the commission with all data it deems necessary to implement this section.

(6) No losses incurred by a telecommunications company in the provision of competitive services may be recovered through rates for noncompetitive services. The commission may order refunds or credits to any class of subscribers to a noncompetitive telecommunications service which has paid excessive rates because of below cost pricing of competitive telecommunications services.

(7) The commission may reclassify any competitive telecommunications service if reclassification would protect the public interest.

(8) The commission may waive the requirements of RCW 80.36.170 and 80.36.180 in whole or in part for a service classified as competitive if it finds that competition will serve the same purpose and protect the public interest.

NEW SECTION. Sec. 7. Sections 1 through 3 of this act are each added to chapter 80.36 RCW.

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.

Passed the Senate March 10, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 338

[Senate Bill 6662]

PROPERTY MANAGERS' COMPENSATION— BUSINESS AND OCCUPATION TAX EXEMPTION

AN ACT Relating to business and occupation tax reimbursements and advances received by property management companies for the payment of wages to on-site employees; adding a new section to chapter 82.04 RCW; creating a new section; and providing an effective date.

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

NEW SECTION. Sec. 1. The legislature finds that property owners often hire property management companies to manage their real property. Frequently, the property management companies also manage the personnel who perform the necessary services at the property location. In these cases, the property owners may pay the on-site personnel through the property management company. The property management company is merely acting as a conduit for the property owner's payment to the personnel at the property site.

This act is not intended to modify the taxation of amounts received by a property management company for purposes other than payment to on-site personnel.

NEW SECTION. Sec. 2. A new section is added to chapter 82.04 RCW to read as follows:

(1) This chapter does not apply to amounts received by a property management company from the owner of a property for gross wages and benefits paid directly to or on behalf of on-site personnel from property management trust accounts that are required to be maintained under RCW 18.85.310.

(2) As used in this section, "on-site personnel" means a person who meets all of the following conditions: (a) The person works primarily at the owner's property; (b) the person's duties include leasing property units, maintaining the property, collecting rents, or similar activities; and (c) under a written property management agreement: (i) The person's compensation is the ultimate obligation of the property owner and not the property manager; (ii) the property manager is liable for payment only as agent of the owner; and (iii) the property manager is the agent of the owner with respect to the on-site personnel and that all actions, including, but not limited to, hiring, firing, compensation, and conditions of employment, taken by the property manager with respect to the on-site personnel are subject to the approval of the property owner.

NEW SECTION. Sec. 3. This act takes effect July 1, 1998.

Passed the Senate February 16, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 339

[Senate Bill 6668]

NEW THOROUGHBRED RACE TRACKS—EXTENSION OF TAX DEFERRALS

AN ACT Relating to tax deferrals for new thoroughbred race tracks; and amending RCW 82.66.040.

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

Sec. 1. RCW 82.66.040 and 1995 c 352 s 4 are each amended to read as follows:

(1) The recipient shall begin paying the deferred taxes in the ~~((fifth))~~ tenth year after the date certified by the department as the date on which the investment project is operationally complete. The first payment is due on December 31st of the ~~((fifth))~~ tenth calendar year after such certified date, with subsequent annual payments due on December 31st of the following nine years with amounts of payment scheduled as follows:

Repayment Year	% of Deferred Tax Repaid
1	10%
2	10%
3	10%
4	10%
5	10%
6	10%
7	10%
8	10%
9	10%
10	10%

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest shall not be charged on any taxes deferred under this chapter for the period of deferral, although all other penalties and interest applicable to delinquent excise taxes may be assessed and imposed for delinquent payments under this chapter. The debt for deferred taxes is not extinguished by insolvency or other failure of the recipient.

Passed the Senate February 16, 1998.

Passed the House March 10, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 340

[Engrossed Substitute House Bill 2491]

SHARING OF EXTRAORDINARY INVESTMENT GAINS

AN ACT Relating to the sharing of extraordinary investment gains; amending RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, 41.40.188, 41.40.660, 41.45.070, 41.45.060, and 41.04.275; adding a new chapter to Title 41 RCW; repealing RCW 41.04.275; and declaring an emergency.

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

NEW SECTION. Sec. 1. Beginning July 1, 1998, and on January 1st of even-numbered years thereafter, the annual increase amount as defined in RCW 41.32.010 and 41.40.010 shall be increased by the gain-sharing increase amount, if any. The monthly retirement allowance of a person in receipt of the benefit provided in RCW 41.32.489 or 41.40.197 shall immediately be adjusted to reflect any increase.

NEW SECTION. Sec. 2. (1) The gain-sharing increase amount shall be the amount of increase, rounded to the nearest cent, that can be fully funded in actuarial present value by the amount of extraordinary investment gains, if any. The amount of extraordinary investment gains shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system plan I fund and the public employees' retirement system plan I fund at the close of the previous state fiscal year;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent.

(2) The gain-sharing increase amount for July 1998, as provided for in section 1 of this act, is ten cents.

NEW SECTION. Sec. 3. The legislature reserves the right to amend or repeal this chapter in the future and no member or beneficiary has a contractual right to receive this postretirement adjustment not granted prior to that amendment or repeal.

Sec. 4. RCW 2.10.146 and 1996 c 175 s 2 are each amended to read as follows:

(1) Upon making application for a service retirement allowance under RCW 2.10.100 or a disability allowance under RCW 2.10.120, a judge who is eligible therefor shall make an election as to the manner in which such service retirement shall be paid from among the following designated options, calculated so as to be actuarially equivalent to each other:

(a) Standard allowance. A member selecting this option shall receive a retirement allowance, which shall be computed as provided in RCW 2.10.110. The retirement allowance shall be payable throughout the judge's life. However, if the judge dies before the total of the retirement allowance paid to the judge equals the amount of the judge's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the judge has nominated by written designation duly executed and filed with the department of retirement systems or, if there is no such designated person or persons still living at the time of the judge's death, then to the surviving spouse or, if there is neither such designated person or persons still living at the time of death nor a surviving spouse, then to the judge's legal representative.

(b) The department shall adopt rules that allow a judge to select a retirement option that pays the judge a reduced retirement allowance and upon death, such portion of the judge's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the judge by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A judge, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a judge is married and both the judge and the judge's spouse do not give written consent to an option under this section, the department will pay the

judge a joint and fifty percent survivor benefit and record the judge's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 5. RCW 41.26.460 and 1996 c 175 s 3 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.26.430 or disability retirement under RCW 41.26.470, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated

person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 6. RCW 41.32.530 and 1996 c 175 s 4 are each amended to read as follows:

(1) Upon an application for retirement for service under RCW 41.32.480 or retirement for disability under RCW 41.32.550, approved by the department, every member shall receive the maximum retirement allowance available to him or her throughout life unless prior to the time the first installment thereof becomes due he or she has elected, by executing the proper application therefor, to receive the actuarial equivalent of his or her retirement allowance in reduced payments throughout his or her life with the following options:

(a) Standard allowance. If he or she dies before he or she has received the present value of his or her accumulated contributions at the time of his or her retirement in annuity payments, the unpaid balance shall be paid to his or her estate or to such person, trust, or organization as he or she shall have nominated by written designation executed and filed with the department.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person who has an insurable interest in the member's life. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) Such other benefits shall be paid to a member receiving a retirement allowance under RCW 41.32.497 as the member may designate for himself, herself, or others equal to the actuarial value of his or her retirement annuity at the time of his retirement: PROVIDED, That the board of trustees shall limit withdrawals of accumulated contributions to such sums as will not reduce the member's retirement allowance below one hundred and twenty dollars per month.

(d) A member whose retirement allowance is calculated under RCW 41.32.498 may also elect to receive a retirement allowance based on options available under this subsection that includes the benefit provided under RCW 41.32.770. This retirement allowance option shall also be calculated so as to be actuarially equivalent to the maximum retirement allowance and to the options available under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be

actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 7. RCW 41.32.785 and 1996 c 175 s 5 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.32.765 or retirement for disability under RCW 41.32.790, a member shall elect to have the retirement allowance paid pursuant to the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving

spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a designated person. Such person shall be nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and member's spouse do not give written consent to an option under this section, the department will pay the member a joint and fifty percent survivor benefit and record the member's spouse as the beneficiary. Such benefit shall be calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 8. RCW 41.40.188 and 1996 c 175 s 6 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.180 or retirement for disability under RCW 41.40.210 or 41.40.230, a member shall elect to have the retirement allowance paid pursuant to one of the following options calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(c) A member may elect to include the benefit provided under RCW 41.40.640 along with the retirement options available under this section. This retirement allowance option shall be calculated so as to be actuarially equivalent to the options offered under this subsection.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 9. RCW 41.40.660 and 1996 c 175 s 7 are each amended to read as follows:

(1) Upon retirement for service as prescribed in RCW 41.40.630 or retirement for disability under RCW 41.40.670, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the

department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

(3)(a) Any member who retired before January 1, 1996, and who elected to receive a reduced retirement allowance under subsection (1)(b) or (2) of this section is entitled to receive a retirement allowance adjusted in accordance with (b) of this subsection, if they meet the following conditions:

(i) The retiree's designated beneficiary predeceases or has predeceased the retiree; and

(ii) The retiree provides to the department proper proof of the designated beneficiary's death.

(b) The retirement allowance payable to the retiree, as of July 1, 1998, or the date of the designated beneficiary's death, whichever comes last, shall be increased by the percentage derived in (c) of this subsection.

(c) The percentage increase shall be derived by the following:

(i) One hundred percent multiplied by the result of (c)(ii) of this subsection converted to a percent;

(ii) Subtract one from the reciprocal of the appropriate joint and survivor option factor;

(iii) The joint and survivor option factor shall be from the table in effect as of July 1, 1998.

(d) The adjustment under (b) of this subsection shall accrue from the beginning of the month following the date of the designated beneficiary's death or from July 1, 1998, whichever comes last.

Sec. 10. RCW 41.45.070 and 1995 c 239 s 310 are each amended to read as follows:

(1) In addition to the basic employer contribution rate established in RCW 41.45.060, the department shall also charge employers of public employees' retirement system, teachers' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsection (6) of this section, the supplemental contribution rates

required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic state contribution rate established in RCW 41.45.060 for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system. Except as provided in subsection (6) of this section, this supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II and plan III, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650(~~(-41.32.775;)~~) or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter . . . , Laws of 1998 (this act).

Sec. 11. RCW 41.45.060 and 1995 c 239 s 309 are each amended to read as follows:

(1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, 1996, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt both: (a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; and (b) basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system

plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024, except as provided in subsection (5) of this section; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) An amount equal to the amount of extraordinary investment gains as defined in section 2 of this act shall be used to shorten the amortization period for the public employees' retirement system plan I and the teachers' retirement system plan I.

(6) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

~~((6))~~ (7) The director of the department of retirement systems shall collect those rates adopted by the council.

Sec. 12. RCW 41.04.275 and 1994 c 298 s 6 are each amended to read as follows:

The pension funding account is created in the state treasury. Moneys in the account may be spent only after appropriation. ~~((Expenditures from the account may be used only for the continuing costs of any state retirement system benefits in effect on July 1, 1993, consistent with section 919, chapter 24, Laws of 1993 sp. sess.))~~

NEW SECTION. **Sec. 13.** RCW 41.04.275 and 1994 c 298 s 6 are each repealed effective July 1, 1998.

NEW SECTION. **Sec. 14.** Except for section 13 of this act, 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. 15.** Sections 1 through 3 of this act constitute a new chapter in Title 41 RCW.

Passed the House February 27, 1998.

Passed the Senate March 5, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 341

[Substitute Senate Bill 6306]

WASHINGTON SCHOOL EMPLOYEES' RETIREMENT SYSTEM

AN ACT Relating to the Washington school employees' retirement system; amending RCW 41.34.020, 41.34.030, 41.34.060, 41.34.080, 41.34.100, 41.45.010, 41.45.020, 41.45.050, 41.45.060, 41.45.061, 41.45.070, 41.50.030, 41.50.060, 41.50.075, 41.50.080, 41.50.086, 41.50.086, 41.50.088, 41.50.110, 41.50.150, 41.50.152, 41.50.255, 41.50.500, 41.50.670, 41.50.790, 41.40.062, 41.26.500, 41.32.800, 41.40.690, 41.32.8401, 41.54.010, 41.54.040, 41.05.011, 43.33A.190, and 43.84.092; reenacting and amending RCW 41.40.010, 41.40.088, and 41.54.030; adding a new section to chapter 41.40 RCW; adding new sections to chapter 41.34 RCW; adding new sections to chapter 41.45 RCW; adding a new section to chapter 41.50 RCW; adding a new section to chapter 41.54 RCW; adding new chapters to Title 41 RCW; creating new sections; prescribing penalties; providing effective dates; and declaring an emergency.

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

NEW SECTION. Sec. 1. The legislature recognizes that teachers and school district employees share the same educational work environment and academic calendar.

It is the intent of the legislature to achieve similar retirement benefits for all educational employees by transferring the membership of classified school employees in the public employees' retirement system plan II to the Washington school employees' retirement system plan II. The transfer of membership to the Washington school employees' retirement system plan II is not intended to cause a diminution or expansion of benefits for affected members. It is enacted solely to provide public employees working under the same conditions with the same options for retirement planning.

As members of the Washington school employees' retirement system plan II, classified employees will have the same opportunity to transfer to the Washington school employees' retirement system plan III as their certificated coworkers. The ability to transfer to the Washington school employees' retirement system plan III offers members a new public retirement system that balances flexibility with stability; provides increased employee control of investments and responsible protection of the public's investment in employee benefits; and encourages the pursuit of public sector careers without creating barriers to other public or private sector employment.

NEW SECTION. Sec. 2. The definitions in this section apply throughout this chapter, unless the context clearly requires otherwise:

(1) "Retirement system" means the Washington school employees' retirement system provided for in this chapter.

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

(3) "State treasurer" means the treasurer of the state of Washington.

(4) "Employer," for plan II and plan III members, means a school district or an educational service district.

(5) "Member" means any employee included in the membership of the retirement system, as provided for in section 4 of this act.

(6)(a) "Compensation earnable" for plan II and plan III 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 plan II and plan III 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 this (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.

(7) "Service" for plan II and plan III 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 section 19 of this act. 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.

(c) For purposes of plan II and III "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:

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

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

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

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

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

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

(9) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(10) "Membership service" means all service rendered as a member.

(11) "Beneficiary" for plan II and plan III 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.

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

(13) "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.

(14) "Average final compensation" for plan II and plan III 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).

(15) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

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

(17) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(18) "Retirement allowance" for plan II and plan III members means monthly payments to a retiree or beneficiary as provided in this chapter.

(19) "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.

(20) "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.

(21) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(22) "Eligible position" means 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.

(23) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (22) of this section.

(24) "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.

(25) "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.

(26) "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.

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

(28) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

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

(30) "Plan II" means the Washington school employees' retirement system plan II providing the benefits and funding provisions covering persons who first became members of the public employees' retirement system on and after October 1, 1977 and transferred to the Washington school employees' retirement system under section 113 of this act.

(31) "Plan III" means the Washington school employees' retirement system plan III providing the benefits and funding provisions covering persons who first became members of the system on and after September 1, 2000, or who transfer from plan II under section 114 of this act.

(32) "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.

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

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

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

(36) "Separation from service" occurs when a person has terminated all employment with an employer.

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

(38) "Classified employee" means an employee of a school district or an educational service district who is not eligible for membership in the teachers' retirement system established under chapter 41.32 RCW.

NEW SECTION. Sec. 3. A retirement system is hereby created for the employees of school districts or educational service districts. The administration and management of the retirement system, the responsibility for making effective the provisions of this chapter, and the authority to make all rules necessary therefor are hereby vested in the department. All such rules shall be governed by the provisions of chapter 34.05 RCW. This retirement system shall be known as the Washington school employees' retirement system.

NEW SECTION. Sec. 4. Membership in the retirement system shall consist of all regularly compensated classified employees and appointive and elective officials of employers, as defined in this chapter, with the following exceptions:

(1) Persons in ineligible positions;

(2)(a) Persons holding elective offices or persons appointed directly by the governor: PROVIDED, That such persons shall have the option of applying for membership during such periods of employment: AND PROVIDED FURTHER, That any persons holding or who have held elective offices or persons appointed by the governor who are members in the retirement system and who have, prior to becoming such members, previously held an elective office, and did not at the start of such initial or successive terms of office exercise their option to become

members, may apply for membership to be effective during such term or terms of office, and shall be allowed to establish the service credit applicable to such term or terms of office upon payment of the employee contributions therefor by the employee with interest as determined by the director and employer contributions therefor by the employer or employee with interest as determined by the director: **AND PROVIDED FURTHER**, That all contributions with interest submitted by the employee under this subsection shall be placed in the employee's individual account in the employee's savings fund and be treated as any other contribution made by the employee, with the exception that any contributions submitted by the employee in payment of the employer's obligation, together with the interest the director may apply to the employer's contribution, shall not be considered part of the member's annuity for any purpose except withdrawal of contributions;

(b) A member holding elective office who has elected to apply for membership pursuant to (a) of this subsection and who later wishes to be eligible for a retirement allowance shall have the option of ending his or her membership in the retirement system. A member wishing to end his or her membership under this subsection must file on a form supplied by the department a statement indicating that the member agrees to irrevocably abandon any claim for service for future periods served as an elected official. A member who receives more than fifteen thousand dollars per year in compensation for his or her elective service, adjusted annually for inflation by the director, is not eligible for the option provided by this subsection (2)(b);

(3) Retirement system retirees: **PROVIDED**, That following reemployment in an eligible position, a retiree may elect to prospectively become a member of the retirement system if otherwise eligible;

(4) Persons enrolled in state-approved apprenticeship programs, authorized under chapter 49.04 RCW, and who are employed by employers to earn hours to complete such apprenticeship programs, if the employee is a member of a union-sponsored retirement plan and is making contributions to such a retirement plan or if the employee is a member of a Taft-Hartley retirement plan;

(5) Persons rendering professional services to an employer on a fee, retainer, or contract basis or when the income from these services is less than fifty percent of the gross income received from the person's practice of a profession;

(6) Employees who (a) are not citizens of the United States, (b) do not reside in the United States, and (c) perform duties outside of the United States;

(7) Employees who (a) are not citizens of the United States, (b) are not covered by chapter 41.48 RCW, (c) are not excluded from membership under this chapter or chapter 41.04 RCW, (d) are residents of this state, and (e) make an irrevocable election to be excluded from membership, in writing, which is submitted to the director within thirty days after employment in an eligible position;

(8) Employees who are citizens of the United States and who reside and perform duties for an employer outside of the United States: **PROVIDED**, That unless otherwise excluded under this chapter or chapter 41.04 RCW, the

employee may apply for membership (a) within thirty days after employment in an eligible position and membership service credit shall be granted from the first day of membership service, and (b) after this thirty-day period, but membership service credit shall be granted only if payment is made for the noncredited membership service under RCW 41.50.165(2), otherwise service shall be from the date of application.

NEW SECTION. Sec. 5. Any person who has been employed in a nonelective position for at least nine months and who has made member contributions required under this chapter throughout such period, shall be deemed to have been in an eligible position during such period of employment.

NEW SECTION. Sec. 6. Within thirty days after his or her employment or his or her acceptance into membership each employee or appointive or elective official shall submit to the department a statement of his or her name and such other information as the department shall require. Compliance with the provisions set forth in this section shall be considered to be a condition of employment and failure by an employee to comply may result in separation from service.

NEW SECTION. Sec. 7. (1)(a) If a retiree enters employment with an employer sooner than one calendar month after his or her accrual date, the retiree's monthly retirement allowance will be reduced by five and one-half percent for every eight hours worked during that month. This reduction will be applied each month until the retiree remains absent from employment with an employer for one full calendar month.

(b) The benefit reduction provided in (a) of this subsection will accrue for a maximum of one hundred sixty hours per month. Any benefit reduction over one hundred percent will be applied to the benefit the retiree is eligible to receive in subsequent months.

(2) A retiree who has satisfied the break in employment requirement of subsection (1) of this section, may work up to five months per calendar year in an eligible position without suspension of his or her benefit.

(3) If the retiree opts to reestablish membership under section 4 of this act, he or she terminates his or her retirement status and becomes a member. Retirement benefits shall not accrue during the period of membership and the individual shall make contributions and receive membership credit. Such a member shall have the right to again retire if eligible in accordance with section 103 or 209 of this act. However, if the right to retire is exercised to become effective before the member has rendered two uninterrupted years of service, the retirement formula and survivor options the member had at the time of the member's previous retirement shall be reinstated.

NEW SECTION. Sec. 8. Those members subject to this chapter who became disabled in the line of duty and who received or are receiving benefits under Title 51 RCW or a similar federal workers' compensation program shall receive or continue to receive service credit subject to the following:

(1) No member may receive more than one month's service credit in a calendar month.

(2) No service credit under this section may be allowed after a member separates or is separated without leave of absence.

(3) Employer contributions shall be paid by the employer at the rate in effect for the period of the service credited.

(4) Employee contributions shall be collected by the employer and paid to the department at the rate in effect for the period of service credited.

(5) Contributions shall be based on the regular compensation which the member would have received had the disability not occurred. If contribution payments are made retroactively, interest shall be charged at the rate set by the director on both employee and employer contributions. No service credit shall be granted until the employee contribution has been paid.

(6) The service and compensation credit shall not be granted for a period to exceed twelve consecutive months.

(7) Should the legislature revoke the service credit authorized under this section or repeal this section, no affected employee is entitled to receive the credit as a matter of contractual right.

NEW SECTION. Sec. 9. The deductions from the compensation of members, provided for in section 104 of this act, shall be made notwithstanding that the minimum compensation provided for by law for any member shall be reduced thereby. Every member shall be deemed to consent and agree to the deductions made and provided for in this chapter and receipt in full for his or her salary or compensation, and payment, less the deductions, shall be a full and complete discharge and acquittance of all claims and demands whatsoever for the services rendered by the person during the period covered by the payment, except as to benefits provided for under this chapter.

NEW SECTION. Sec. 10. (1) The director shall report to each employer the contribution rates required for the ensuing biennium or fiscal year, whichever is applicable.

(2) Beginning September 1, 1990, the amount to be collected as the employer's contribution shall be computed by applying the applicable rates established in chapter 41.45 RCW to the total compensation earnable of employer's members as shown on the current payrolls of the employer. Each employer shall compute at the end of each month the amount due for that month and the same shall be paid as are its other obligations.

(3) In the event of failure, for any reason, of an employer other than a political subdivision of the state to have remitted amounts due for membership service of any of the employer's members rendered during a prior biennium, the director shall bill such employer for such employer's contribution together with such charges as the director deems appropriate in accordance with RCW 41.50.120. Such billing shall be paid by the employer as, and the same shall be,

a proper charge against any moneys available or appropriated to such employer for payment of current biennial payrolls.

NEW SECTION. **Sec. 11.** (1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, or retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, the various funds created by this chapter, and all moneys and investments and income thereof, are hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and which has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section also does not prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section does not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department of retirement systems to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

NEW SECTION. **Sec. 12.** A member shall not receive a disability retirement benefit under section 105 or 210 of this act if the disability is the result of criminal conduct by the member committed after April 21, 1997.

NEW SECTION. **Sec. 13.** Any person who knowingly makes any false statements, or falsifies or permits to be falsified any record or records of this retirement system in any attempt to defraud the retirement system as a result of such act, is guilty of a gross misdemeanor.

NEW SECTION. **Sec. 14.** (1) Any person who was a member of the state-wide city employees' retirement system governed by chapter 41.44 RCW and who was never reemployed by an employer as defined in RCW 41.40.010 and who is employed by an employer as defined in section 2 of this act, may, in a writing filed with the director, elect to:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service which was previously credited under chapter 41.44 RCW but which was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190. The service may be reestablished and transferred only upon payment by the member to the employees' savings fund of this retirement system of the amount withdrawn plus interest thereon from the date of withdrawal until the date of payment at a rate determined by the director. No additional payments are required for service credit described in this subsection if already established under this chapter; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW, upon payment in full by the member of the total employer's contribution to the benefit account fund of this retirement system that would have been made under this chapter when the initial service was rendered. The payment shall be based on the first month's compensation earnable as a member of the state-wide city employees' retirement system and as defined in RCW 41.44.030(13). However, a person who has established service credit under RCW 41.40.010(13) (c) or (d) shall not establish additional credit under this subsection nor may anyone who establishes credit under this subsection establish any additional credit under RCW 41.40.010(13) (c) or (d). No additional payments are required for service credit described in this subsection if already established under this chapter.

(2) The written election must be filed and the payments must be completed in full within one year after employment by an employer.

(3) Upon receipt of the written election and payments required by subsection (1) of this section from any retiree described in subsection (1) of this section, the department shall recompute the retiree's allowance in accordance with this section and shall pay any additional benefit resulting from such recomputation retroactively to the date of retirement from the system governed by this chapter.

(4) Any person who was a member of the state-wide city employees' retirement system under chapter 41.44 RCW and also became a member of the public employees' retirement system established under chapter 41.40 RCW or the Washington school employees' retirement system established under this chapter, and did not make the election under RCW 41.40.058 or subsection (1) of this section because he or she was not a member of the public employees' retirement system prior to July 27, 1987, or did not meet the time limitations of RCW 41.40.058 or subsection (2) of this section, may elect to do any of the following:

(a) Transfer to this retirement system all service currently credited under chapter 41.44 RCW;

(b) Reestablish and transfer to this retirement system all service that was previously credited under chapter 41.44 RCW but was canceled by discontinuance of service and withdrawal of accumulated contributions as provided in RCW 41.44.190; and

(c) Establish service credit for the initial period of employment not to exceed six months, prior to establishing membership under chapter 41.44 RCW.

To make the election or elections, the person must pay the amount required under RCW 41.50.165(2) prior to retirement from this retirement system.

NEW SECTION. Sec. 15. Any person aggrieved by any decision of the department affecting his or her legal rights, duties, or privileges must, before he or she appeals to the courts, file with the director by mail or personally within sixty days from the day the decision was communicated to the person, a notice for a hearing before the director's designee. The notice of hearing shall set forth in full detail the grounds upon which the person considers the decision unjust or unlawful and shall include every issue to be considered by the department, and it must contain a detailed statement of facts upon which the person relies in support of the appeal. These persons shall be deemed to have waived all objections or irregularities concerning the matter on which the appeal is taken, other than those specifically set forth in the notice of hearing or appearing in the records of the retirement system.

NEW SECTION. Sec. 16. Following its receipt of a notice for hearing in accordance with section 15 of this act, a hearing shall be held by the director or a duly authorized representative, in the county of the residence of the claimant at a time and place designated by the director. Such hearing shall be conducted and governed in all respects by the provisions of chapter 34.05 RCW.

NEW SECTION. Sec. 17. Judicial review of any final decision and order by the director is governed by the provisions of chapter 34.05 RCW.

NEW SECTION. Sec. 18. No bond of any kind shall be required of a claimant appealing to the superior court, the court of appeals, or the supreme court from a finding of the department affecting the claimant's right to retirement or disability benefits.

NEW SECTION. Sec. 19. (1) Except for any period prior to the member's employment in an eligible position, a plan II or plan III member who is employed by a school district or districts or an educational service district:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period;

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(2) The department shall adopt rules implementing this section.

NEW SECTION. Sec. 20. RCW 43.01.044 shall not result in any increase in retirement benefits. The rights extended to state officers and employees under RCW 43.01.044 are not intended to and shall not have any effect on retirement benefits under this chapter.

NEW SECTION. Sec. 21. (1) The annual compensation taken into account in calculating retiree benefits under this system shall not exceed the limits imposed by section 401(a)(17) of the federal internal revenue code for qualified trusts.

(2) The department shall adopt rules as necessary to implement this section.

NEW SECTION. Sec. 22. Beginning July 1, 1979, and every year thereafter, the department shall determine the following information for each retired member or beneficiary whose retirement allowance has been in effect for at least one year:

(1) The original dollar amount of the retirement allowance;

(2) The index for the calendar year prior to the effective date of the retirement allowance, to be known as "index A";

(3) The index for the calendar year prior to the date of determination, to be known as "index B"; and

(4) The ratio obtained when index B is divided by index A.

The value of the ratio obtained shall be the annual adjustment to the original retirement allowance and shall be applied beginning with the July payment. In no event, however, shall the annual adjustment:

(a) Produce a retirement allowance which is lower than the original retirement allowance;

(b) Exceed three percent in the initial annual adjustment; or

(c) Differ from the previous year's annual adjustment by more than three percent.

For the purposes of this section, "index" means, for any calendar year, that year's 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.

NEW SECTION. Sec. 23. (1) Upon retirement for service as prescribed in section 103 or 209 of this act or retirement for disability under section 105 or 210 of this act, a member shall elect to have the retirement allowance paid pursuant to one of the following options, calculated so as to be actuarially equivalent to each other.

(a) Standard allowance. A member electing this option shall receive a retirement allowance payable throughout such member's life. However, if the retiree dies before the total of the retirement allowance paid to such retiree equals the amount of such retiree's accumulated contributions at the time of retirement, then the balance shall be paid to the member's estate, or such person or persons, trust, or organization as the retiree shall have nominated by written designation duly executed and filed with the department; or if there be no such designated person or persons still living at the time of the retiree's death, then to the surviving spouse; or if there be neither such designated person or persons still living at the time of death nor a surviving spouse, then to the retiree's legal representative.

(b) The department shall adopt rules that allow a member to select a retirement option that pays the member a reduced retirement allowance and upon death, such portion of the member's reduced retirement allowance as the department by rule designates shall be continued throughout the life of and paid to a person nominated by the member by written designation duly executed and filed with the department at the time of retirement. The options adopted by the department shall include, but are not limited to, a joint and one hundred percent survivor option and a joint and fifty percent survivor option.

(2)(a) A member, if married, must provide the written consent of his or her spouse to the option selected under this section, except as provided in (b) of this subsection. If a member is married and both the member and the member's spouse do not give written consent to an option under this section, the department shall pay a joint and fifty percent survivor benefit calculated to be actuarially equivalent to the benefit options available under subsection (1) of this section unless spousal consent is not required as provided in (b) of this subsection.

(b) If a copy of a dissolution order designating a survivor beneficiary under RCW 41.50.790 has been filed with the department at least thirty days prior to a member's retirement:

(i) The department shall honor the designation as if made by the member under subsection (1) of this section; and

(ii) The spousal consent provisions of (a) of this subsection do not apply.

NEW SECTION. Sec. 24. (1) Except as provided in section 7 of this act, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in section 2 of this act, RCW 41.40.010 or 41.32.010, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section.

NEW SECTION. Sec. 25. Sections 1 through 24 of this act apply to members of plan II and plan III.

NEW SECTION. Sec. 101. A member of the retirement system shall receive a retirement allowance equal to two percent of such member's average final compensation for each service credit year of service.

NEW SECTION. Sec. 102. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary, subject to the provisions of subsection (5) of this section, a lump sum payment in lieu of a monthly benefit if the initial monthly benefit computed in accordance with section 101 of this act would be less than fifty dollars. The lump sum payment shall be the greater of the actuarial equivalent of the monthly benefits or an amount equal to the individual's accumulated contributions plus accrued interest.

(2) A retiree or a beneficiary, subject to the provisions of subsection (5) of this section, who is receiving a regular monthly benefit of less than fifty dollars may request, in writing, to convert from a monthly benefit to a lump sum payment. If the director approves the conversion, the calculation of the actuarial equivalent of the total estimated regular benefit will be computed based on the beneficiary's age at the time the benefit initially accrued. The lump sum payment will be reduced to reflect any payments received on or after the initial benefit accrual date.

(3) Persons covered under the provisions of RCW 41.40.625 or subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to re retiring, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(4) If a member fails to meet the time limitations under subsection (3) of this section, reinstatement of all previous service will occur if the member pays the amount required under RCW 41.50.165(2). The amount, however, shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(5) Only persons entitled to or receiving a service retirement allowance under section 101 of this act or an earned disability allowance under section 105 of this act qualify for participation under this section.

(6) It is the intent of the legislature that any member who receives a settlement under this section shall be deemed to be retired from this system.

NEW SECTION. Sec. 103. (1) **NORMAL RETIREMENT.** Any member with at least five service credit years who has attained at least age sixty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 101 of this act.

(2) **EARLY RETIREMENT.** Any member who has completed at least twenty service credit years and has attained age fifty-five shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 101 of this act, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

NEW SECTION. Sec. 104. The required contribution rates to the retirement system for both members and employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan II fund from the total employer contributions collected under section 10 of this act.

Contribution rates required to fund the costs of the retirement system shall always be equal for members and employers, except as herein provided. Any adjustments in contribution rates required from time to time for future costs shall likewise be shared equally by the members and employers.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

Members contributions required by this section shall be deducted from the members compensation earnable each payroll period. The members contribution and the employers contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

NEW SECTION. Sec. 105. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department upon recommendation of the department shall be eligible to receive an allowance under the provisions of sections 101 through 112 of this act. The member shall receive a monthly disability allowance computed as provided for in section 101 of this act and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an

employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies before the total of the retirement allowance paid to the recipient equals the amount of the accumulated contributions at the date of retirement, then the balance shall be paid to the member's estate, or the person or persons, trust, or organization as the recipient has nominated by written designation duly executed and filed with the director, or, if there is no designated person or persons still living at the time of the recipient's death, then to the surviving spouse, or, if there is no designated person or persons still living at the time of his or her death nor a surviving spouse, then to his or her legal representative.

NEW SECTION. Sec. 106. Any member or beneficiary eligible to receive a retirement allowance under the provisions of section 103, 105, or 107 of this act shall be eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members under the provisions of section 103 of this act shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances paid to vested members no longer in service, but qualifying for such an allowance pursuant to section 103 of this act, shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members under the provisions of section 105 of this act shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits under the provisions of section 107 of this act shall accrue from the first day of the calendar month immediately following the member's death.

NEW SECTION. Sec. 107. (1) Except as provided in RCW 11.07.010, if a member or a vested member who has not completed at least ten years of service dies, the amount of the accumulated contributions standing to such member's credit in the retirement system at the time of such member's death, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's estate, or such person or persons, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department. If there be no such designated person or persons still living at the time of the member's death, such member's accumulated contributions standing to such member's credit in the retirement system, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid to the member's surviving spouse as if in fact such spouse had been nominated by written designation, or if there be no such surviving spouse, then to such member's legal representatives.

(2) If a member who is eligible for retirement or a member who has completed at least ten years of service dies, the surviving spouse or eligible child or children shall elect to receive either:

(a) A retirement allowance computed as provided for in section 103 of this act, actuarially reduced by the amount of any lump sum benefit identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670 and actuarially adjusted to reflect a joint and one hundred percent survivor option under section 23 of this act and if the member was not eligible for normal retirement at the date of death a further reduction as described in section 103 of this act; if a surviving spouse who is receiving a retirement allowance dies leaving a child or children of the member under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority; if there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike, calculated as herein provided making the assumption that the ages of the spouse and member were equal at the time of the member's death; or

(b) The member's accumulated contributions, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670.

(3) If a member who is eligible for retirement or a member who has completed at least ten years of service dies and is not survived by a spouse or an eligible child, then the accumulated contributions standing to the member's credit, less any amount identified as owing to an obligee upon withdrawal of accumulated contributions pursuant to a court order filed under RCW 41.50.670, shall be paid:

(a) To a person or persons, estate, trust, or organization as the member shall have nominated by written designation duly executed and filed with the department; or

(b) If there is no such designated person or persons still living at the time of the member's death, then to the member's legal representatives.

NEW SECTION. Sec. 108. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit as provided for under the provisions of sections 101 through 112 of this act.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The compensation earnable reported for a member who establishes service credit

under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes both the plan II employer and member contributions plus interest as determined by the department for the period of the authorized leave of absence within five years of resumption of service or prior to retirement whichever comes sooner; or

(b) If not within five years of resumption of service but prior to retirement, pay the amount required under RCW 41.50.165(2).

The contributions required under (a) of this subsection shall be based on the average of the member's compensation earnable at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

(a) The member qualifies for service credit under this subsection if:

(i) Within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces; and

(ii) The member makes the employee contributions required under section 104 of this act within five years of resumption of service or prior to retirement, whichever comes sooner; or

(iii) Prior to retirement and not within ninety days of the member's honorable discharge or five years of resumption of service the member pays the amount required under RCW 41.50.165(2).

(b) Upon receipt of member contributions under (a)(ii) of this subsection, the department shall establish the member's service credit and shall bill the employer for its contribution required under section 104 of this act for the period of military service, plus interest as determined by the department.

(c) The contributions required under (a)(ii) of this subsection shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

NEW SECTION. Sec. 109. A member who separates or has separated after having completed at least five years of service may remain a member during the period of such member's absence from service for the exclusive purpose only of receiving a retirement allowance under the provisions of section 103 of this act if such member maintains the member's accumulated contributions intact.

NEW SECTION. Sec. 110. A member who ceases to be an employee of an employer except by service or disability retirement may request a refund of the member's accumulated contributions. The refund shall be made within ninety days following the receipt of the request and notification of termination through the contribution reporting system by the employer; except that in the case of death, an initial payment shall be made within thirty days of receipt of request for such payment and notification of termination through the contribution reporting system by the employer. A member who files a request for refund and subsequently enters into employment with another employer prior to the refund being made shall not be eligible for a refund. The refund of accumulated contributions shall terminate all rights to benefits under sections 101 through 112 of this act.

NEW SECTION. Sec. 111. (1) A member, who had left service and withdrawn the member's accumulated contributions, shall receive service credit for such prior service if the member restores all withdrawn accumulated contributions together with interest since the time of withdrawal as determined by the department.

The restoration of such funds must be completed within five years of the resumption of service or prior to retirement, whichever occurs first.

(2) If a member fails to meet the time limitations of subsection (1) of this section, the member may receive service credit destroyed by the withdrawn contributions if the amount required under RCW 41.50.165(2) is paid.

NEW SECTION. Sec. 112. Sections 101 through 111 and 114 of this act apply only to plan II members.

NEW SECTION. Sec. 113. A new section is added to chapter 41.40 RCW to read as follows:

(1) Effective September 1, 2000, the membership of all plan II members currently employed in eligible positions in a school district or educational service district and all plan II service credit for such members, is transferred to the Washington school employees' retirement system plan II. Plan II members who have withdrawn their member contributions for prior plan II service may restore contributions and service credit to the Washington school employees' retirement system plan II as provided under RCW 41.40.740.

(2) The membership and previous service credit of a plan II member not employed in an eligible position on September 1, 2000, will be transferred to the Washington school employees' retirement system plan II when he or she becomes employed in an eligible position. Plan II members not employed in an eligible position on September 1, 2000, who have withdrawn their member contributions for prior plan II service may restore contributions and service credit to the Washington school employees' retirement system plan II as provided under RCW 41.40.740.

(3) Members who restore contributions and service credit under subsection (1) or (2) of this section shall have their contributions and service credit transferred to the Washington school employees' retirement system.

NEW SECTION. Sec. 114. (1) Every plan II member employed by an employer in an eligible position has the option to make an irrevocable transfer to plan III.

(2) All service credit in plan II shall be transferred to the defined benefit portion of plan III.

(3) Any plan II member who wishes to transfer to plan III after February 28, 2001, may transfer during the month of January in any following year, provided that the member earns service credit for that month.

(4) The accumulated contributions in plan II, less fifty percent of any contributions made pursuant to RCW 41.50.165(2) shall be transferred to the member's account in the defined contribution portion established in chapter 41.34 RCW, pursuant to procedures developed by the department and subject to RCW 41.34.090. Contributions made pursuant to RCW 41.50.165(2) that are not transferred to the member's account shall be transferred to the fund created in RCW 41.50.075(2), except that interest earned on all such contributions shall be transferred to the member's account.

(5) The legislature reserves the right to discontinue the right to transfer under this section.

(6) Anyone previously retired from plan II is prohibited from transferring to plan III.

NEW SECTION. Sec. 201. (1) Sections 201 through 213 of this act apply only to plan III members.

(2) Plan III consists of two separate elements: (a) A defined benefit portion covered under this subchapter; and (b) a defined contribution portion covered under chapter 41.34 RCW.

(3) Unless otherwise specified, all references to "plan III" in this subchapter refer to the defined benefit portion of plan III.

NEW SECTION. Sec. 202. All classified employees who first become employed by an employer in an eligible position on or after September 1, 2000, shall be members of plan III.

NEW SECTION. Sec. 203. (1) A member of the retirement system shall receive a retirement allowance equal to one percent of such member's average final compensation for each service credit year.

(2) The retirement allowance payable under section 209 of this act to a member who separates after having completed at least twenty service credit years shall be increased by twenty-five one-hundredths of one percent, compounded for each month from the date of separation to the date that the retirement allowance commences.

NEW SECTION. Sec. 204. (1) Anyone who requests to transfer under section 114 of this act before March 1, 2001, and establishes service credit for January 2001, shall have their member account increased by sixty-five percent of:

(a) The member's public employees' retirement system plan II accumulated contributions as of January 1, 2000, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 2000, which are completely restored before March 1, 2001.

(2) If a member who requests to transfer dies before January 1, 2001, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

(3) The legislature reserves the right to modify or discontinue the right to an additional payment under this section for any plan II members who have not previously transferred to plan III.

NEW SECTION. Sec. 205. Any member or beneficiary eligible to receive a retirement allowance under the provisions of section 209, 210, or 212 of this act is eligible to commence receiving a retirement allowance after having filed written application with the department.

(1) Retirement allowances paid to members shall accrue from the first day of the calendar month immediately following such member's separation from employment.

(2) Retirement allowances payable to eligible members no longer in service, but qualifying for such an allowance pursuant to section 15 of this act shall accrue from the first day of the calendar month immediately following such qualification.

(3) Disability allowances paid to disabled members shall accrue from the first day of the calendar month immediately following such member's separation from employment for disability.

(4) Retirement allowances paid as death benefits shall accrue from the first day of the calendar month immediately following the member's death.

NEW SECTION. Sec. 206. (1) A member who is on a paid leave of absence authorized by a member's employer shall continue to receive service credit.

(2) A member who receives compensation from an employer while on an authorized leave of absence to serve as an elected official of a labor organization, and whose employer is reimbursed by the labor organization for the compensation paid to the member during the period of absence, may also be considered to be on a paid leave of absence. This subsection shall only apply if the member's leave of absence is authorized by a collective bargaining agreement that provides that the member retains seniority rights with the employer during the period of leave. The earnable compensation reported for a member who establishes service credit under this subsection may not be greater than the salary paid to the highest paid job class covered by the collective bargaining agreement.

(3) Except as specified in subsection (4) of this section, a member shall be eligible to receive a maximum of two years service credit during a member's entire working career for those periods when a member is on an unpaid leave of absence authorized by an employer. Such credit may be obtained only if:

(a) The member makes the contribution on behalf of the employer, plus interest, as determined by the department; and

(b) The member makes the employee contribution, plus interest, as determined by the department, to the defined contribution portion.

The contributions required shall be based on the average of the member's earnable compensation at both the time the authorized leave of absence was granted and the time the member resumed employment.

(4) A member who leaves the employ of an employer to enter the armed forces of the United States shall be entitled to retirement system service credit for up to five years of military service if within ninety days of the member's honorable discharge from the United States armed forces, the member applies for reemployment with the employer who employed the member immediately prior to the member entering the United States armed forces. This subsection shall be administered in a manner consistent with the requirements of the federal uniformed services employment and reemployment rights act.

The department shall establish the member's service credit and shall bill the employer for its contribution required under section 213 of this act for the period of military service, plus interest as determined by the department. Service credit under this subsection may be obtained only if the member makes the employee contribution to the defined contribution portion as determined by the department.

The contributions required shall be based on the compensation the member would have earned if not on leave, or if that cannot be estimated with reasonable certainty, the compensation reported for the member in the year prior to when the member went on military leave.

NEW SECTION. Sec. 207. (1) Contributions on behalf of the employer paid by the employee to purchase plan III service credit shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the statutory time limitations to purchase plan III service credit, it may be purchased under the provisions of RCW 41.50.165(2). One-half of the purchase payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

(2) No purchased plan III membership service will be credited until all payments required of the member are made, with interest. Upon receipt of all payments owed by the member, the department shall bill the employer for any contributions, plus interest, required to purchase membership service.

NEW SECTION. Sec. 208. (1) The director may pay a member eligible to receive a retirement allowance or the member's beneficiary a lump sum payment

in lieu of a monthly benefit if the initial monthly benefit would be less than one hundred dollars. The one hundred dollar limit shall be increased annually as determined by the director. The lump sum payment shall be the actuarial equivalent of the monthly benefit.

(2) Persons covered under the provisions of subsection (1) of this section may upon returning to member status reinstate all previous service by depositing the lump sum payment received, with interest as computed by the director, within two years of returning to service or prior to retiring again, whichever comes first. In computing the amount due, the director shall exclude the accumulated value of the normal payments the member would have received while in beneficiary status if the lump sum payment had not occurred.

(3) Any member who receives a settlement under this section is deemed to be retired from this system.

NEW SECTION. Sec. 209. (1) **NORMAL RETIREMENT.** Any member who is at least age sixty-five and who has:

(a) Completed ten service credit years; or

(b) Completed five service credit years, including twelve service credit months after attaining age fifty-four; or

(c) Completed five service credit years by September 1, 2000, under the public employees' retirement system plan II and who transferred to plan III under section 114 of this act;

shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 203 of this act.

(2) **EARLY RETIREMENT.** Any member who has attained at least age fifty-five and has completed at least ten years of service shall be eligible to retire and to receive a retirement allowance computed according to the provisions of section 203 of this act, except that a member retiring pursuant to this subsection shall have the retirement allowance actuarially reduced to reflect the difference in the number of years between age at retirement and the attainment of age sixty-five.

NEW SECTION. Sec. 210. (1) A member of the retirement system who becomes totally incapacitated for continued employment by an employer as determined by the department shall be eligible to receive an allowance under the provisions of plan III. The member shall receive a monthly disability allowance computed as provided for in section 203 of this act and shall have this allowance actuarially reduced to reflect the difference in the number of years between age at disability and the attainment of age sixty-five.

Any member who receives an allowance under the provisions of this section shall be subject to comprehensive medical examinations as required by the department. If these medical examinations reveal that a member has recovered from the incapacitating disability and the member is offered reemployment by an employer at a comparable compensation, the member shall cease to be eligible for the allowance.

(2) If the recipient of a monthly retirement allowance under this section dies, any further benefit payments shall be conditioned by the payment option selected by the retiree as provided in section 23 of this act.

NEW SECTION. Sec. 211. (1) Any member who elects to transfer to plan III and has eligible unrestored withdrawn contributions in plan II, may restore such contributions under the provisions of section 113 of this act with interest as determined by the department. The restored plan II service credit will be automatically transferred to plan III. Restoration payments will be transferred to the member account in plan III. If the member fails to meet the time limitations of section 113 of this act, they may restore such contributions under the provisions of RCW 41.50.165(2). The restored plan II service credit will be automatically transferred to plan III. One-half of the restoration payments under RCW 41.50.165(2) plus interest shall be allocated to the member's account.

(2) Any member who elects to transfer to plan III may purchase plan II service credit under section 113 of this act. Purchased plan II service credit will be automatically transferred to plan III. Contributions on behalf of the employer paid by the employee shall be allocated to the defined benefit portion of plan III and shall not be refundable when paid to the fund described in RCW 41.50.075(4). Contributions on behalf of the employee shall be allocated to the member account. If the member fails to meet the time limitations of section 113 of this act, they may subsequently restore such contributions under the provisions of RCW 41.50.165(2). Purchased plan II service credit will be automatically transferred to plan III. One-half of the payments under RCW 41.50.165(2), plus interest, shall be allocated to the member's account.

NEW SECTION. Sec. 212. If a member dies prior to retirement, the surviving spouse or eligible child or children shall receive a retirement allowance computed as provided in section 203 of this act actuarially reduced to reflect a joint and one hundred percent survivor option and if the member was not eligible for normal retirement at the date of death a further reduction as described in section 209 of this act.

If the surviving spouse who is receiving the retirement allowance dies leaving a child or children under the age of majority, then such child or children shall continue to receive an allowance in an amount equal to that which was being received by the surviving spouse, share and share alike, until such child or children reach the age of majority.

If there is no surviving spouse eligible to receive an allowance at the time of the member's death, such member's child or children under the age of majority shall receive an allowance, share and share alike. The allowance shall be calculated with the assumption that the age of the spouse and member were equal at the time of the member's death.

NEW SECTION. Sec. 213. The required contribution rates to the retirement system for employers shall be established by the director from time to time as may be necessary upon the advice of the state actuary. The state actuary shall use

the aggregate actuarial cost method to calculate contribution rates. The employer contribution rate calculated under this section shall be used only for the purpose of determining the amount of employer contributions to be deposited in the plan 11 fund from the total employer contributions collected under section 10 of this act.

Any increase in the contribution rate required as the result of a failure of an employer to make any contribution required by this section shall be borne in full by the employer not making the contribution.

The director shall notify all employers of any pending adjustment in the required contribution rate and such increase shall be announced at least thirty days prior to the effective date of the change.

The employer's contribution shall be remitted directly to the department within fifteen days following the end of the calendar month during which the payroll period ends.

NEW SECTION. Sec. 214. Sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act constitute a new chapter in Title 41 RCW.

Sec. 301. RCW 41.34.020 and 1996 c 39 s 13 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated:

(1) "Actuary" means the state actuary or the office of the state actuary.

(2) "Board" means the employee retirement benefits board authorized in chapter 41.50 RCW.

(3) "Department" means the department of retirement systems.

(4)(a) "Compensation" for teachers for purposes of this chapter is the same as "earnable compensation" for plan III in chapter 41.32 RCW except that the compensation may be reported when paid, rather than when earned.

(b) "Compensation" for classified employees for purposes of this chapter is the same as "compensation earnable" for plan III in section 2 of this act, except that the compensation may be reported when paid, rather than when earned.

(5)(a) "Employer" for teachers for purposes of this chapter means the same as "employer" for plan III in chapter 41.32 RCW.

(b) "Employer" for classified employees for purposes of this chapter means the same as "employer" for plan III in section 2 of this act.

(6) "Member" means any employee included in the membership of a retirement system as provided for in chapter 41.32 RCW of plan III or chapter 41.—RCW (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act) of plan III.

(7) "Member account" or "member's account" means the sum of the contributions and earnings on behalf of the member.

(8) "Retiree" means any member in receipt of an allowance or other benefit provided by this chapter resulting from service rendered to an employer by such member.

(9) "Teacher" means a member of the teachers' retirement system plan III as defined in RCW 41.32.010(29).

(10) "Classified employee" means a member of the school employees' retirement system plan III as defined in section 2 of this act.

Sec. 302. RCW 41.34.030 and 1995 c 239 s 203 are each amended to read as follows:

(1) This chapter applies only to members of plan III retirement systems created under chapters 41.32 and 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act) RCW.

(2) Plan III consists of two separate elements:

(a) A defined benefit portion covered under:

(i) Sections 101 through 117, chapter 239, Laws of 1995; or

(ii) Sections 1 through 25 and 201 through 213 of this act; and

(b) A defined contribution portion covered under this chapter. Unless specified otherwise, all references to "plan III" in this chapter refer to the defined contribution portion of plan III.

Sec. 303. RCW 41.34.060 and 1996 c 39 s 15 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, the member's account shall be invested by the state investment board. ~~((All contributions under this subsection shall be invested))~~ 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 (2) of this section.

(a) For members of the retirement system as provided for in chapter 41.32 RCW of plan III, investment shall be in the same portfolio as that of the teachers' retirement system combined plan II and III fund under RCW 41.50.075(2).

(b) For members of the retirement system as provided for in chapter 41.— RCW (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act) of plan III, investment shall be in the same portfolio as that of the school employees' retirement system combined plan II and III fund under RCW 41.50.075(4).

(2) Members may elect to self-direct their investments as ~~((authorized by the board, other than as provided in subsection (1) of this section. Expenses caused by self-directed investment shall be paid by the member in accordance with rules established by the board under RCW 41.50.088))~~ set forth in sections 307 and 707 of this act.

Sec. 304. RCW 41.34.080 and 1995 c 239 s 208 are each amended to read as follows:

(1) Subject to subsections (2) and (3) of this section, the right of a person to a pension, an annuity, a retirement allowance, any optional benefit, any other right accrued or accruing to any person under the provisions of this chapter, and

the various funds created by chapter 239, Laws of 1995, and chapter . . . , Laws of 1998 (this act) and all moneys and investments and income thereof, is hereby exempt from any state, county, municipal, or other local tax, and shall not be subject to execution, garnishment, attachment, the operation of bankruptcy or insolvency laws, or other process of law whatsoever, and shall be unassignable.

(2) This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of premiums due on any group insurance policy or plan issued for the benefit of a group comprised of public employees of the state of Washington or its political subdivisions and that has been approved for deduction in accordance with rules that may be adopted by the state health care authority and/or the department. This section shall not be deemed to prohibit a beneficiary of a retirement allowance from authorizing deductions therefrom for payment of dues and other membership fees to any retirement association or organization the membership of which is composed of retired public employees, if a total of three hundred or more of such retired employees have authorized such deduction for payment to the same retirement association or organization.

(3) Subsection (1) of this section shall not prohibit the department from complying with (a) a wage assignment order for child support issued pursuant to chapter 26.18 RCW, (b) an order to withhold and deliver issued pursuant to chapter 74.20A RCW, (c) a notice of payroll deduction issued pursuant to RCW 26.23.060, (d) a mandatory benefits assignment order issued by the department, (e) a court order directing the department to pay benefits directly to an obligee under a dissolution order as defined in RCW 41.50.500(3) which fully complies with RCW 41.50.670 and 41.50.700, or (f) any administrative or court order expressly authorized by federal law.

Sec. 305. RCW 41.34.100 and 1995 c 239 s 325 are each amended to read as follows:

(1) The benefits provided pursuant to chapter 239, Laws of 1995 are not provided to employees as a matter of contractual right prior to July 1, 1996. The legislature retains the right to alter or abolish these benefits at any time prior to July 1, 1996.

(2) The benefits provided pursuant to chapter . . . , Laws of 1998 (this act) are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000.

NEW SECTION. **Sec. 306.** A new section is added to chapter 41.34 RCW to read as follows:

All moneys in members' accounts, all property and rights purchased therewith, and all income attributable thereto, shall be held in trust by the state investment board, as set forth under RCW 43.33A.030, for the exclusive benefit of the members and their beneficiaries.

NEW SECTION. Sec. 307. A new section is added to chapter 41.34 RCW 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, 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 employee retirement benefits board regarding any recommendations made pursuant to RCW 41.50.088(2), 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 shall be paid by members and recovered under procedures agreed to by the board 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 board 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) 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.

NEW SECTION. Sec. 308. A new section is added to chapter 41.34 RCW 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 or required pursuant to RCW 41.34.060 (1) or (2).

(2) Neither the board nor the state investment board, nor any officer, employee, or member thereof is liable for any loss or deficiency resulting from reasonable efforts to implement investment directions pursuant to RCW 41.34.060 (1) or (2).

NEW SECTION. Sec. 309. (1) On July 1, 1998, and January 1, 2000, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons are eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan III who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875; or

- (c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:
- (i) Completed ten service credit years; or
 - (ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or
 - (iii) Completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817; or
- (d) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:
- (i) Completed ten service credit years; or
 - (ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or
 - (iii) Completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817.
- (3) The extraordinary investment gain amount shall be calculated as follows:
- (a) One-half of the sum of the value of the net assets held in trust for pension benefits in the public employees' retirement system plan II fund and the teachers' retirement system combined plan II and III fund at the close of the previous state fiscal year not including the amount attributable to member accounts;
 - (b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;
 - (c) Multiplied by the proportion of:
 - (i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to
 - (ii) The sum of the service credit on August 31st of the previous year of:
 - (A) All persons eligible for the benefit provided in subsection (1) of this section;
 - (B) Any person who earned service credit in the teachers' retirement system plan II or the public employees' retirement system plan II during the twelve-month period from September 1st to August 31st immediately preceding the distribution;
 - (C) Any person in receipt of a benefit pursuant to RCW 41.32.765 or 41.40.630; and
 - (D) Any person with five or more years of service in the teachers' retirement system plan II or the public employees' retirement system plan II;
 - (d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.
- (4) The distribution provided for in this section shall be made solely from assets included in the teachers' retirement system combined plan II and III fund.

NEW SECTION. Sec. 310. Section 309 of this act is added to chapter 41.34 RCW, but because of its temporary nature, shall not be codified.

NEW SECTION. Sec. 311. The definitions in this section apply throughout this chapter unless the context requires otherwise.

- (1) "Actuary" means the state actuary or the office of the state actuary.
- (2) "Department" means the department of retirement systems.
- (3) "Teacher" means any employee included in the membership of the teachers' retirement system as provided for in chapter 41.32 RCW.
- (4) "Member account" or "member's account" means the sum of any contributions as provided for in chapter 41.34 RCW and the earnings on behalf of the member.
- (5) "Classified employee" means the same as in section 2 of this act.

NEW SECTION. Sec. 312: (1) On January 1, 2002, and on January 1st of even-numbered years thereafter, the member account of a person meeting the requirements of this section shall be credited by the extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefit provided in subsection (1) of this section:

(a) Any member of the teachers' retirement system plan III or the Washington school employees' retirement system plan III who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution; or

(b) Any person in receipt of a benefit pursuant to RCW 41.32.875 or section 209 of this act; or

(c) Any person who is a retiree pursuant to RCW 41.34.020(8) and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(d) Any teacher who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817; or

(e) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan III under section 114 of this act; or

(f) Any person who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who:

(i) Completed ten service credit years; or

(ii) Completed five service credit years, including twelve service months after attaining age fifty-four; or

(g) Any teacher who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by July 1, 1996, under plan II and who transferred to plan III under RCW 41.32.817; or

(h) Any classified employee who had a balance of at least one thousand dollars in their member account on August 31st of the year immediately preceding the distribution and who has completed five service credit years by September 1, 2000, and who transferred to plan III under section 114 of this act.

(3) The extraordinary investment gain amount shall be calculated as follows:

(a) One-half of the sum of the value of the net assets held in trust for pension benefits in the teachers' retirement system combined plan II and III fund and the Washington school employees' retirement system combined plan II and III fund at the close of the previous state fiscal year not including the amount attributable to member accounts;

(b) Multiplied by the amount which the compound average of investment returns on those assets over the previous four state fiscal years exceeds ten percent;

(c) Multiplied by the proportion of:

(i) The sum of the service credit on August 31st of the previous year of all persons eligible for the benefit provided in subsection (1) of this section; to

(ii) The sum of the service credit on August 31st of the previous year of:

(A) All persons eligible for the benefit provided in subsection (1) of this section;

(B) Any person who earned service credit in the teachers' retirement system plan II or the Washington school employees' retirement system plan II during the twelve-month period from September 1st to August 31st immediately preceding the distribution;

(C) Any person in receipt of a benefit pursuant to RCW 41.32.765 or section 103 of this act; and

(D) Any person with five or more years of service in the teachers' retirement system plan II or the Washington school employees' retirement system plan II;

(d) Divided proportionally among persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31st of the previous year.

(4) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time.

NEW SECTION. Sec. 313. (1) On March 1, 2001, the member account of a person meeting the requirements of this section shall be credited by the 1998 retroactive extraordinary investment gain amount and the 2000 retroactive extraordinary investment gain amount.

(2) The following persons shall be eligible for the benefits provided in subsection (1) of this section:

(a) Any classified employee who earned service credit during the twelve-month period from September 1st to August 31st immediately preceding the distribution and who transferred to plan III under section 114 of this act; or

(b) Any classified employee in receipt of a benefit pursuant to section 209 of this act and who has completed five service credit years by September 1, 2000, and who transferred to plan III under section 114 of this act; or

(c) Any classified employee who is a retiree pursuant to RCW 41.34.020(8) and who has completed five service credit years by September 1, 2000, and who transferred to plan III under section 114 of this act; or

(d) Any classified employee who has a balance of at least one thousand dollars in his or her member account and who has completed five service credit years by September 1, 2000, and who transferred to plan III under section 114 of this act.

(3) The 1998 retroactive extraordinary investment gain amount shall be calculated as follows:

(a) An amount equal to the average benefit per year of service paid to members of the teachers' retirement system plan III pursuant to section 309 of this act in 1998;

(b) Distributed to persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31, 1997.

(4) The 2000 retroactive extraordinary investment gain amount shall be calculated as follows:

(a) An amount equal to the average benefit per year of service paid to members of the teachers' retirement system plan III pursuant to section 309 of this act in 2000;

(b) Distributed to persons eligible for the benefit provided in subsection (1) of this section on the basis of their service credit total on August 31, 1999.

(5) The legislature reserves the right to amend or repeal this section in the future and no member or beneficiary has a contractual right to receive this distribution not granted prior to that time.

NEW SECTION. Sec. 314. Sections 311 through 313 of this act constitute a new chapter in Title 41 RCW.

Sec. 401. RCW 41.45.010 and 1995 c 239 s 305 are each amended to read as follows:

It is the intent of the legislature to provide a dependable and systematic process for funding the benefits provided to members and retirees of the public employees' retirement system, chapter 41.40 RCW; the teachers' retirement system, chapter 41.32 RCW; the law enforcement officers' and fire fighters' retirement system, chapter 41.26 RCW; the school employees' retirement system, chapter 41.— RCW (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act); and the Washington state patrol retirement system, chapter 43.43 RCW.

The funding process established by this chapter is intended to achieve the following goals:

(1) To continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, the school employees'

retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II as provided by law;

(2) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, and the law enforcement officers' and fire fighters' retirement system plan I not later than June 30, 2024;

(3) To establish predictable long-term employer contribution rates which will remain a relatively constant proportion of the future state budgets; and

(4) To fund, to the extent feasible, benefit increases for plan I members and all benefits for plan II and III members over the working lives of those members so that the cost of those benefits are paid by the taxpayers who receive the benefit of those members' service.

Sec. 402. RCW 41.45.020 and 1995 c 239 s 306 are each amended to read as follows:

As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Council" means the economic and revenue forecast council created in RCW 82.33.010.

(2) "Department" means the department of retirement systems.

(3) "Law enforcement officers' and fire fighters' retirement system plan I" and "law enforcement officers' and fire fighters' retirement system plan II" mean the benefits and funding provisions under chapter 41.26 RCW.

(4) "Public employees' retirement system plan I" and "public employees' retirement system plan II" mean the benefits and funding provisions under chapter 41.40 RCW.

(5) "Teachers' retirement system plan I," "teachers' retirement system plan II," and "teachers' retirement system plan III" mean the benefits and funding provisions under chapter 41.32 RCW.

(6) "School employees' retirement system plan II" and "school employees' retirement system plan III" mean the benefits and funding provisions under chapter 41.— RCW (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act).

(7) "Washington state patrol retirement system" means the retirement benefits provided under chapter 43.43 RCW.

~~((7))~~ (8) "Unfunded liability" means the unfunded actuarial accrued liability of a retirement system.

~~((8))~~ (9) "Actuary" or "state actuary" means the state actuary employed under chapter 44.44 RCW.

~~((9))~~ (10) "State retirement systems" means the retirement systems listed in RCW 41.50.030.

(11) "Classified employee" means a member of the Washington school employees' retirement system plan II or plan III as defined in section 2 of this act.

(12) "Teacher" means a member of the teachers' retirement system as defined in RCW 41.32.010(15).

Sec. 403. RCW 41.45.050 and 1995 c 239 s 308 are each amended to read as follows:

(1) Employers of members of the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, and the Washington state patrol retirement system shall make contributions to those systems based on the rates established in RCW 41.45.060 and 41.45.070.

(2) The state shall make contributions to the law enforcement officers' and fire fighters' retirement system based on the rates established in RCW 41.45.060 and 41.45.070. The state treasurer shall transfer the required contributions each month on the basis of salary data provided by the department.

(3) The department shall bill employers, and the state shall make contributions to the law enforcement officers' and fire fighters' retirement system, using the combined rates established in RCW 41.45.060 and 41.45.070 regardless of the level of pension funding provided in the biennial budget. Any member of an affected retirement system may, by mandamus or other appropriate proceeding, require the transfer and payment of funds as directed in this section.

(4) The contributions received for the public employees' retirement system shall be allocated between the public employees' retirement system plan I fund and public employees' retirement system plan II fund as follows: The contributions necessary to fully fund the public employees' retirement system plan II employer contribution required by RCW 41.40.650 shall first be deposited in the public employees' retirement system plan II fund. All remaining public employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

(5) The contributions received for the teachers' retirement system shall be allocated between the plan I fund and the combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining teachers' retirement system employer contributions shall be deposited in the plan I fund.

(6) The contributions received for the school employees' retirement system shall be allocated between the public employees' retirement system plan I fund and the school employees' retirement system combined plan II and plan III fund as follows: The contributions necessary to fully fund the combined plan II and plan III employer contribution shall first be deposited in the combined plan II and plan III fund. All remaining school employees' retirement system employer contributions shall be deposited in the public employees' retirement system plan I fund.

(7) The contributions received under RCW 41.26.450 for the law enforcement officers' and fire fighters' retirement system shall be allocated between the law enforcement officers' and fire fighters' retirement system plan I and the law enforcement officers' and fire fighters' retirement system plan II fund as follows: The contributions necessary to fully fund the law enforcement officers' and fire fighters' retirement system plan II employer contributions shall

be first deposited in the law enforcement officers' and fire fighters' retirement system plan II fund. All remaining law enforcement officers' and fire fighters' retirement system employer contributions shall be deposited in the law enforcement officers' and fire fighters' retirement system plan I fund.

Sec. 404. RCW 41.45.060 and 1995 c 239 s 309 are each amended to read as follows:

(1) The state actuary shall provide actuarial valuation results based on the assumptions adopted under RCW 41.45.030.

(2) Not later than September 30, 1996, and every two years thereafter, consistent with the assumptions adopted under RCW 41.45.030, the council shall adopt both:

(a) A basic state contribution rate for the law enforcement officers' and fire fighters' retirement system; ~~((and))~~

(b) Basic employer contribution rates for the public employees' retirement system plan I, the teachers' retirement system plan I, and the Washington state patrol retirement system to be used in the ensuing biennial period; and

(c) A basic employer contribution rate for the school employees' retirement system for funding the public employees' retirement system plan I.

(3) The employer and state contribution rates adopted by the council shall be the level percentages of pay that are needed:

(a) To fully amortize the total costs of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and the unfunded liability of the Washington state patrol retirement system not later than June 30, 2024; and

(b) To also continue to fully fund the public employees' retirement system plan II, the teachers' retirement system plans II and III, the school employees' retirement system plans II and III, and the law enforcement officers' and fire fighters' retirement system plan II in accordance with RCW 41.40.650, 41.26.450, and this section.

(4) The aggregate actuarial cost method shall be used to calculate a combined plan II and III employer contribution rate.

(5) The council shall immediately notify the directors of the office of financial management and department of retirement systems of the state and employer contribution rates adopted.

(6) The director of the department of retirement systems shall collect those rates adopted by the council.

Sec. 405. RCW 41.45.061 and 1997 c 10 s 2 are each amended to read as follows:

(1) The required contribution rate for members of the plan II teachers' retirement system shall be fixed at the rates in effect on July 1, 1996, subject to the following:

(a) Beginning September 1, 1997, except as provided in (b) of this subsection, the employee contribution rate shall not exceed the employer plan II

and III rates adopted under RCW 41.45.060 and 41.45.070 for the teachers' retirement system;

(b) In addition, the employee contribution rate for plan II shall be increased by fifty percent of the contribution rate increase caused by any plan II benefit increase passed after July 1, 1996(;

~~— (2) The required plan II and III contribution rates for employers shall be adopted in the manner described in RCW 41.45.060);~~

(c) In addition, the employee contribution rate for plan II shall not be increased as a result of any distributions pursuant to sections 309 and 312 of this act.

(2) The required contribution rate for members of the school employees' retirement system plan II shall be fixed at the rates in effect on September 1, 2000, for members of the public employees' retirement system plan II, subject to the following:

(a) Except as provided in (b) of this subsection, the member contribution rate shall not exceed the school employees' retirement system employer plan II and III contribution rate adopted under RCW 41.45.060 and 41.45.070;

(b) The member contribution rate for the school employees' retirement system plan II shall be increased by fifty percent of the contribution rate increase caused by any plan II benefit increase passed after September 1, 2000.

(3) The employee contribution rate for plan II shall not be increased as a result of any distributions pursuant to sections 312 and 313 of this act.

(4) The required plan II and III contribution rates for employers shall be adopted in the manner described in RCW 41.45.060.

Sec. 406. RCW 41.45.070 and 1995 c 239 s 310 are each amended to read as follows:

(1) In addition to the basic employer contribution rate established in RCW 41.45.060, the department shall also charge employers of public employees' retirement system, teachers' retirement system, school employees' retirement system, or Washington state patrol retirement system members an additional supplemental rate to pay for the cost of additional benefits, if any, granted to members of those systems. Except as provided in subsection (6) of this section, the supplemental contribution rates required by this section shall be calculated by the state actuary and shall be charged regardless of language to the contrary contained in the statute which authorizes additional benefits.

(2) In addition to the basic state contribution rate established in RCW 41.45.060 for the law enforcement officers' and fire fighters' retirement system the department shall also establish a supplemental rate to pay for the cost of additional benefits, if any, granted to members of the law enforcement officers' and fire fighters' retirement system. This supplemental rate shall be calculated by the state actuary and the state treasurer shall transfer the additional required contributions regardless of language to the contrary contained in the statute which authorizes the additional benefits.

(3) The supplemental rate charged under this section to fund benefit increases provided to active members of the public employees' retirement system plan I, the teachers' retirement system plan I, the law enforcement officers' and fire fighters' retirement system plan I, and Washington state patrol retirement system, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit not later than June 30, 2024.

(4) The supplemental rate charged under this section to fund benefit increases provided to active and retired members of the public employees' retirement system plan II, the teachers' retirement system plan II and plan III, the school employees' retirement system plan II and plan III, or the law enforcement officers' and fire fighters' retirement system plan II, shall be calculated as the level percentage of all members' pay needed to fund the cost of the benefit, as calculated under RCW 41.40.650(~~(, 41.32.775,)~~) or 41.26.450, respectively.

(5) The supplemental rate charged under this section to fund postretirement adjustments which are provided on a nonautomatic basis to current retirees shall be calculated as the percentage of pay needed to fund the adjustments as they are paid to the retirees. The supplemental rate charged under this section to fund automatic postretirement adjustments for active or retired members of the public employees' retirement system plan I and the teachers' retirement system plan I shall be calculated as the level percentage of pay needed to fund the cost of the automatic adjustments not later than June 30, 2024.

(6) A supplemental rate shall not be charged to pay for the cost of additional benefits granted to members pursuant to chapter 41.— RCW (sections 31 I through 313 of this act); section 309 of this act; or section 701, chapter . . . , Laws of 1998 (section 701 of this act).

NEW SECTION. Sec. 407. A new section is added to chapter 41.45 RCW to read as follows:

Upon the advice of the state actuary, the state treasurer shall divide the assets in the public employees' retirement system plan II as of September 1, 2000, in such a manner that sufficient assets remain in plan II to maintain the employee contribution rate calculated in the latest actuarial valuation of the public employees' retirement system plan II. The state actuary shall take into account changes in assets that occur between the latest actuarial valuation and the date of transfer. The balance of the assets shall be transferred to the Washington school employees' retirement system plan II and III.

Sec. 501. RCW 41.50.030 and 1995 c 239 s 316 are each amended to read as follows:

(1) As soon as possible but not more than one hundred and eighty days after March 19, 1976, there is transferred to the department of retirement systems, except as otherwise provided in this chapter, all powers, duties, and functions of:

- (a) The Washington public employees' retirement system;
- (b) The Washington state teachers' retirement system;

(c) The Washington law enforcement officers' and fire fighters' retirement system;

(d) The Washington state patrol retirement system;

(e) The Washington judicial retirement system; and

(f) The state treasurer with respect to the administration of the judges' retirement fund imposed pursuant to chapter 2.12 RCW.

(2) On July 1, 1996, there is transferred to the department all powers, duties, and functions of the deferred compensation committee.

(3) The department shall administer chapter 41.34 RCW.

(4) The department shall administer the Washington school employees' retirement system created under chapter 41.— RCW (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act).

Sec. 502. RCW 41.50.060 and 1995 c 239 s 318 are each amended to read as follows:

The director may delegate the performance of such powers, duties, and functions, other than those relating to rule making, to employees of the department, but the director shall remain and be responsible for the official acts of the employees of the department.

The director shall be responsible for the public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the judicial retirement system, the law enforcement officers' and fire fighters' retirement system, and the Washington state patrol retirement system. The director shall also be responsible for the deferred compensation program.

Sec. 503. RCW 41.50.075 and 1996 c 39 s 16 are each amended to read as follows:

(1) Two funds are hereby created and established in the state treasury to be known as the Washington law enforcement officers' and fire fighters' system plan I retirement fund, and the Washington law enforcement officers' and fire fighters' system plan II retirement fund which shall consist of all moneys paid into them in accordance with the provisions of this chapter and chapter 41.26 RCW, whether such moneys take the form of cash, securities, or other assets. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the law enforcement officers' and fire fighters' retirement system plan II.

(2) All of the assets of the Washington state teachers' retirement system shall be credited according to the purposes for which they are held, to two funds to be maintained in the state treasury, namely, the teachers' retirement system plan I fund and the teachers' retirement system combined plan II and III fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the Washington state teachers' retirement system plan I, and the combined plan II and III fund shall consist of all moneys paid to finance the

benefits provided to members of the Washington state teachers' retirement system plan II and III.

(3) There is hereby established in the state treasury two separate funds, namely the public employees' retirement system plan I fund and the public employees' retirement system plan II fund. The plan I fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan I, and the plan II fund shall consist of all moneys paid to finance the benefits provided to members of the public employees' retirement system plan II.

(4) There is hereby established in the state treasury the school employees' retirement system combined plan II and III fund. The combined plan II and III fund shall consist of all moneys paid to finance the benefits provided to members of the school employees' retirement system plan II and plan III.

Sec. 504. RCW 41.50.080 and 1981 c 3 s 34 are each amended to read as follows:

The state investment board shall provide for the investment of all funds of the Washington public employees' retirement system, the teachers' retirement system, the school employees' retirement system, the Washington law enforcement officers' and fire fighters' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, and the judges' retirement fund, pursuant to RCW 43.84.150, and may sell or exchange investments acquired in the exercise of that authority.

Sec. 505. RCW 41.50.086 and 1995 c 239 s 301 are each amended to read as follows:

(1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of ~~((eight))~~ eleven members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Three members representing classified employees of school districts and educational service districts: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired

member, two years for one active member, and three years for the remaining active member.

(d) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

~~((d))~~ (e) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support.

~~((8) The state investment board shall provide advice and support to the board.))~~

Sec. 506. RCW 41.50.086 and 1995 c 239 s 301 are each amended to read as follows:

(1) The employee retirement benefits board is created within the department of retirement systems.

(2) The board shall be composed of ~~((eight))~~ eleven members appointed by the governor and one ex officio member as follows:

(a) Three members representing the public employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be two years for the retired member, one year for one active member, and three years for the remaining active member.

(b) Three members representing the teachers' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(c) Three members representing the school employees' retirement system: One retired, two active. The members shall be appointed from a list of nominations submitted by organizations representing each category. The initial term of appointment shall be one year for the retired member, two years for one active member, and three years for the remaining active member.

(d) Two members with experience in defined contribution plan administration. The initial term for these members shall be two years for one member and three years for the remaining member.

~~((4))~~ (e) The director of the department shall serve ex officio and shall be the chair of the board.

(3) After the initial appointments, members shall be appointed to three-year terms.

(4) The board shall meet at least quarterly during the calendar year, at the call of the chair.

(5) Members of the board shall serve without compensation but shall receive travel expenses as provided for in RCW 43.03.050 and 43.03.060. Such travel expenses shall be reimbursed by the department from the retirement system expense fund.

(6) The board shall adopt rules governing its procedures and conduct of business.

(7) The actuary shall perform all actuarial services for the board and provide advice and support.

~~((8) The state investment board shall provide advice and support to the board:))~~

Sec. 507. RCW 41.50.088 and 1995 c 239 s 302 are each amended to read as follows:

(1) The board shall adopt rules as necessary and exercise all the powers and perform all duties prescribed by law with respect to:

~~((1) The preselection of options for members to choose from for self-directed investment deemed by the board to be in the best interest of the member. At the board's request, the state investment board may provide investment options for purposes of this subsection;~~

~~—(2))~~ (a) The board shall recommend to the state investment board types of options for member self-directed investment in the teachers' retirement system plan III and the school employees' retirement system plan III, as deemed by the board to be reflective of the members' preferences.

(b) The selection of optional benefit payment schedules available to members and survivors of members upon the death, disability, retirement, or termination of the member. The optional benefit payments may include but not be limited to: Fixed and participating annuities, joint and survivor annuities, and payments that bridge to social security or defined benefit plan payments;

~~((3))~~ (c) Approval of actuarially equivalent annuities that may be purchased from the combined plan II and plan III funds under RCW 41.50.075 (2) or (3); and

~~((4))~~ (d) Determination of the basis for administrative charges to the self-directed investment fund to offset self-directed account expenses; ~~and~~

~~—(5))~~ (2) Selection of investment options for the deferred compensation program.

Sec. 508. RCW 41.50.110 and 1996 c 39 s 17 are each amended to read as follows:

(1) Except as provided by RCW 41.50.255 and subsection (6) of this section, all expenses of the administration of the department and the expenses of administration of the retirement systems created in chapters 2.10, 2.12, 41.26, 41.32, 41.40, 41.34, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act) and 43.43 RCW shall be paid from the department of retirement systems expense fund.

(2) In order to reimburse the department of retirement systems expense fund on an equitable basis the department shall ascertain and report to each employer, as defined in RCW 41.26.030, 41.32.010, section 2 of this act, or 41.40.010, the sum necessary to defray its proportional share of the entire expense of the administration of the retirement system that the employer participates in during the ensuing biennium or fiscal year whichever may be required. Such sum is to be computed in an amount directly proportional to the estimated entire expense of the administration as the ratio of monthly salaries of the employer's members bears to the total salaries of all members in the entire system. It shall then be the duty of all such employers to include in their budgets or otherwise provide the amounts so required.

(3) The department shall compute and bill each employer, as defined in RCW 41.26.030, 41.32.010, section 2 of this act, or 41.40.010, at the end of each month for the amount due for that month to the department of retirement systems expense fund and the same shall be paid as are its other obligations. Such computation as to each employer shall be made on a percentage rate of salary established by the department. However, the department may at its discretion establish a system of billing based upon calendar year quarters in which event the said billing shall be at the end of each such quarter.

(4) The director may adjust the expense fund contribution rate for each system at any time when necessary to reflect unanticipated costs or savings in administering the department.

(5) An employer who fails to submit timely and accurate reports to the department may be assessed an additional fee related to the increased costs incurred by the department in processing the deficient reports. Fees paid under this subsection shall be deposited in the retirement system expense fund.

(a) Every six months the department shall determine the amount of an employer's fee by reviewing the timeliness and accuracy of the reports submitted by the employer in the preceding six months. If those reports were not both timely and accurate the department may prospectively assess an additional fee under this subsection.

(b) An additional fee assessed by the department under this subsection shall not exceed fifty percent of the standard fee.

(c) The department shall adopt rules implementing this section.

(6) Expenses other than those under RCW 41.34.060(2) shall be paid pursuant to subsection (1) of this section.

Sec. 509. RCW 41.50.150 and 1997 c 221 s 1 are each amended to read as follows:

(1) The employer of any employee whose retirement benefits are based in part on excess compensation, as defined in this section, shall, upon receipt of a billing from the department, pay into the appropriate retirement system the present value at the time of the employee's retirement of the total estimated cost of all present and future benefits from the retirement system attributable to the excess compensation. The state actuary shall determine the estimated cost using the same method and procedure as is used in preparing fiscal note costs for the legislature. However, the director may in the director's discretion decline to bill the employer if the amount due is less than fifty dollars. Accounts unsettled within thirty days of the receipt of the billing shall be assessed an interest penalty of one percent of the amount due for each month or fraction thereof beyond the original thirty-day period.

(2) "Excess compensation," as used in this section, includes the following payments, if used in the calculation of the employee's retirement allowance:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means:

(i) Any payment in lieu of an accrual of annual leave; or

(ii) Any payment added to salary or wages, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance to the extent that payment qualifies as reportable compensation in the member's retirement system;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular daily or hourly rate of pay; and

(e) Any termination or severance payment.

(3) This section applies to the retirement systems listed in RCW 41.50.030 and to retirements occurring on or after March 15, 1984. Nothing in this section is intended to amend or determine the meaning of any definition in chapter 2.10, 2.12, 41.26, 41.32, 41.40, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), or 43.43 RCW or to determine in any manner what payments are includable in the calculation of a retirement allowance under such chapters.

(4) An employer is not relieved of liability under this section because of the death of any person either before or after the billing from the department.

Sec. 510. RCW 41.50.152 and 1995 c 387 s 1 are each amended to read as follows:

(1) Except as limited by subsection (3) of this section, the governing body of an employer under chapter 41.32, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), or 41.40 RCW shall comply with the provisions of subsection (2) of this section prior to executing a contract or

collective bargaining agreement with members under chapter 41.32, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), or 41.40 RCW which provides for:

(a) A cash out of unused annual leave in excess of two hundred forty hours of such leave. "Cash out" for purposes of this subsection means any payment in lieu of an accrual of annual leave or any payment added to regular salary, concurrent with a reduction of annual leave;

(b) A cash out of any other form of leave;

(c) A payment for, or in lieu of, any personal expense or transportation allowance;

(d) The portion of any payment, including overtime payments, that exceeds twice the regular rate of pay; or

(e) Any other termination or severance payment.

(2) Any governing body entering into a contract that includes a compensation provision listed in subsection (1) of this section shall do so only after public notice in compliance with the open public meetings act, chapter 42.30 RCW. This notification requirement may be accomplished as part of the approval process for adopting a contract in whole, and does not require separate or additional open public meetings. At the public meeting, full disclosure shall be made of the nature of the proposed compensation provision, and the employer's estimate of the excess compensation billings under RCW 41.50.150 that the employing entity would have to pay as a result of the proposed compensation provision. The employer shall notify the department of its compliance with this section at the time the department bills the employer under RCW (~~41.40.150~~) 41.50.150 for the pension impact of compensation provisions listed in subsection (1) of this section that are adopted after July 23, 1995.

(3) The requirements of subsection (2) of this section shall not apply to the adoption of a compensation provision listed in subsection (1) of this section if the compensation would not be includable in calculating benefits under chapter 41.32, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), or 41.40 RCW for the employees covered by the compensation provision.

Sec. 511. RCW 41.50.255 and 1995 c 281 s 1 are each amended to read as follows:

The director is authorized to pay from the interest earnings of the trust funds of the public employees' retirement system, the teachers' retirement system, the Washington state patrol retirement system, the Washington judicial retirement system, the judges' retirement system, the school district employees' retirement system, or the law enforcement officers' and fire fighters' retirement system lawful obligations of the appropriate system for legal expenses and medical expenses which expenses are primarily incurred for the purpose of protecting the appropriate trust fund or are incurred in compliance with statutes governing such funds.

The term "legal expense" includes, but is not limited to, legal services provided through the legal services revolving fund, fees for expert witnesses,

travel expenses, fees for court reporters, cost of transcript preparation, and reproduction of documents.

The term "medical costs" includes, but is not limited to, expenses for the medical examination or reexamination of members or retirees, the costs of preparation of medical reports, and fees charged by medical professionals for attendance at discovery proceedings or hearings.

The director may also pay from the interest earnings of the trust funds specified in this section costs incurred in investigating fraud and collecting overpayments, including expenses incurred to review and investigate cases of possible fraud against the trust funds and collection agency fees and other costs incurred in recovering overpayments. Recovered funds must be returned to the appropriate trust funds.

Sec. 512. RCW 41.50.500 and 1991 c 365 s 1 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 41.50.500 through 41.50.650, 41.50.670 through 41.50.720, and 26.09.138.

(1) "Benefits" means periodic retirement payments or a withdrawal of accumulated contributions.

(2) "Disposable benefits" means that part of the benefits of an individual remaining after the deduction from those benefits of any amount required by law to be withheld. The term "required by law to be withheld" does not include any deduction elective to the member.

(3) "Dissolution order" means any judgment, decree, or order of spousal maintenance, property division, or court-approved property settlement incident to a decree of divorce, dissolution, invalidity, or legal separation issued by the superior court of the state of Washington or a judgment, decree, or other order of spousal support issued by a court of competent jurisdiction in another state or country, that has been registered or otherwise made enforceable in this state.

(4) "Mandatory benefits assignment order" means an order issued to the department of retirement systems pursuant to RCW 41.50.570 to withhold and deliver benefits payable to an obligor under chapter 2.10, 2.12, 41.26, 41.32, 41.40, ~~41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act)~~, or 43.43 RCW.

(5) "Obligee" means an ex spouse or spouse to whom a duty of spousal maintenance or property division obligation is owed.

(6) "Obligor" means the spouse or ex spouse owing a duty of spousal maintenance or a property division obligation.

(7) "Periodic retirement payments" means periodic payments of retirement allowances, including but not limited to service retirement allowances, disability retirement allowances, and survivors' allowances. The term does not include a withdrawal of accumulated contributions.

(8) "Property division obligation" means any outstanding court-ordered property division or court-approved property settlement obligation incident to a decree of divorce, dissolution, or legal separation.

(9) "Standard allowance" means a benefit payment option selected under RCW 2.10.146(1)(a), 41.26.460(1)(a), 41.32.785(1)(a), 41.40.188(1)(a), ((or)) 41.40.660(1), or section 23 of this act that ceases upon the death of the retiree. Standard allowance also means the benefit allowance provided under RCW 2.10.110, 2.10.130, 43.43.260, 41.26.100, 41.26.130(1)(a), or chapter 2.12 RCW. Standard allowance also means the maximum retirement allowance available under RCW 41.32.530(1) following member withdrawal of accumulated contributions, if any.

(10) "Withdrawal of accumulated contributions" means a lump sum payment to a retirement system member of all or a part of the member's accumulated contributions, including accrued interest, at the request of the member including any lump sum amount paid upon the death of the member.

Sec. 513. RCW 41.50.670 and 1996 c 39 s 18 are each amended to read as follows:

(1) Nothing in this chapter regarding mandatory assignment of benefits to enforce a spousal maintenance obligation shall abridge the right of an obligee to direct payments of retirement benefits to satisfy a property division obligation ordered pursuant to a court decree of dissolution or legal separation or any court order or court-approved property settlement agreement incident to any court decree of dissolution or legal separation as provided in RCW 2.10.180, 2.12.090, 41.04.310, 41.04.320, 41.04.330, 41.26.053, 41.32.052, section 11 of this act, 41.34.070(3), 41.40.052, 43.43.310, or 26.09.138, as those statutes existed before July 1, 1987, and as those statutes exist on and after July 28, 1991. The department shall pay benefits under this chapter in a lump sum or as a portion of periodic retirement payments as expressly provided by the dissolution order. A dissolution order may not order the department to pay a periodic retirement payment or lump sum unless that payment is specifically authorized under the provisions of chapter 2.10, 2.12, 41.26, 41.32, 41.—(sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), 41.34, 41.40, or 43.43 RCW, as applicable.

(2) The department shall pay directly to an obligee the amount of periodic retirement payments or lump sum payment, as appropriate, specified in the dissolution order if the dissolution order filed with the department pursuant to subsection (1) of this section includes a provision that states in the following form:

If (the obligor) receives periodic retirement payments as defined in RCW 41.50.500, the department of retirement systems shall pay to (the obligee) dollars from such payments or . . . percent of such payments. If the obligor's debt is expressed as a percentage of his or her periodic retirement payment and the obligee does not have a survivorship interest in the obligor's benefit, the amount received by the obligee shall be the percentage of the periodic

retirement payment that the obligor would have received had he or she selected a standard allowance.

If (the obligor) requests or has requested a withdrawal of accumulated contributions as defined in RCW 41.50.500, or becomes eligible for a lump sum death benefit, the department of retirement systems shall pay to (the obligee) dollars plus interest at the rate paid by the department of retirement systems on member contributions. Such interest to accrue from the date of this order's entry with the court of record.

(3) This section does not require a member to select a standard allowance upon retirement nor does it require the department to recalculate the amount of a retiree's periodic retirement payment based on a change in survivor option.

(4) A court order under this section may not order the department to pay more than seventy-five percent of an obligor's periodic retirement payment to an obligee.

(5) Persons whose court decrees were entered between July 1, 1987, and July 28, 1991, shall also be entitled to receive direct payments of retirement benefits to satisfy court-ordered property divisions if the dissolution orders comply or are modified to comply with this section and RCW 41.50.680 through 41.50.720 and, as applicable, RCW 2.10.180, 2.12.090, 41.26.053, 41.32.052, section 11 of this act, 41.34.070, 41.40.052, 43.43.310, and 26.09.138.

(6) The obligee must file a copy of the dissolution order with the department within ninety days of that order's entry with the court of record.

(7) A division of benefits pursuant to a dissolution order under this section shall be based upon the obligor's gross benefit prior to any deductions. If the department is required to withhold a portion of the member's benefit pursuant to 26 U.S.C. Sec. 3402 and the sum of that amount plus the amount owed to the obligee exceeds the total benefit, the department shall satisfy the withholding requirements under 26 U.S.C. Sec. 3402 and then pay the remainder to the obligee. The provisions of this subsection do not apply to amounts withheld pursuant to 26 U.S.C. Sec. 3402(i).

Sec. 514. RCW 41.50.790 and 1996 c 175 s 1 are each amended to read as follows:

(1) The department shall designate an obligee as a survivor beneficiary of a member under RCW 2.10.146, 41.26.460, 41.32.530, 41.32.785, section 23 of this act, 41.40.188, or 41.40.660 if the department has been served by registered or certified mail with a dissolution order as defined in RCW 41.50.500 at least thirty days prior to the member's retirement. The department's duty to comply with the dissolution order arises only if the order contains a provision that states in substantially the following form:

When (the obligor) applies for retirement the department shall designate (the obligee) as survivor beneficiary with a survivor benefit.

The survivor benefit designated in the dissolution order must be consistent with the survivor benefit options authorized by statute or administrative rule.

(2) The obligee's entitlement to a survivor benefit pursuant to a dissolution order filed with the department in compliance with subsection (1) of this section shall cease upon the death of the obligee.

(3)(a) A subsequent dissolution order may order the department to divide a survivor benefit between a survivor beneficiary and an alternate payee. In order to divide a survivor benefit between more than one payee, the dissolution order must:

(i) Be ordered by a court of competent jurisdiction following notice to the survivor beneficiary;

(ii) Contain a provision that complies with subsection (1) of this section designating the survivor beneficiary;

(iii) Contain a provision clearly identifying the alternate payee or payees; and

(iv) Specify the proportional division of the benefit between the survivor beneficiary and the alternate payee or payees.

(b) The department will calculate actuarial adjustment for the court-ordered survivor benefit based upon the life of the survivor beneficiary.

(c) If the survivor beneficiary dies, the department shall terminate the benefit. If the alternate payee predeceases the survivor beneficiary, all entitlement of the alternate payee to a benefit ceases and the entire benefit will revert to the survivor beneficiary.

(d) For purposes of this section, "survivor beneficiary" means:

(i) The obligee designated in the provision of dissolution filed in compliance with subsection (1) of this section; or

(ii) In the event of more than one dissolution order, the obligee named in the first decree of dissolution received by the department.

(e) For purposes of this section, "alternate payee" means a person, other than the survivor beneficiary, who is granted a percentage of a survivor benefit pursuant to a dissolution order.

(4) The department shall under no circumstances be held liable for not designating an obligee as a survivor beneficiary under subsection (1) of this section if the dissolution order or amendment thereto is not served on the department by registered or certified mail at least thirty days prior to the member's retirement.

(5) If a dissolution order directing designation of a survivor beneficiary has been previously filed with the department in compliance with this section, no additional obligation shall arise on the part of the department upon filing of a subsequent dissolution order unless the subsequent dissolution order:

(a) Specifically amends or supersedes the dissolution order already on file with the department; and

(b) Is filed with the department by registered or certified mail at least thirty days prior to the member's retirement.

(6) The department shall designate a court-ordered survivor beneficiary pursuant to a dissolution order filed with the department before June 6, 1996, only if the order:

- (a) Specifically directs the member or department to make such selection;
- (b) Specifies the survivor option to be selected; and
- (c) The member retires after June 6, 1996.

NEW SECTION. **Sec. 515.** A new section is added to chapter 41.50 RCW to read as follows:

(1) If the department determines that due to employer error a member of plan III has suffered a loss of investment return, the employer shall pay the department for credit to the member's account the amount determined by the department as necessary to correct the error.

(2) If the department determines that due to departmental error a member of plan III has suffered a loss of investment return, the department shall credit to the member's account from the school employees' retirement system combined plan II and III fund the amount determined by the department as necessary to correct the error.

Sec. 601. RCW 41.40.010 and 1997 c 254 s 10 and 1997 c 88 s 6 are each reenacted and amended to read as follows:

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

(1) "Retirement system" means the public employees' retirement system provided for in this chapter.

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

(3) "State treasurer" means the treasurer of the state of Washington.

(4)(a) "Employer" for plan I 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 II 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 II.

(5) "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.

(6) "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.

(7) "New member" means a person who becomes a member on or after April 1, 1949, except as otherwise provided in this section.

(8)(a) "Compensation earnable" for plan I 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 I 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;

(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. ((Standby compensation is regular salary for the purposes of RCW 41.50.150(2).))

(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 II 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 II 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. ~~((Standby compensation is regular salary for the purposes of RCW 41.50.150(2).))~~

(9)(a) "Service" for plan I 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

I "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 I 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, or law enforcement officers' and fire fighters' 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, or law enforcement officers' and fire fighters' 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 II "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.

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

(11) "Service credit month" means a month or an accumulation of months of service credit which is equal to one.

(12) "Prior service" means all service of an original member rendered to any employer prior to October 1, 1947.

(13) "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.

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

(b) "Beneficiary" for plan II 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.

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

(16) "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.

(17)(a) "Average final compensation" for plan I 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 II 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).

(18) "Final compensation" means the annual rate of compensation earnable by a member at the time of termination of employment.

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

(20) "Pension" means payments for life derived from contributions made by the employer. All pensions shall be paid in monthly installments.

(21) "Retirement allowance" means the sum of the annuity and the pension.

(22) "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.

(23) "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.

(24) "Retirement" means withdrawal from active service with a retirement allowance as provided by this chapter.

(25) "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.

(26) "Ineligible position" means any position which does not conform with the requirements set forth in subsection (25) of this section.

(27) "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.

(28) "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.

(29) "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.

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

(31) "State elective position" means any position held by any person elected or appointed to state-wide office or elected or appointed as a member of the legislature.

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

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

(34) "Plan II" means the public employees' retirement system, plan II providing the benefits and funding provisions covering persons who first became members of the system on and after October 1, 1977.

(35) "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.

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

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

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

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

(40) "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.

(41) "Separation from service" occurs when a person has terminated all employment with an employer.

Sec. 602. RCW 41.40.062 and 1995 c 286 s 4 are each amended to read as follows:

(1) The members and appointive and elective officials of any political subdivision or association of political subdivisions of the state may become members of the retirement system by the approval of the local legislative authority.

(2) On and after September 1, 1965, every school district of the state of Washington shall be an employer under this chapter. Every member of each school district who is eligible for membership under RCW 41.40.023 shall be a member of the retirement system and participate on the same basis as a person who first becomes a member through the admission of any employer into the retirement system on and after April 1, 1949, except that after August 31, 2000, school districts will no longer be employers for the public employees' retirement system plan II.

Sec. 603. RCW 41.40.088 and 1991 c 343 s 9 and 1991 c 35 s 96 are each reenacted and amended to read as follows:

(1) A plan I member who is employed by a school district or districts, an educational service district, the state school for the deaf, the state school for the blind, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for six hundred thirty hours or more during that period, and is employed during nine months of that period, except that a member may not receive credit for any period prior to the member's employment in an eligible position;

(b) If a member in an eligible position does not meet the requirements of (a) of this subsection, the member is entitled to a service credit month for each month of the period he or she earns earnable compensation for seventy or more hours; and the member is entitled to a one-quarter service credit month for those calendar months during which he or she earned compensation for less than seventy hours.

(2) Except for any period prior to the member's employment in an eligible position, a plan II member who is employed by a school district or districts, an educational service district, the state school for the blind, the state school for the deaf, institutions of higher education, or community colleges:

(a) Shall receive a service credit month for each month of the period from September through August of the following year if he or she is employed in an eligible position, earns compensation earnable for eight hundred ten hours or more during that period, and is employed during nine months of that period;

(b) If a member in an eligible position for each month of the period from September through August of the following year does not meet the hours requirements of (a) of this subsection, the member is entitled to one-half service credit month for each month of the period if he or she earns earnable compensation for at least six hundred thirty hours but less than eight hundred ten hours during that period, and is employed nine months of that period.

(c) In all other instances, a member in an eligible position is entitled to service credit months as follows:

(i) One service credit month for each month in which compensation is earned for ninety or more hours;

(ii) One-half service credit month for each month in which compensation is earned for at least seventy hours but less than ninety hours; and

(iii) One-quarter service credit month for each month in which compensation is earned for less than seventy hours.

(d) After August 31, 2000, school districts and educational service districts will no longer be employers for the public employees' retirement system plan II.

(3) The department shall adopt rules implementing this section.

Sec. 604. RCW 41.26.500 and 1990 c 274 s 12 are each amended to read as follows:

(1) No retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 ~~((or))~~, 41.32.010, or section 2 of this act, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030. If a retiree's benefits have been suspended under this section, his or her benefits

shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

Sec. 605. RCW 41.32.800 and 1997 c 254 s 6 are each amended to read as follows:

(1) Except as provided in RCW 41.32.802, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 ((~~or~~), 41.32.010, or section 2 of this act, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030.

If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(2) The department shall adopt rules implementing this section.

Sec. 606. RCW 41.40.690 and 1997 c 254 s 13 are each amended to read as follows:

(1) Except as provided in RCW 41.40.037, no retiree under the provisions of plan II shall be eligible to receive such retiree's monthly retirement allowance if he or she is employed in an eligible position as defined in RCW 41.40.010 ((~~or~~), 41.32.010, or section 2 of this act, or as a law enforcement officer or fire fighter as defined in RCW 41.26.030, except that a retiree who ends his or her membership in the retirement system pursuant to RCW 41.40.023(3)(b) is not subject to this section if the retiree's only employment is as an elective official of a city or town.

(2) If a retiree's benefits have been suspended under this section, his or her benefits shall be reinstated when the retiree terminates the employment that caused his or her benefits to be suspended. Upon reinstatement, the retiree's benefits shall be actuarially recomputed pursuant to the rules adopted by the department.

(3) The department shall adopt rules implementing this section.

Sec. 701. RCW 41.32.8401 and 1997 c 10 s 1 are each amended to read as follows:

(1) Anyone who requests to transfer under RCW 41.32.817 before January 1, 1998, and establishes service credit for January 1998, shall have their member account increased by forty percent of:

(a) Plan II accumulated contributions as of January 1, 1996, less fifty percent of any payments made pursuant to RCW 41.50.165(2); or

(b) All amounts withdrawn after January 1, 1996, which are completely restored before January 1, 1998.

(2) A further additional payment of twenty-five percent, for a total of sixty-five percent, shall be paid subject to the conditions contained in subsection (1) of this section on July 1, 1998.

(3) Substitute teachers shall receive the additional payment provided in subsection (1) of this section if they:

- (a) Establish service credit for January 1998; and
- (b) Establish any service credit from July 1996 through December 1997; and
- (c) Elect to transfer on or before March 1, 1999.

~~((3))~~ (4) If a member who requests to transfer dies before January 1, 1998, the additional payment provided by this section shall be paid to the member's estate, or the person or persons, trust, or organization the member nominated by written designation duly executed and filed with the department.

~~((4))~~ (5) The legislature reserves the right to modify or discontinue the right to an incentive payment under this section for any plan II members who have not previously transferred to plan III.

Sec. 702. RCW 41.54.010 and 1993 c 517 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) "Base salary" means salaries or wages earned by a member of a system during a payroll period for personal services and includes wages and salaries deferred under provisions of the United States internal revenue code, but shall exclude overtime payments, nonmoney maintenance compensation, and lump sum payments for deferred annual sick leave, unused accumulated vacation, unused accumulated annual leave, any form of severance pay, any bonus for voluntary retirement, any other form of leave, or any similar lump sum payment.

(2) "Department" means the department of retirement systems.

(3) "Director" means the director of the department of retirement systems.

(4) "Dual member" means a person who (a) is or becomes a member of a system on or after July 1, 1988, (b) has been a member of one or more other systems, and (c) has never been retired for service from a retirement system and is not receiving a disability retirement or disability leave benefit from any retirement system listed in RCW 41.50.030 or subsection (6) of this section.

(5) "Service" means the same as it may be defined in each respective system. For the purposes of RCW 41.54.030, military service granted under RCW 41.40.170(3) or 43.43.260 may only be based on service accrued under chapter 41.40 or 43.43 RCW, respectively.

(6) "System" means the retirement systems established under chapters 41.32, 41.40, 41.44, 41.— (sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), and 43.43 RCW; plan II of the system established under chapter 41.26 RCW; and the city employee retirement systems for Seattle, Tacoma, and Spokane. The inclusion of an individual first class city system is subject to the procedure set forth in RCW 41.54.061.

Sec. 703. RCW 41.54.030 and 1996 c 55 s 4, 1996 c 55 s 3, and 1996 c 39 s 19 are each reenacted and amended to read as follows:

(1) A dual member may combine service in all systems for the purpose of:

(a) Determining the member's eligibility to receive a service retirement allowance; and

(b) Qualifying for a benefit under RCW 41.32.840(2) or section 203 of this act.

(2) A dual member who is eligible to retire under any system may elect to retire from all the member's systems and to receive service retirement allowances calculated as provided in this section. Each system shall calculate the allowance using its own criteria except that the member shall be allowed to substitute the member's base salary from any system as the compensation used in calculating the allowance.

(3) The service retirement allowances from a system which, but for this section, would not be allowed to be paid at this date based on the dual member's age may be received immediately or deferred to a later date. The allowances shall be actuarially adjusted from the earliest age upon which the combined service would have made such dual member eligible in that system.

(4) The service retirement eligibility requirements of RCW 41.40.180 shall apply to any dual member whose prior system is plan I of the public employees' retirement system established under chapter 41.40 RCW.

Sec. 704. RCW 41.54.040 and 1996 c 55 s 5 are each amended to read as follows:

(1) The allowances calculated under RCW 41.54.030, 41.54.032, and 41.54.034 shall be paid separately by each respective current and prior system. Any deductions from such separate payments shall be according to the provisions of the respective systems.

(2) Postretirement adjustments, if any, shall be applied by the respective systems based on the payments made under subsection (1) of this section.

(3) The department shall adopt rules under chapter 34.05 RCW to ensure that where a dual member has service in a system established under chapter 41.32, 41.40, 41.44, 41.—(sections 1 through 25, 101 through 112, 114, and 201 through 213 of this act), or 43.43 RCW; service in plan II of the system established under chapter 41.26 RCW; and service under the city employee retirement system for Seattle, Tacoma, or Spokane, the additional cost incurred as a result of the dual member receiving a benefit under this chapter shall be borne by the retirement system incurring the additional cost.

NEW SECTION. **Sec. 705.** A new section is added to chapter 41.54 RCW to read as follows:

Persons who were members of the public employees' retirement system plan II prior to the effective date of this section and were transferred or mandated into membership pursuant to chapter . . . , Laws of 1998 (this act) shall suffer no

diminution of benefits guaranteed to public employees' retirement system plan II members as of the date of their change in membership.

Sec. 706. RCW 41.05.011 and 1996 c 39 s 21 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Administrator" means the administrator of the authority.

(2) "State purchased health care" or "health care" means medical and health care, pharmaceuticals, and medical equipment purchased with state and federal funds by the department of social and health services, the department of health, the basic health plan, the state health care authority, the department of labor and industries, the department of corrections, the department of veterans affairs, and local school districts.

(3) "Authority" means the Washington state health care authority.

(4) "Insuring entity" means an insurer as defined in chapter 48.01 RCW, a health care service contractor as defined in chapter 48.44 RCW, or a health maintenance organization as defined in chapter 48.46 RCW.

(5) "Flexible benefit plan" means a benefit plan that allows employees to choose the level of health care coverage provided and the amount of employee contributions from among a range of choices offered by the authority.

(6) "Employee" includes all full-time and career seasonal employees of the state, whether or not covered by civil service; elected and appointed officials of the executive branch of government, including full-time members of boards, commissions, or committees; and includes any or all part-time and temporary employees under the terms and conditions established under this chapter by the authority; justices of the supreme court and judges of the court of appeals and the superior courts; and members of the state legislature or of the legislative authority of any county, city, or town who are elected to office after February 20, 1970. "Employee" also includes: (a) Employees of a county, municipality, or other political subdivision of the state if the legislative authority of the county, municipality, or other political subdivision of the state seeks and receives the approval of the authority to provide any of its insurance programs by contract with the authority, as provided in RCW 41.04.205; (b) employees of employee organizations representing state civil service employees, at the option of each such employee organization, and, effective October 1, 1995, employees of employee organizations currently pooled with employees of school districts for the purpose of purchasing insurance benefits, at the option of each such employee organization; and (c) employees of a school district if the authority agrees to provide any of the school districts' insurance programs by contract with the authority as provided in RCW 28A.400.350.

(7) "Board" means the public employees' benefits board established under RCW 41.05.055.

(8) "Retired or disabled school employee" means:

(a) Persons who separated from employment with a school district or educational service district and are receiving a retirement allowance under chapter 41.32 or 41.40 RCW as of September 30, 1993;

(b) Persons who separate from employment with a school district or educational service district on or after October 1, 1993, and immediately upon separation receive a retirement allowance under chapter 41.32 or 41.40 RCW;

(c) Persons who separate from employment with a school district or educational service district due to a total and permanent disability, and are eligible to receive a deferred retirement allowance under chapter 41.32 or 41.40 RCW.

(9) "Benefits contribution plan" means a premium only contribution plan, a medical flexible spending arrangement, or a cafeteria plan whereby state and public employees may agree to a contribution to benefit costs which will allow the employee to participate in benefits offered pursuant to 26 U.S.C. Sec. 125 or other sections of the internal revenue code.

(10) "Salary" means a state employee's monthly salary or wages.

(11) "Participant" means an individual who fulfills the eligibility and enrollment requirements under the benefits contribution plan.

(12) "Plan year" means the time period established by the authority.

(13) "Separated employees" means persons who separate from employment with an employer as defined in:

(a) RCW 41.32.010(11) on or after July 1, 1996~~(?)~~; or

(b) Section 2 of this act on or after September 1, 2000;

and who are at least age fifty-five and have at least ten years of service under the teachers' retirement system plan III as defined in RCW 41.32.010(40) or the Washington school employees' retirement system plan III as defined in section 2 of this act.

Sec. 707. RCW 43.33A.190 and 1995 c 239 s 321 are each amended to read as follows:

~~Pursuant to ((RCW 41.50.088, the state investment board, at the request of the employee retirement benefits board, is authorized to offer investment options for self-directed investment under plan III))~~ section 307 of this act, the state investment board shall invest all self-directed investment moneys under teachers' retirement system plan III and the school employees' retirement system plan III, with full power to establish investment policy, develop investment options, and manage self-directed investment funds.

Sec. 708. RCW 43.84.092 and 1997 c 218 s 5 are each 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 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 common school construction fund, the county criminal justice assistance account, the county sales and use tax equalization account, the data processing building construction account, the deferred compensation administrative account, the deferred compensation principal account, the department of retirement systems expense account, the drinking water assistance account, the Eastern Washington University capital projects account, the education construction fund, the emergency reserve fund, the federal forest revolving account, the health services account, the public health services account, the health system capacity account, the personal health services account, the highway infrastructure account, the industrial insurance premium refund account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the medical aid account, the mobile home park relocation fund, the municipal criminal justice assistance account, the municipal sales and use tax equalization account, the natural resources deposit account, the perpetual surveillance and maintenance account, the public employees' retirement system plan I account, the public employees' retirement system plan II account, the Puyallup tribal

settlement account, the resource management cost account, the site closure 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 supplemental pension account, the teachers' retirement system plan I account, the teachers' retirement system combined plan II and plan III account, the transportation infrastructure account, the tuition recovery trust fund, the University of Washington bond retirement fund, the University of Washington building account, the volunteer fire fighters' relief and pension principal account, the volunteer fire fighters' relief and pension administrative account, the Washington judicial retirement system account, the Washington law enforcement officers' and fire fighters' system plan I retirement account, the Washington law enforcement officers' and fire fighters' system plan II retirement account, the Washington school employees' retirement system combined plan II and III account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving fund, and the Western Washington University capital projects account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts. All earnings to be distributed under this subsection (4)(a) shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(b) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The aeronautics account, the aircraft search and rescue account, the central Puget Sound public transportation account, the city hardship assistance account, the county arterial preservation account, the department of licensing services account, the economic development account, the essential rail assistance account, the essential rail banking account, the ferry bond retirement fund, the gasohol exeinction holding account, the grade crossing protective fund, the high capacity transportation account, the highway bond retirement fund, the highway construction stabilization account, the highway safety account, the marine operating fund, the motor vehicle fund, the motorcycle safety education account, the pilotage account, the public transportation systems account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the recreational vehicle account, the rural arterial trust account, the safety and education account, the small city account, the special category C account, the state patrol highway account, the transfer relief account, the transportation capital facilities account, the transportation equipment fund, the transportation fund, the transportation improvement account, the transportation revolving loan account, and the urban arterial trust account.

(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. 709. (1) The legislature declares that changing the numerical designation of the different retirement plans within the retirement systems from Roman numerals to Arabic numerals is of no substantive importance.

(2) The code reviser, under RCW 1.08.025, is directed to change the numerical designation of the retirement plans as follows:

- (a) Where "I" is used, replace with "1";
- (h) Where "II" is used, replace with "2"; and
- (c) Where "III" is used, replace with "3."

NEW SECTION. Sec. 710. The state investment board, in consultation with the employee retirement benefits board, shall develop and implement administrative changes to mitigate the impact on the other pension funds of the movement of plan III members in and out of the state investment board portfolio. The changes shall be designed to meet the goals of minimizing the impact of the self-directed investing option on the state investment board's (1) asset allocation strategy, (2) liquidity needs, and (3) transaction costs. The changes may include but not be limited to restricting the frequency and timing of transfers in and out of the state investment board portfolio and charging appropriate fees to cover additional transaction costs caused by such transfers. At the September 1998 meeting of the joint committee on pension policy, the state investment board shall report on its progress in identifying and implementing administrative changes required by this section. If the state investment board determines that statutory changes are required to achieve the goals specified in this section, the state investment board shall recommend alternatives at the September 1998 meeting of the joint committee on pension policy.

NEW SECTION. Sec. 711. The joint committee on pension policy shall study the policy and the costs of merging the teachers' retirement system and the Washington school employees' retirement system and shall report their findings to the legislature by January 15, 1999.

NEW SECTION. Sec. 712. The department of retirement systems shall study the ongoing costs of administering the plan III systems, ways to decrease those costs, and methods of charging members for higher-cost investment options. The department shall report to the joint committee on pension policy by September 1998.

NEW SECTION. Sec. 713. The benefits provided pursuant to chapter . . . , Laws of 1998 (this act) are not provided to employees as a matter of contractual right prior to September 1, 2000. The legislature retains the right to alter or abolish these benefits at any time prior to September 1, 2000.

NEW SECTION. Sec. 714. Except for sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 of this act, this act takes effect September 1, 2000.

NEW SECTION. Sec. 715. Section 505 of this act expires September 1, 2000.

NEW SECTION. Sec. 716. Sections 303, 306 through 309, 404, 505, 507, 515, 701, 707, and 710 through 713 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 the Senate March 7, 1998.

Passed the House March 4, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 342

[Second Engrossed Second Substitute House Bill 1354]
AIR POLLUTION CONTROL—REVISIONS

AN ACT Relating to air pollution control; amending RCW 70.94.130, 70.120.070, 70.120.100, 70.120.170, 46.16.015, and 70.94.473; adding a new section to chapter 70.120 RCW; creating a new section; and providing an expiration date.

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

Sec. 1. RCW 70.94.130 and 1991 c 199 s 705 are each amended to read as follows:

The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. In no event may a regular alternate serve as the permanent chair. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds.

Sec. 2. RCW 70.120.070 and 1991 c 199 s 203 are each amended to read as follows:

(1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with:

(a) Information regarding the availability of federal warranties and certified emission specialists;

(b) Information on the availability and procedure for acquiring license trip-permits;

(c) Information on the availability and procedure for receiving a certificate of acceptance; and

(d) The local phone number of the department's local vehicle specialist.

Sec. 3. RCW 70.120.100 and 1979 ex.s. c 163 s 10 are each amended to read as follows:

The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.17 RCW.

Sec. 4. RCW 70.120.170 and 1991 c 199 s 208 are each amended to read as follows:

(1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW 46.16.015(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle as provided under RCW 46.16.015.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards;

or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable state-wide or throughout an emission contributing area and shall be no greater than ~~((eighteen))~~ fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle

does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department.

NEW SECTION. Sec. 5. A new section is added to chapter 70.120 RCW to read as follows:

The department shall establish a scientific advisory board to review plans to establish or expand the geographic area where an inspection and maintenance system for motor vehicle emissions is required. The board shall consist of three to five members. All members shall have at least a master's degree in physics, chemistry, or engineering, or a closely related field. No member may be a current employee of a local air pollution control authority, the department, the United States environmental protection agency, or a company that may benefit from a review by the board.

The board shall review an inspection and maintenance plan at the request of a local air pollution control authority, the department, or by a petition of at least fifty people living within the proposed boundaries of a vehicle emission inspection and maintenance system. The entity or entities requesting a scientific review may include specific issues for the board to consider in its review. The board shall limit its review to matters of science and shall not provide advice on penalties or issues that are strictly legal in nature.

The board shall provide a complete written review to the department. If the board members are not in agreement as to the scientific merit of any issue under review, the board may include a dissenting opinion in its report to the department. The department shall immediately make copies available to the local air pollution control authority and to the public.

The department shall conduct a public hearing, within the area affected by the proposed rule, if any significant aspect of the rule is in conflict with a majority opinion of the board. The department shall include in its responsiveness summary the rationale for including a rule that is not consistent with the review of the board, including a response to the issues raised at the public hearing.

Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

Sec. 6. RCW 46.16.015 and 1991 c 199 s 209 are each amended to read as follows:

(1) Neither the department of licensing nor its agents may issue or renew a motor vehicle license for any vehicle or change the registered owner of a licensed vehicle, for any vehicle that is 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 pursuant to chapter 70.120 RCW; or (b) exempted from this requirement pursuant to subsection (2) of this section. The certificates must have a date of validation which is within six months of the date of application for the vehicle license or license renewal. Certificates for fleet or owner tested diesel vehicles may have a date of validation which is within twelve months of the assigned license renewal date.

(2) Subsection (1) of this section does not apply to the following vehicles:

(a) New motor vehicles whose equitable or legal title has never been transferred to a person who in good faith purchases the vehicle for purposes other than resale;

(b) Motor vehicles with a model year of 1967 or earlier;

(c) Motor vehicles that use propulsion units powered exclusively by electricity;

(d) Motor vehicles fueled by propane, compressed natural gas, or liquid petroleum gas, unless it is determined that federal sanctions will be imposed as a result of this exemption;

(e) Motorcycles as defined in RCW 46.04.330 and motor-driven cycles as defined in RCW 46.04.332;

(f) Farm vehicles as defined in RCW 46.04.181;

(g) Used vehicles which are offered for sale by a motor vehicle dealer licensed under chapter 46.70 RCW; ~~((or))~~

(h) Classes of motor vehicles exempted by the director of the department of ecology;

(i) Collector cars as identified by the department of licensing under RCW 46.16.305(1); or

(j) Beginning January 1, 2000, vehicles that are less than five years old or more than twenty-five years old.

The provisions of ~~((subparagraph))~~ (a) of this subsection may not be construed as exempting from the provisions of subsection (1) of this section applications for the renewal of licenses for motor vehicles that are or have been leased.

(3) The department of ecology shall provide information to motor vehicle owners regarding the boundaries of emission contributing areas and restrictions established under this section that apply to vehicles registered in such areas. In addition the department of ecology shall provide information to motor vehicle owners on the relationship between motor vehicles and air pollution and steps motor vehicle owners should take to reduce motor vehicle related air pollution. The department of licensing shall send to all registered motor vehicle owners

affected by the emission testing program notice that they must have an emission test to renew their registration.

NEW SECTION. Sec. 7. (1) The department of ecology shall evaluate changes to the motor vehicle emission inspection program made in RCW 46.16.015(2)(j) and other options that meet air quality objectives and lessen the effect of the program on the motorist. The department shall consider air quality, program costs, and motorist convenience in its evaluation and make recommendations for changes to the program to the appropriate standing committees of the legislature by January 1, 1999.

(2) This section expires June 30, 1999.

Sec. 8. RCW 70.94.473 and 1995 c 205 s 1 are each amended to read as follows:

(1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of ~~((seventy-five))~~ sixty micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

Passed the House March 12, 1998.
 Passed the Senate March 12, 1998.
 Approved by the Governor April 3, 1998.
 Filed in Office of Secretary of State April 3, 1998.

CHAPTER 343

[Engrossed Substitute House Bill 2933]

WAREHOUSING AND RESELLING OF PHARMACEUTICAL DRUGS— BUSINESS AND OCCUPATION TAXATION

AN ACT Relating to the business and occupation taxation of warehousing and reselling of pharmaceutical drugs subject to regulation by the federal drug enforcement administration and the state board of pharmacy; amending RCW 82.04.270, 82.04.280, 82.04.290, and 82.04.250; adding a new section to chapter 82.04 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 82.04 RCW to read as follows:

(1) Upon every person engaging within this state in the business of warehousing and reselling prescription drugs; as to such persons, the amount of the tax shall be equal to the gross income of the business multiplied by the rate of 0.138 percent.

(2) For the purposes of this section:

(a) "Prescription drug" has the same meaning as that term is given in RCW 82.08.0281; and

(b) "Warehousing and reselling prescription drugs" means the buying of prescription drugs from a manufacturer or another wholesaler, and reselling of the drugs to persons selling at retail or to hospitals, clinics, health care providers, or other providers of health care services, by a wholesaler or retailer who is registered with the federal drug enforcement administration and licensed by the state board of pharmacy.

Sec. 2. RCW 82.04.270 and 1994 c 124 s 2 are each amended to read as follows:

(1) Upon every person except persons taxable under ~~((subsections (1) or (8) of))~~ RCW 82.04.260 (1) or (8) or section 1 of this act engaging within this state in the business of making sales at wholesale; as to such persons the amount of tax with respect to such business shall be equal to the gross proceeds of sales of such business multiplied by the rate of 0.484 percent.

(2) The tax imposed by this section is levied and shall be collected from every person engaged in the business of distributing in this state articles of tangible personal property, owned by them from their own warehouse or other central location in this state to two or more of their own retail stores or outlets, where no change of title or ownership occurs, the intent hereof being to impose a tax equal to the wholesaler's tax upon persons performing functions essentially comparable to those of a wholesaler, but not actually making sales. The tax designated in this section may not be assessed twice to the same person for the

same article. The amount of the tax as to such persons shall be computed by multiplying 0.484 percent of the value of the article so distributed as of the time of such distribution. The department of revenue shall prescribe uniform and equitable rules for the purpose of ascertaining such value, which value shall correspond as nearly as possible to the gross proceeds from sales at wholesale in this state of similar articles of like quality and character, and in similar quantities by other taxpayers. Delivery trucks or vans will not under the purposes of this section be considered to be retail stores or outlets.

Sec. 3. RCW 82.04.280 and 1994 c 112 s 1 are each amended to read as follows:

Upon every person engaging within this state in the business of: (1) Printing, and of publishing newspapers, periodicals, or magazines; (2) building, repairing or improving any street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle which is owned by a municipal corporation or political subdivision of the state or by the United States and which is used or to be used, primarily for foot or vehicular traffic including mass transportation vehicles of any kind and including any readjustment, reconstruction or relocation of the facilities of any public, private or cooperatively owned utility or railroad in the course of such building, repairing or improving, the cost of which readjustment, reconstruction, or relocation, is the responsibility of the public authority whose street, place, road, highway, easement, right of way, mass public transportation terminal or parking facility, bridge, tunnel, or trestle is being built, repaired or improved; (3) extracting for hire or processing for hire; (4) operating a cold storage warehouse or storage warehouse, but not including the rental of cold storage lockers; (5) representing and performing services for fire or casualty insurance companies as an independent resident managing general agent licensed under the provisions of RCW 48.05.310; (6) radio and television broadcasting, excluding network, national and regional advertising computed as a standard deduction based on the national average thereof as annually reported by the Federal Communications Commission, or in lieu thereof by itemization by the individual broadcasting station, and excluding that portion of revenue represented by the out-of-state audience computed as a ratio to the station's total audience as measured by the 100 micro-volt signal strength and delivery by wire, if any; (7) engaging in activities which bring a person within the definition of consumer contained in RCW 82.04.190(6); as to such persons, the amount of tax on such business shall be equal to the gross income of the business multiplied by the rate of 0.484 percent.

As used in this section, "cold storage warehouse" means a storage warehouse used to store fresh and/or frozen perishable fruits or vegetables, meat, seafood, dairy products, or fowl, or any combination thereof, at a desired temperature to maintain the quality of the product for orderly marketing.

As used in this section, "storage warehouse" means a building or structure, or any part thereof, in which goods, wares, or merchandise are received for

storage for compensation, except field warehouses, fruit warehouses, fruit packing plants, warehouses licensed under chapter 22.09 RCW, public garages storing automobiles, railroad freight sheds, docks and wharves, and "self-storage" or "mini storage" facilities whereby customers have direct access to individual storage areas by separate entrance. "Storage warehouse" does not include a building or structure, or that part of such building or structure, in which an activity taxable under section 1 of this act is conducted.

As used in this section, "periodical or magazine" means a printed publication, other than a newspaper, issued regularly at stated intervals at least once every three months, including any supplement or special edition of the publication.

Sec. 4. RCW 82.04.290 and 1997 c 7 s 2 are each amended to read as follows:

(1) Upon every person engaging within this state in the business of providing international investment management services, as to such persons, the amount of tax with respect to such business shall be equal to the gross income or gross proceeds of sales of the business multiplied by a rate of 0.275 percent.

(2) Upon every person engaging within this state in any business activity other than or in addition to those enumerated in RCW 82.04.230, 82.04.240, 82.04.250, 82.04.255, 82.04.260, 82.04.270, ~~((and))~~ 82.04.280, and section 1 of this act, and subsection (1) of this section; as to such persons the amount of tax on account of such activities shall be equal to the gross income of the business multiplied by the rate of 1.5 percent.

This section includes, among others, and without limiting the scope hereof (whether or not title to materials used in the performance of such business passes to another by accession, confusion or other than by outright sale), persons engaged in the business of rendering any type of service which does not constitute a "sale at retail" or a "sale at wholesale." The value of advertising, demonstration, and promotional supplies and materials furnished to an agent by his principal or supplier to be used for informational, educational and promotional purposes shall not be considered a part of the agent's remuneration or commission and shall not be subject to taxation under this section.

Sec. 5. RCW 82.04.250 and 1993 sp.s. c 25 s 103 are each amended to read as follows:

(1) Upon every person except persons taxable under RCW 82.04.260(8), section 1 of this act, or subsection (2) of this section engaging within this state in the business of making sales at retail, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.471 percent.

(2) Upon every person engaging within this state in the business of making sales at retail that are exempt from the tax imposed under chapter 82.08 RCW by reason of RCW 82.08.0261, 82.08.0262, or 82.08.0263, as to such persons, the amount of tax with respect to such business shall be equal to the gross proceeds of sales of the business, multiplied by the rate of 0.484 percent.

NEW SECTION. Sec. 6. This act takes effect July 1, 2001.

Passed the House March 11, 1998.

Passed the Senate March 11, 1998.

Approved by the Governor April 3, 1998.

Filed in Office of Secretary of State April 3, 1998.

CHAPTER 344

[Substitute Senate Bill 6655]

INSTITUTIONS OF HIGHER EDUCATION IN THE SPOKANE AREA

AN ACT Relating to institutions of higher education; amending RCW 28B.10.029, 28B.45.050, 28B.13.020, and 43.01.236; adding a new section to chapter 28B.35 RCW; adding a new chapter to Title 28B RCW; creating new sections; repealing RCW 28B.25.010, 28B.25.020, 28B.25.030, 28B.25.033, 28B.25.037, 28B.25.040, 28B.25.050, 28B.25.070, 28B.25.075, 28B.25.090, 28B.25.100, 28B.25.900, and 28B.10.060; providing an effective date; and declaring an emergency.

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

NEW SECTION. Sec. 1. It is the intent of the legislature to provide the necessary access to quality upper division and graduate higher education opportunities for the citizens of Spokane. The legislature intends that the Spokane branch campus of Washington State University, offering upper-division and graduate programs, be located at the Riverpoint Higher Education Park and that Washington State University be the administrative and fiscal agent for the Riverpoint Higher Education Park. In addition, those programs offered by Eastern Washington University that meet the rules and guidelines established by the higher education coordinating board's program approval process may serve students at the Riverpoint Higher Education Park. The legislature intends to streamline the program planning and approval process in Spokane by eliminating the joint center for higher education; thereby treating the Spokane higher education community like other public higher education communities in Washington that receive program approval from the higher education coordinating board. However, the legislature encourages partnerships, collaboration, and avoidance of program duplication through regular communication among the presidents of Spokane's public and private institutions of higher education. The legislature further intends that the residential mission of Eastern Washington University in Cheney be strengthened and that Eastern Washington University focus on the excellence of its primary campus in Cheney.

In addition, the legislature finds that the Spokane intercollegiate research and technology institute is a vital and necessary element in the academic and economic future of eastern Washington. The legislature also finds that it is in the interest of the state of Washington to support and promote applied research and technology in areas of the state that, because of geographic or historic circumstances, have not developed fully balanced economies. It is the intent of the legislature that institutions of higher education and the department of community, trade, and economic development work cooperatively with the

private sector in the development and implementation of a technology transfer and integration program to promote the economic development and enhance the quality of life in eastern Washington.

NEW SECTION. Sec. 2. (1) The higher education coordinating board shall manage an assessment that determines the current higher education resources of the greater Spokane area and the current and future capital and programmatic higher education needs of the Spokane area, including the balance among anticipated, unmet, and fully met higher education needs. This assessment shall be coordinated with an economic analysis of the greater Spokane area.

(2) The higher education coordinating board, in coordination with the office of financial management, the employment security department, and the department of community, trade, and economic development, shall oversee the administration of an economic assessment of the greater Spokane area. This assessment shall reference previous economic studies of the greater Spokane area and include:

(a) Input from Spokane area civic leaders as well as the higher education and business communities;

(b) An evaluation of the current economic situation in the greater Spokane area and potential sectors and subsectors for significant job expansion;

(c) An analysis of the possible transformation of the economic base toward high technology and opportunities for industries producing higher wages; and

(d) An evaluation of the basic and applied research resources and needs of the present and future economy of the area.

(3) The assessments in subsections (1) and (2) of this section shall be completed by July 1, 1998, and a final report submitted to the higher education and fiscal committees of the legislature by October 1, 1998.

(4) By December 1, 1998, based on the findings of the assessments in subsections (1) and (2) of this section, the higher education coordinating board shall evaluate and develop a plan for the disposition of the Eastern Washington University Spokane Center Building.

(5)(a) By December 1, 1998, based on the findings of the assessments in subsections (1) and (2) of this section, Washington State University shall develop and deliver to the higher education coordinating board for approval a plan for the management of the Riverpoint Higher Education Park, excluding the land and the Spokane Intercollegiate Research and Technology Institute, that includes:

(i) Capital facilities maintenance and development;

(ii) Coordination of upper-division course offerings; and

(iii) The coordination of graduate programs in Spokane.

(b) In developing the plan in (a) of this subsection, Washington State University shall:

(i) Assume that Eastern Washington University students enrolled in Eastern Washington University courses will pay Eastern Washington University tuition rates; and

(ii) Emphasize and implement a maximum level of collaboration and partnerships by Eastern Washington University, Washington State University, and private institutions of higher education at the Riverpoint Higher Education Park.

(c) Washington State University shall submit a preliminary higher education services plan for the Riverpoint Higher Education Park to the higher education coordinating board by September 1, 1998, and a final plan to the higher education coordinating board and the office of financial management by October 15, 1998. The plan shall incorporate, but not be limited to:

(i) Relocation of all Spokane-based upper-division and graduate course offerings and academic programs offered by public universities in the city of Spokane to the Riverpoint Higher Education Park, using existing and planned structures at the Riverpoint Higher Education Park, except that the nursing courses and programs located in the intercollegiate center for nursing education facility shall remain at that location; and

(ii) A plan to establish an intercollegiate health sciences consortium that would be modeled on the intercollegiate center for nursing education. The intercollegiate health sciences consortium shall include, but not be limited to, programs offered through the intercollegiate center for nursing education and public and private institutions of higher education. Programs offered by Eastern Washington University in physical therapy, communication disorders, nursing, and dental hygiene shall continue to be offered by Eastern Washington University in Spokane.

(6) Washington State University, in consultation with the higher education coordinating board, shall write a new mission statement and operations plan for its Spokane branch campus. The draft mission statement and plan shall be submitted to the higher education coordinating board by September 1, 1998, and a final mission statement and plan shall be submitted to the higher education coordinating board for approval by October 15, 1998. The academic mission and plan shall include, but not be limited to the following elements:

(a) Identifying those academic centers of excellence on which Washington State University Spokane branch campus should focus, build, and expand in order to enhance its upper-division and graduate enrollment;

(b) Reflecting that programs in physical therapy, communications disorders, nursing, and dental hygiene continue to be offered through Eastern Washington University in Spokane;

(c) Including a requirement that Washington State University identify and report to the higher education coordinating board programs that should be offered in Spokane because of documented demand, unique partnerships, demonstrated efficiency, and other considerations. The draft of the report shall be submitted to the higher education coordinating board by September 1, 1998, and the final report shall be submitted to the higher education coordinating board by October 15, 1998;

(d) Ensuring that undergraduate programs that are offered at Washington State University Spokane branch campus do not duplicate undergraduate programs offered by Eastern Washington University at Cheney;

(e) Describing and targeting Washington State University Spokane branch campus's primary student audience;

(f) Ensuring that Washington State University Spokane branch campus's admission standards complement the primary student audience;

(g) Describing circumstances under which it is appropriate for Washington State University Spokane branch campus programs to serve nonprimary students;

(h) Establishing projected enrollment levels for Washington State University Spokane branch campus that reflect the needs of an upper-division and graduate level branch campus and that account for the demographic qualities and growth patterns associated with the areas from which the branch campus draws its students;

(i) Describing how Washington State University Spokane branch campus's enrollment levels will be consistent with state enrollment levels;

(j) Developing financial projections for serving these projected enrollment levels; and

(k) Analyzing and reviewing all capital and capacity information regarding the Washington State University Spokane branch campus, with particular attention to the current state of the existing physical plant and to the realistic enrollment capacity of the campus.

(7) Eastern Washington University, in consultation with the higher education coordinating board, shall write a new mission statement and operations plan for Eastern Washington University as a comprehensive, Cheney-based public institution of higher education. The draft mission statement and plan shall be submitted to the higher education coordinating board by September 1, 1998, and a final mission statement and plan shall be submitted to the higher education coordinating board for approval by October 15, 1998. The academic mission and plan shall include, but not be limited to the following elements:

(a) Identifying those academic centers of excellence on which Eastern Washington University should focus, build, and expand in order to enhance its enrollment and reaffirm its reputation for academic excellence;

(b) Reflecting that programs in physical therapy, communications disorders, nursing, and dental hygiene continue to be offered through Eastern Washington University in Spokane;

(c) Including a requirement that Eastern Washington University identify and report to the higher education coordinating board program offerings in Spokane that should be returned to the Cheney campus, discontinued, or continued to be offered in Spokane because of documented demand, unique partnerships, demonstrated efficiency, and other considerations. The draft of the report shall be submitted to the higher education coordinating board by September 1, 1998, and the final report shall be submitted to the higher education coordinating board by October 15, 1998;

(d) Ensuring that every effort is made to protect the academic interests of and minimize adverse impacts on Eastern Washington University students;

(e) Describing and targeting Eastern Washington University's primary student audience;

(f) Ensuring that Eastern Washington University's admission standards complement the primary student audience;

(g) Describing circumstances under which it is appropriate for Eastern Washington University programs to serve nonprimary students;

(h) Establishing projected enrollment levels for Eastern Washington University that reflect the needs of a comprehensive university and that account for the demographic qualities and growth patterns associated with the areas from which Eastern Washington University draws its students;

(i) Describing how Eastern Washington University's enrollment levels will be consistent with state enrollment levels;

(j) Developing financial projections for serving these reconfigured enrollment levels; and

(k) Analyzing and reviewing all capital and capacity information regarding the Eastern Washington University Cheney campus, with particular attention to the current state of the existing physical plant and to the realistic enrollment capacity of the campus.

(8) By December 1, 1998, the higher education coordinating board shall evaluate the mission statements and operations plans required in this section and submit a report to the higher education and fiscal committees of the legislature.

NEW SECTION. Sec. 3. (1) On July 1, 1998, title to or all interest in real estate and other assets, including but not limited to assignable contracts, cash, equipment, buildings, facilities, and appurtenances related to Riverpoint park, except for the area of real property defined as the approximate two and one-half acres bounded by the Spokane river, Trent Avenue, and Riverpoint Boulevard that is reserved for the Spokane intercollegiate research and technology institute and its expansion, shall be transferred from the joint center for higher education to Washington State University.

(2) All interest in real estate and other assets, including but not limited to assignable contracts, cash, equipment, buildings, facilities, and appurtenances related to the Spokane intercollegiate research and technology institute held as of July 1, 1998, shall vest in the Spokane intercollegiate institute of technology. The area of the real property related to the Spokane intercollegiate institute of technology is defined as the approximate two and one-half acres bounded by the Spokane river, Trent Avenue, and Riverpoint Boulevard.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.35 RCW to read as follows:

Housing or a housing allowance may only be provided for the president of a public four-year institution of higher education who resides in the location

where the institution is designated under RCW 28B.20.010, 28B.30.010, 28B.35.010, and 28B.40.010.

Sec. 5. RCW 28B.10.029 and 1996 c 110 s 5 are each amended to read as follows:

(1) An institution of higher education may exercise independently those powers otherwise granted to the director of general administration in chapter 43.19 RCW in connection with the purchase and disposition of all material, supplies, services, and equipment needed for the support, maintenance, and use of the respective institution of higher education. Property disposition policies followed by institutions of higher education shall be consistent with policies followed by the department of general administration. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapters 39.19, 39.29, and 43.03 RCW, and RCW 43.19.1901, 43.19.1906, 43.19.1911, 43.19.1917, 43.19.1937, 43.19.534, 43.19.685, 43.19.700 through 43.19.704, and 43.19.550 through 43.19.637. The community and technical colleges shall comply with RCW 43.19.450. Except for the University of Washington, institutions of higher education shall comply with RCW 43.19.1935, 43.19.19363, and 43.19.19368. If an institution of higher education can satisfactorily demonstrate to the director of the office of financial management that the cost of compliance is greater than the value of benefits from any of the following statutes, then it shall be exempt from them: RCW 43.19.685; 43.19.534; and 43.19.637. Any institution of higher education that chooses to exercise independent purchasing authority for a commodity or group of commodities shall notify the director of general administration. Thereafter the director of general administration shall not be required to provide those services for that institution for the duration of the general administration contract term for that commodity or group of commodities.

(2) An institution of higher education may exercise independently those powers otherwise granted to the public printer in chapter 43.78 RCW in connection with the production or purchase of any printing and binding needed by the respective institution of higher education. Purchasing policies and procedures followed by institutions of higher education shall be in compliance with chapter 39.19 RCW. Any institution of higher education that chooses to exercise independent printing production or purchasing authority shall notify the public printer. Thereafter the public printer shall not be required to provide those services for that institution.

~~((3) For the purposes of this section, an "institution of higher education" shall include the joint center for higher education created in chapter 28B.25 RCW when the joint center for higher education is contracting with another institution of higher education that is acting as the sole agent for purchasing and disposing of material, supplies, services, and equipment, and for procuring printing or binding services:))~~

**Sec. 6. RCW 28B.45.050 and 1991 c 205 s 11 are each amended to read as follows:*

Washington State University ((and Eastern Washington University are)) is responsible for ((providing)) ensuring the expansion of upper-division and graduate level higher education programs to the citizens of ((the)) Spokane ((area)), under rules or guidelines adopted by the ((joint-center-for-higher education. However, before any degree is authorized under this section it shall be subject to the review and approval of the)) higher education coordinating board. The rules adopted by the higher education coordinating board shall: (1) Avoid program duplication; and (2) encourage collaboration between Washington State University and Eastern Washington University on the delivery of graduate level programs in Spokane. Washington State University shall meet ((its)) that responsibility through the operation of a branch campus in ((the)) Spokane ((area. Eastern Washington University shall meet its responsibility through the operation of programs and facilities in Spokane)).

**Sec. 6 was vetoed. See message at end of chapter.*

Sec. 7. RCW 28B.130.020 and 1997 c 273 s 2 are each amended to read as follows:

(1) The governing board of an institution of higher education as defined in RCW 28B.10.016 may impose either a voluntary or a mandatory transportation fee on employees and on students at the institution. The board of ((the joint center for higher education under chapter 28B.25 RCW)) regents of Washington State University may impose either a voluntary or a mandatory transportation fee on faculty and staff working at the Riverpoint higher education park and on students attending classes there. The transportation fee shall be used solely to fund transportation demand management programs that reduce the demand for campus and neighborhood parking, and promote alternatives to single-occupant vehicle driving. If the board charges a mandatory transportation fee to students, it shall charge a mandatory transportation fee to employees. The transportation fee for employees may exceed, but shall not be lower than the transportation fee charged to students. The transportation fee for employees may be deducted from the employees' paychecks. The transportation fee for students may be imposed annually, or each academic term. For students attending community colleges and technical colleges, the mandatory transportation fee shall not exceed sixty percent of the maximum rate permitted for services and activities fees at community colleges, unless, through a vote, a majority of students consent to increase the transportation fee. For students attending four-year institutions of higher education or classes at the Riverpoint higher education park, the mandatory transportation fee shall not exceed thirty-five percent of the maximum rate permitted for services and activities fees at the institution where the student is enrolled unless, through a vote, a majority of students consents to increase the transportation fee. The board may make a limited number of exceptions to the fee based on a policy adopted by the board.

(2) The board of ~~((the joint center for higher education under chapter 28B.25 RCW))~~ regents of Washington State University shall not impose a transportation fee on any student who is already paying a transportation fee to the institution of higher education in which the student is enrolled.

Sec. 8. RCW 43.01.236 and 1997 c 273 s 3 are each amended to read as follows:

All institutions of higher education as defined under RCW 28B.10.016 ~~((and the joint center for higher education under chapter 28B.25 RCW))~~ are exempt from the requirements under RCW 43.01.240.

NEW SECTION. Sec. 9. SPOKANE INTERCOLLEGIATE RESEARCH AND TECHNOLOGY INSTITUTE. (1) The Spokane intercollegiate research and technology institute is created.

(2) The institute shall be operated and administered as a multi-institutional education and research center, housing appropriate programs conducted in Spokane under the authority of institutions of higher education as defined in RCW 28B.10.016. Washington independent and private institutions of higher education may participate as full partners in any academic and research activities of the institute.

(3) The institute shall house education and research programs specifically designed to meet the needs of eastern Washington.

(4) The establishment of any education program at the institute and the lease, purchase, or construction of any site or facility for the institute is subject to the approval of the higher education coordinating board under RCW 28B.80.340.

(5) The institute shall be headquartered in Spokane.

(6) The mission of the institute is to perform and commercialize research that benefits the intermediate and long-term economic vitality of eastern Washington and to develop and strengthen university-industry relationships through the conduct of research that is primarily of interest to eastern Washington-based companies or state economic development programs. The institute shall:

(a) Perform and facilitate research supportive of state science and technology objectives, particularly as they relate to eastern Washington industries;

(b) Provide leading edge collaborative research and technology transfer opportunities primarily to eastern Washington industries;

(c) Provide substantial opportunities for training undergraduate and graduate students through direct involvement in research and industry interactions;

(d) Emphasize and develop nonstate support of the institute's research activities; and

(e) Provide a forum for effective interaction between the state's technology-based industries and its academic institutions through promotion of faculty collaboration with industry, particularly within eastern Washington.

NEW SECTION. Sec. 10. ADMINISTRATION—BOARD OF DIRECTORS. (1) The institute shall be administered by the board of directors:

(2) The board shall consist of the following members:

(a) Nine members of the general public. Of the general public membership, at least six shall be individuals who are associated with or employed by technology-based or manufacturing-based industries and have broad business experience and an understanding of high technology;

(b) The executive director of the Washington technology center or the director's designee;

(c) The provost of Washington State University or the provost's designee;

(d) The provost of Eastern Washington University or the provost's designee;

(e) The provost of Central Washington University or the provost's designee;

(f) The provost of the University of Washington or the provost's designee;

(g) An academic representative from the Spokane community colleges;

(h) One member from Gonzaga University; and

(i) One member from Whitworth College.

(3) The term of office for each board member, excluding the executive director of the Washington technology center, the provosts of Washington State University, Eastern Washington University, Central Washington University, and the University of Washington, shall be three years. The executive director of the institute shall be an ex officio, nonvoting member of the board. Board members shall be appointed by the governor. Initial appointments shall be for staggered terms to ensure the long-term continuity of the board. The board shall meet at least quarterly.

(4) The duties of the board include:

(a) Developing the general operating policies for the institute;

(b) Appointing the executive director of the institute;

(c) Approving the annual operating budget of the institute;

(d) Establishing priorities for the selection and funding of research projects that guarantee the greatest potential return on the state's investment;

(e) Approving and allocating funding for research projects conducted by the institute;

(f) In cooperation with the department of community, trade, and economic development, developing a biennial work plan and five-year strategic plan for the institute that are consistent with the state-wide technology development and commercialization goals;

(g) Coordinating with public, independent, and private institutions of higher education, and other participating institutions of higher education in the development of training, research, and development programs to be conducted at the institute that are targeted to meet industrial needs;

(h) Assisting the department of community, trade, and economic development in the department's efforts to develop state science and technology public policies and coordinate publicly funded programs;

(i) Reviewing annual progress reports on funded research projects;

(j) Providing an annual report to the governor and the legislature detailing the activities and performance of the institute; and

(k) Submitting annually to the department of community, trade, and economic development an updated strategic plan and a statement of performance measured against the mission, roles, and contractual obligations of the institute.

(5) The board may enter into contracts to fulfill its responsibilities and purposes under this chapter.

NEW SECTION. Sec. 11. SUPPORT FROM PARTICIPATING INSTITUTIONS. Staff support for programs will be provided from among the cooperating institutions through cooperative agreements. Cooperating institutions are Washington State University as the senior research partner, Eastern Washington University, Central Washington University, the University of Washington, Gonzaga University, Whitworth College, and other participating institutions of higher education.

NEW SECTION. Sec. 12. OPERATING STAFF. The director of the Spokane intercollegiate research and technology institute may hire staff as necessary to operate the institution. The director may enter into cooperative agreements for programs and research with public and private organizations including state and nonstate funding agencies consistent with policies of the Spokane intercollegiate research and technology institute.

NEW SECTION. Sec. 13. ROLE OF DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT. The department of community, trade, and economic development shall contract with the institute for the expenditure of state-appropriated funds for the operation of the institute. The department of community, trade, and economic development shall provide guidance to the institute regarding expenditure of state-appropriated funds and the development of the institute's strategic plan. The director of the department of community, trade, and economic development shall not withhold funds appropriated for the institute if the institute complies with the provisions of its contract with the department of community, trade, and economic development. The department is responsible to the legislature for the contractual performance of the institute.

NEW SECTION. Sec. 14. AVAILABILITY OF FACILITIES TO OTHER INSTITUTIONS. The facilities of the institute shall be made available to other institutions of higher education within the state when this would benefit specific program needs.

NEW SECTION. Sec. 15. AUTHORITY TO RECEIVE AND EXPEND FEDERAL FUNDS. The board may receive and expend federal funds and any private gifts or grants to further the purpose of the institute. The funds are to be expended in accordance with federal and state law and any conditions contingent in the grant of those funds.

NEW SECTION. Sec. 16. CAPTIONS NOT LAW. Captions used in this chapter are not any part of the law.

NEW SECTION. Sec. 17. The following acts or parts of acts are each repealed:

- (1) RCW 28B.25.010 and 1991 c 205 s 2 & 1985 c 370 s 97;
- (2) RCW 28B.25.020 and 1996 c 110 s 1, 1991 c 205 s 3, 1989 1st ex.s. c 7 s 11, & 1985 c 370 s 98;
- (3) RCW 28B.25.030 and 1996 c 110 s 2, 1991 c 205 s 4, & 1985 c 370 s 99;
- (4) RCW 28B.25.033 and 1996 c 110 s 6 & 1991 c 205 s 5;
- (5) RCW 28B.25.037 and 1991 c 205 s 6;
- (6) RCW 28B.25.040 and 1991 c 205 s 7 & 1985 c 370 s 100;
- (7) RCW 28B.25.050 and 1991 c 205 s 8 & 1985 c 370 s 101;
- (8) RCW 28B.25.070 and 1991 c 205 s 9;
- (9) RCW 28B.25.075 and 1997 c 273 s 1;
- (10) RCW 28B.25.090 and 1996 c 110 s 3;
- (11) RCW 28B.25.100 and 1996 c 110 s 4;
- (12) RCW 28B.25.900 and 1991 c 205 s 13; and
- (13) RCW 28B.10.060 and 1991 c 205 s 1 & 1989 1st ex.s. c 7 s 10.

NEW SECTION. Sec. 18. Sections 9 through 16 of this act constitute a new chapter in Title 28B RCW.

***NEW SECTION.** Sec. 19. *Section 6 of this act takes effect January 1, 1999.*

*Sec. 19 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 20. Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed the Senate March 9, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 6 and 19, Substitute Senate Bill No. 6655 entitled:

"AN ACT Relating to institutions of higher education;"

Substitute Senate Bill No. 6655 makes several important changes to statutes regarding higher education in the Spokane area. Many of its provisions enact recommendations developed by the Higher Education Coordinating (HEC) Board at my request. I commend the HEC Board for its comprehensive assessment performed on short notice, and I commend the Legislature for its enactment of many of the HEC Board's recommendations.

SSB 6655 dissolves the Spokane Joint Center for Higher Education (the "Joint Center") and transfers the majority of its duties and real estate and other assets to Washington State University (WSU). WSU is required to develop a plan for the management of the Joint Center's Riverpoint Park facility, and a new mission statement and operations plan for its Spokane branch campus.

Under SSB 6655, the Spokane Intercollegiate Research and Technology Institute (SIRTI) will no longer be under the authority of the Joint Center. It will be separately

established with its own board of directors and more clearly affiliated with the economic development efforts of the Department of Community, Trade and Economic Development.

The bill also requires the HEC Board to manage an assessment of current and future higher education capital and programmatic needs in Spokane, and also an economic assessment of the Spokane area addressing job expansion, technology-based high wage job development, and basic and applied research needs.

SSB 6655 requires Eastern Washington University (EWU) to develop a new mission statement and operations plan for comprehensive higher education based in Cheney. In addition, the value and role of EWU in Spokane is recognized along with the overriding values of collaboration and coordination among the various public and private higher education institutions in the Spokane area.

Section 6 of SSB 6655 would replicate ambiguous language in other sections of law regarding service delivery control and responsibility for branch campuses. It would not recognize the unique situation in Spokane where two public universities each have a major presence. Section 6 would confuse the roles, opportunity and value offered by EWU and other institutions in the Spokane area. It would leave open an interpretation that these institutions would be excluded from participating in higher education offered at Spokane, which was not the intent of the HEC Board's recommendations. Section 19 establishes an effective date for section 6, and is unnecessary after my veto of section 6.

For these reasons, I have vetoed sections 6 and 19 of Substitute Senate Bill No. 6655.

With the exception of sections 6 and 19, Substitute Senate Bill No. 6655 is approved."

CHAPTER 345

[Engrossed Second Substitute Senate Bill 6562]

EQUINE INDUSTRY RELIEF

AN ACT Relating to relief for the equine industry by amending the parimutuel tax on horse racing to provide additional support for licensed racing associations, the state fair account, the state trade fair account, and the Washington horse racing commission, and modifying the membership thereof; amending RCW 15.04.090, 67.16.012, 67.16.100, 67.16.105, and 67.16.170; adding a new section to chapter 15.76 RCW; adding a new section to chapter 43.31 RCW; adding new sections to chapter 43.131 RCW; adding new sections to chapter 67.16 RCW; creating a new section; providing a contingent effective date; and declaring an emergency.

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

Sec. 1. RCW 15.04.090 and 1961 c 11 s 15.04.090 are each amended to read as follows:

The director of agriculture may, at his discretion, for a period of not to exceed ten years, lease state lands which are now or may hereafter be, under his direction and control, the retention of which he deems unnecessary for present state purposes or needs, to any nonprofit group or organization having educational, agricultural or youth development purposes. Such leases shall be upon such terms as the director deems beneficial to the state. All rental funds received by the director under the provisions of this section shall be deposited in the (~~"fair fund" provided in RCW 67.16.100~~) fair fund created under section 2 of this act.

NEW SECTION. **Sec. 2.** A new section is added to chapter 15.76 RCW 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) shall be deposited into the fund. 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.

NEW SECTION. Sec. 3. A new section is added to chapter 43.31 RCW to read as follows:

The state trade fair fund is created in the custody of the state treasury. All moneys received by the department of community, trade, and economic development for the purposes of this fund shall be deposited into the fund. Expenditures from the fund may be used only for the purpose of assisting state trade fairs. Only the director of community, trade, and economic development 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. 4. RCW 67.16.012 and 1987 c 453 s 2 are each amended to read as follows:

There is hereby created the Washington horse racing commission, to consist of ~~((three))~~ five commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers.

Sec. 5. RCW 67.16.100 and 1995 c 399 s 166 are each amended to read as follows:

(1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102(~~(:)~~) and 67.16.105(3)(~~(-and 67.16.105(4))~~), shall be disposed of by the commission as follows: ~~((a) Fifty))~~ One hundred percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

~~((b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund.~~

~~— (c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "state trade fair fund" which shall be maintained as a separate and independent fund, and made available to the director of community, trade, and economic development for the sole purpose of assisting state trade fairs.~~

~~— (d) Forty-six percent shall be paid to the state treasurer, who is hereby made ex officio treasurer of a fund to be known as the "fair fund," which shall be maintained as a separate and independent fund outside of the state treasury, and made available to the director of agriculture for the sole purpose of assisting fairs in the manner provided in Title 15 RCW.)~~

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the ~~((general))~~ fair fund created in section 2 of this act. The commission may, with the approval of the office of financial management, retain any sum required for working capital.

Sec. 6. RCW 67.16.105 and 1997 c 87 s 3 are each amended to read as follows:

(1) Licensees of race meets that are nonprofit in nature ~~((;))~~ and are of ten days or less ~~((, and have an average daily handle of one hundred twenty thousand dollars or less shall withhold and pay to the commission daily for each authorized day of racing one-half percent of the daily gross receipts from all parimutuel machines at each race meet))~~ shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the ~~((daily))~~ gross receipts of all its in-state parimutuel machines are more than ~~((two hundred fifty thousand))~~ fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily ~~((two and one-half))~~ 1.30 percent of the daily gross receipts; and

(b) If the ~~((daily))~~ gross receipts of all its in-state parimutuel machines are ~~((two hundred fifty thousand))~~ fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily ~~((one))~~ 0.52 percent of the daily gross receipts.

(3) In addition to those amounts in subsection ~~((s(1) and))~~ (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW

67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. The commission shall transfer funds generated under subsection (2) of this section equal to the difference between funds collected under this subsection (3) in a calendar year and three hundred thousand dollars, and distribute that amount under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in section 2 of this act.

Sec. 7. RCW 67.16.170 and 1991 c 270 s 8 are each amended to read as follows:

(1) Licensees of race meets that are nonprofit in nature(~~(;)~~) and are of ten days or less(~~(-and have an average daily handle of one hundred twenty thousand dollars or less)~~) may retain daily for each authorized day of racing (~~((fourteen and one-half))~~) fifteen percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section, may retain daily for each authorized day of (~~(racing))~~ parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines (~~(at each race meet))~~:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than (~~((two hundred fifty thousand))~~) fifty million dollars in the previous calendar year, the licensee may retain daily (~~((twelve and one-half))~~) 13.70 percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are (~~((two hundred fifty thousand))~~) fifty million dollars or less in the previous calendar year, the licensee may retain daily (~~((fourteen))~~) 14.48 percent of the daily gross receipts.

NEW SECTION. Sec. 8. A new section is added to chapter 4.3 131 RCW to read as follows:

The reduction in parimutuel taxes and redistributions under sections 5 through 7, chapter . . . , Laws of 1998 (sections 5 through 7 of this act) shall be reviewed under this chapter before June 30, 2001.

NEW SECTION. Sec. 9. A new section is added to chapter 43.131 RCW to read as follows:

The following acts or parts of acts, as now existing or hereafter amended, are each repealed, effective June 30, 2001:

(1) RCW 67.16.100 and 1998 c . . . s 5 (section 5 of this act), 1995 c 399 s 166, & 1991 c 270 s 4;

(2) RCW 67.16.105 and 1998 c . . . s 6 (section 6 of this act), 1997 c 87 s 3, 1995 c 173 s 2, 1994 c 159 s 2, 1993 c 170 s 2, 1991 c 270 s 6, 1987 c 347 s 4, 1985 c 146 s 7, 1982 c 32 s 3, & 1979 c 31 s 6; and

(3) RCW 67.16.170 and 1998 c . . . s 7 (section 7 of this act), 1991 c 270 s 8, 1987 c 347 s 2, 1985 c 146 s 9, 1983 c 228 s 1, & 1979 c 31 s 5.

NEW SECTION. Sec. 10. (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows:

(a) Fifty percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(b) One percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the general fund.

(c) Three percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the state trade fair fund created in section 3 of this act.

(d) Forty-six percent shall, on the next business day following the receipt thereof, be paid to the state treasurer to be deposited in the fair fund created in section 2 of this act.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and be placed in the general fund. The commission may, with the approval of the office of financial management, retain any sum required for working capital.

NEW SECTION. Sec. 11. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall withhold and pay to the commission daily for each authorized day of parimutuel wagering one-half percent of the gross receipts of its parimutuel machines at each race meet.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and

pay to the commission daily two and one-half percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily one percent of the daily gross receipts.

(3) In addition to those amounts in subsections (1) and (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment.

NEW SECTION. Sec. 12. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fourteen and one-half percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily twelve and one-half percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily fourteen percent of the daily gross receipts.

NEW SECTION. Sec. 13. Sections 10 through 12 of this act are each added to chapter 67.16 RCW.

NEW SECTION. Sec. 14. 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. 15. (1) Sections 1 through 9, 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.

(2) Sections 10 through 12 of this act take effect July 1, 2001, if the repeal of RCW 67.16.100, 67.16.105, and 67.16.170 under section 9 of this act becomes effective.

****NEW SECTION. Sec. 16. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 1998, in the omnibus appropriations act, this act is null and void.***

***Sec. 16 was vetoed. See message at end of chapter.**

Passed the Senate March 9, 1998.

Passed the House March 6, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to section 16, Engrossed Second Substitute Senate Bill No. 6562 entitled:

"AN ACT Relating to relief of the equine industry by amending the parimutuel tax on horse racing to provide additional support for licensed racing associations, the state fair account, the state trade fair account and the Washington horse racing commission;"

The changes to the parimutuel tax contained in E2SSB 6562 were intended to provide a temporary solution to economic problems of the horse racing industry. Unfortunately the provisions of this legislation leave funding for state, county and trade fairs at risk. By reducing the parimutuel tax rate and redistributing tax revenues, E2SSB 6562 eliminates funding for the fairs in Fiscal Year 1999, and the 1999-01 Biennium.

In an effort to temporarily replace lost revenues to the fair funds, sections 906 and 907 of ESSB 6108 (the Omnibus Appropriations Act), direct the Washington State Lottery to conduct two to four lottery games with agricultural themes per year in the 1997-99 Biennium and divert lottery proceeds to the State Fair Fund. I have vetoed sections 906 and 907 of ESSB 6108 because they place unrealistic requirements on the Washington State Lottery to develop new lottery games in a very short time period, and would divert lottery proceeds from the General Fund to replace parimutuel taxes. This would result in lowering the expenditure limit established by Initiative 601.

It is my intent that the funding for state, county and trade fairs be maintained. My actions related to E2SSB 6562 and ESSB 6108 will not jeopardize funding for fairs in 1998, since annual distributions to support fairs are made in March of each year. Current fund balances in the state fair funds are sufficient to support all fairs through 1998. It is my intention to propose to the 1999 Legislature a special funding package which will permit the state to fulfill its obligations for ongoing fair funding by March of 1999.

Section 16 of E2SSB 6562 is the "null and void" clause which stipulates that if specific funding for the purposes of this act is not provided by June 30, 1998 in the omnibus appropriations act, E2SSB 6562 is null and void. I am vetoing this section in order to develop an adequate funding proposal to support the fairs for Fiscal Year 1999 and the 1999-01 Biennium. The funding proposal that is developed should seek to maintain the current level of support for fairs without affecting the Initiative 601 expenditure limit. State, county and trade fairs are important to hundreds of thousands of our citizens and I am committed to ensuring that adequate funding is available to support them.

For these reasons, I have vetoed section 16 of Engrossed Second Substitute Senate Bill 6562.

With the exception of section 16, Engrossed Second Substitute Senate Bill No. 6562 is approved."

CHAPTER 346

[Engrossed Substitute Senate Bill 6108]

OPERATING BUDGET—SUPPLEMENTAL, 1997-1999

AN ACT Relating to fiscal matters; amending RCW 50.24.014, 28B.15.910, 70.105D.070, and 67.70.240; amending 1997 c 149 ss 101, 102, 104, 110, 111, 112, 113, 114, 116, 117, 120, 121, 122, 123, 124, 129, 130, 134, 136, 141, 142, 145, 146, 147, 152, 201, 204, 205, 206, 209, 210, 215, 217, 224, 304, 306, 309, 310, 401, 402, 502, 505, 506, 507, 508, 513, 516, 612, 614, 616, 618, 619, 701, 703, 705, 710, 712, 717, 718, 902, and 905 (uncodified); amending 1997 c 454 ss 101, 103, 104, 105, 202, 203, 204, 205, 206, 207, 208, 210, 211, 209, 212, 213, 214, 301, 302, 303, 304, 305, 501, 503, 504, 505, 506, 507, 508, 601, 602, 603, 604, 605, 606, 607, 608, 609, 610, 611, 704, 801, and 802 (uncodified); amending 1997 c 235 ss 676 and 108 (uncodified); reenacting and amending RCW 69.50.520 and 43.88.030; adding new sections to 1997 c 149 (uncodified); creating new sections; repealing 1998 c . . . (Second Substitute Senate Bill No. 6214) ss 27, 50, and 57; making appropriations; and declaring an emergency.

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

NEW SECTION. Sec. I. (1) A budget is hereby adopted and, subject to the provisions set forth in the following sections, the several amounts specified in parts I through VIII of this act, or so much thereof as shall be sufficient to accomplish the purposes designated, are hereby appropriated and authorized to be incurred for salaries, wages, and other expenses of the agencies and offices of the state and for other specified purposes for the fiscal biennium beginning July 1, 1997, and ending June 30, 1999, except as otherwise provided, out of the several funds of the state hereinafter named.

(2) Unless the context clearly requires otherwise, the definitions in this section apply throughout this act.

(a) "Fiscal year 1998" or "FY 1998" means the fiscal year ending June 30, 1998.

(b) "Fiscal year 1999" or "FY 1999" means the fiscal year ending June 30, 1999.

(c) "FTE" means full time equivalent.

(d) "Lapse" or "revert" means the amount shall return to an unappropriated status.

(e) "Provided solely" means the specified amount may be spent only for the specified purpose. Unless otherwise specifically authorized in this act, any portion of an amount provided solely for a specified purpose which is unnecessary to fulfill the specified purpose shall lapse.

PART I

GENERAL GOVERNMENT

Sec. 101. 1997 c 149 s 101 (uncodified) is amended to read as follows:

FOR THE HOUSE OF REPRESENTATIVES

General Fund Appropriation (FY 1998) \$ ((24,241,000))
24,221,000

General Fund Appropriation (FY 1999) \$ ((25,637,000))
25,907,000

Department of Retirement Systems Expense

Account Appropriation \$ 25,000

TOTAL APPROPRIATION \$ ((49,878,000))
50,153,000

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

(1) \$75,000 of the general fund fiscal year 1998 appropriation and \$75,000 of the general fund fiscal year 1999 appropriation are provided solely for the independent operations of the legislative ethics board. Expenditure decisions of the board, including employment of staff, shall be independent of the senate and house of representatives.

~~(2) ((\$25,000 of the general fund fiscal year 1998 appropriation is provided solely to implement Substitute Senate Concurrent Resolution No. 8408 (water policy report). If the concurrent resolution is not enacted by June 30, 1997, the amount provided in this subsection shall lapse))~~ The department of retirement systems expense account appropriation is provided solely to implement the provisions relating to the actuarial audit of the pension contribution rates in Substitute House Bill No. 2544 (funding state retirement systems). If the bill is not enacted by June 30, 1998, the appropriation shall lapse.

(3) \$125,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a review of the memorandum of agreement signed between the United States environmental protection agency and the department of ecology. The agreement requires the department to conduct total maximum daily loads on polluted water bodies as defined by the federal clean water act. The review may include but is not limited to the department's program for implementing the settlement, an examination of the decisions that affect how water quality problems are defined, the causes of those problems, and the means by which solutions to these problems are to be developed and implemented.

Sec. 102. 1997 c 149 s 102 (uncodified) is amended to read as follows:

FOR THE SENATE

General Fund Appropriation (FY 1998) \$ 19,357,000
 General Fund Appropriation (FY 1999) \$ ((20,663,000))
20,838,000

Department of Retirement Systems Expense Account

Appropriation \$ 25,000
TOTAL APPROPRIATION \$ ((40,020,000))
40,220,000

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

(1) \$75,000 of the general fund fiscal year 1998 appropriation and \$75,000 of the general fund fiscal year 1999 appropriation are provided solely for the independent operations of the legislative ethics board. Expenditure decisions of the board, including employment of staff, shall be independent of the senate and house of representatives.

(2) (~~(\$25,000 of the general fund fiscal year 1998 appropriation is provided solely to implement Substitute Senate Concurrent Resolution No. 8408 (water policy report). If the concurrent resolution is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.~~

~~—(3))~~ \$100,000 of the general fund appropriation for fiscal year 1998 is provided solely for a study of financial aid and tuition by the senate committee on ways and means and the house of representatives committee on appropriations.

(a) The study shall report on the current usage and distribution of financial aid, investigate other resources available to financial aid recipients, and shall compare alternative methods of financial aid distribution and their impacts on the sectors of higher education and students served within each sector.

(b) The study shall also provide comparative data from other states on methods of establishing tuition rates and the relationship of tuition to state funding.

(3) The department of retirement systems expense account appropriation is provided solely to implement the provisions relating to the actuarial audit of the pension contribution rates in Substitute House Bill No. 2544 (funding state retirement systems). If the bill is not enacted by June 30, 1998, the appropriation shall lapse.

(4) \$25,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the legislature and the office of financial management to contract jointly for a performance review of the state long-term care system. The review shall result in recommendations by October 1, 1998, on strategies for increasing the long-term affordability and cost-effectiveness of the system, and shall include a review of topics such as methods for matching service levels to recipient needs, options for managing growth in entitlement caseloads, and techniques for projecting the number of persons in need of publicly funded services.

(5) \$125,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a review of the memorandum of agreement signed between the United States environmental protection agency and the department of ecology. The agreement requires the department to conduct total maximum daily loads on polluted water bodies as defined by the federal clean water act. The review may include but is not limited to the department's program for implementing the settlement, an examination of the decisions that affect how water quality problems are defined, the causes of those problems, and the means by which solutions to these problems are to be developed and implemented.

Sec. 103. 1997 c 454 s 101 (uncodified) is amended to read as follows:

FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE

General Fund Appropriation (FY 1998)	\$	((1,421,000))
		<u>1,371,000</u>
General Fund Appropriation (FY 1999)	\$	((1,421,000))
		<u>1,890,000</u>

TOTAL APPROPRIATION \$	((2,846,000))
	<u>3,261,000</u>

The appropriations in this section are subject to the following conditions and limitations: ~~((50,000 of the general fund appropriation for fiscal year 1998 is provided solely to implement Substitute Senate Bill No. 5071 (school district territory). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.))~~

(1) \$340,000 of the general fund appropriation for fiscal year 1999 is provided solely for a study of the system of finance of the Washington common schools as required by section 501 of this act.

(2) \$75,000 of the general fund appropriation for fiscal year 1999 is provided solely for completion of a management audit of the division of developmental disabilities within the department of social and health services. The objectives of the review shall include, but are not limited to: (a) An analysis and evaluation of the current organizational structures, management practices, and performance measures that are in place to fulfill statutory responsibilities; (b) an assessment of the impact of overlapping statutory or administrative code responsibilities with other department of social and health services divisions and other state agencies; and (c) development of recommendations, as appropriate, that would result in significant management improvements in the division's operations. The audit report shall be provided to the senate committee on ways and means and the house of representatives committee on appropriations by January 8, 1999.

(3) \$50,000 of the general fund appropriation for fiscal year 1999 is provided solely for a study of: (a) The effect of the state certificate of need program under chapter 70.38 RCW on the cost, quality, and availability of hospital, ambulatory surgery, home health, hospice, and kidney disease treatment services; and (b) the effect the repeal of the program would have on the cost, quality, and availability of any of these services, and on the availability of charity care and of health facilities and services in rural areas, including the experience in other states where such programs have been fully or partially repealed. The study shall be submitted to the legislature by January 1, 1999.

Sec. 104, 1997 c 149 s 104 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE EVALUATION AND ACCOUNTABILITY PROGRAM COMMITTEE

General Fund Appropriation (FY 1998) \$	1,263,000
General Fund Appropriation (FY 1999) \$	((1,332,000))
	<u>1,482,000</u>
TOTAL APPROPRIATION \$	((2,595,000))
	<u>2,745,000</u>

The appropriations in this section are subject to the following conditions and limitations: The committee shall conduct an inventory and examination of state data processing projects funded in this act and make recommendations to improve the accountability and legislative evaluation and oversight of these projects.

Sec. 105. 1997 c 149 s 110 (uncodified) is amended to read as follows:

FOR THE COURT OF APPEALS

General Fund Appropriation (FY 1998)	\$	((+0,225,000))
		<u>10,340,000</u>
General Fund Appropriation (FY 1999)	\$	((+0,133,000))
		<u>10,307,000</u>
TOTAL APPROPRIATION	\$	((20,358,000))
		<u>20,647,000</u>

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

(1) \$271,000 of the general fund fiscal year 1999 appropriation is provided solely for an additional judge position and related support staff in division I in King county, effective July 1, 1998.

(2) \$490,000 of the general fund fiscal year 1998 appropriation is provided solely for remodeling existing space in division I court facilities to house additional staff.

Sec. 106. 1997 c 149 s 111 (uncodified) is amended to read as follows:

FOR THE COMMISSION ON JUDICIAL CONDUCT

General Fund Appropriation (FY 1998)	\$	((652,000))
		<u>692,000</u>
General Fund Appropriation (FY 1999)	\$	((653,000))
		<u>714,000</u>
TOTAL APPROPRIATION	\$	((+1,305,000))
		<u>1,406,000</u>

Sec. 107. 1997 c 149 s 112 (uncodified) is amended to read as follows:

FOR THE ADMINISTRATOR FOR THE COURTS

General Fund Appropriation (FY 1998)	\$	12,723,000
General Fund Appropriation (FY 1999)	\$	((+2,595,000))
		<u>12,770,000</u>
Public Safety and Education Account Appropriation	\$	((31,134,000))
		<u>27,709,000</u>
Judicial Information Systems Account Appropriation	\$	((+6,305,000))
		<u>17,489,000</u>
TOTAL APPROPRIATION	\$	((72,757,000))
		<u>70,691,000</u>

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

(I) Funding provided in the judicial information systems account appropriation shall be used for the operations and maintenance of technology systems that improve services provided by the supreme court, the court of appeals, the office

of public defense, and the office of the administrator for the courts. \$400,000 of the judicial information systems account appropriation is provided solely for the year 2000 date conversion.

(2) No moneys appropriated in this section may be expended by the administrator for the courts for payments in excess of fifty percent of the employer contribution on behalf of superior courts judges for insurance and health care plans and federal social security and medicare and medical aid benefits. Consistent with Article IV, section 13 of the state Constitution and 1996 Attorney General's Opinion No. 2, it is the intent of the legislature that the cost of these employer contributions shall be shared equally between the state and county or counties in which the judges serve. The administrator for the courts shall continue to implement procedures for the collection and disbursement of these employer contributions.

(3) (~~(\$6,510,000)~~) \$3,255,000 of the public safety and education account appropriation is provided solely for the continuation of treatment alternatives to street crimes (TASC) programs in Pierce, Snohomish, Clark, King, Spokane, and Yakima counties.

(4) \$125,000 of the public safety and education account appropriation is provided solely for the workload associated with the increase in state cases filed in Thurston county superior court.

(5) \$223,000 of the public safety and education account appropriation is provided solely for the gender and justice commission.

(6) \$308,000 of the public safety and education account appropriation is provided solely for the minority and justice commission.

(7) \$100,000 of the general fund fiscal year 1998 appropriation and \$100,000 of the general fund fiscal year 1999 appropriation are provided solely for judicial program enhancements. Within the funding provided in this subsection, the office of administrator of courts in consultation with the supreme court shall determine the program or programs to receive an enhancement.

(8) \$35,000 of the general fund fiscal year 1998 appropriation is provided solely for the implementation of Engrossed Substitute House Bill No. 1771 (guardian certification). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(9) \$100,000 of the general fund fiscal year 1998 appropriation is provided solely for the Snohomish county preprosecution diversion program.

(10) \$175,000 of the general fund appropriation for fiscal year 1999 is provided solely for costs associated with the publication and distribution of a judicial voter pamphlet for the 1998 primary election.

Sec. 108. 1997 c 149 s 113 (uncodified) is amended to read as follows:

FOR THE OFFICE OF PUBLIC DEFENSE

Public Safety and Education Account

Appropriation	\$	(12,187,000)
		<u>12,103,000</u>

The appropriation in this section is subject to the following conditions and limitations:

(1) The cost of defending indigent offenders in death penalty cases has escalated significantly over the last four years. The office of public defense advisory committee shall analyze the current methods for reimbursing private attorneys and shall develop appropriate standards and criteria designed to control costs and still provide indigent defendants their constitutional right to representation at public expense. The office of public defense advisory committee shall report its findings and recommendations to the supreme court and the appropriate legislative committees by September 30, 1998.

(2) \$688,000 of the public safety and education account appropriation is provided solely to increase the reimbursement for private attorneys providing constitutionally mandated indigent defense in nondeath penalty cases.

Sec. 109. 1997 c 149 s 114 (uncodified) is amended to read as follows:

FOR THE OFFICE OF THE GOVERNOR

General Fund—State Appropriation (FY 1998) . . . \$	((5,047,000))
	<u>5,068,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((4,963,000))
	<u>5,520,000</u>
General Fund—Federal Appropriation \$	((188,000))
	<u>553,000</u>
Water Quality Account Appropriation \$	700,000
TOTAL APPROPRIATION \$	((10,898,000))
	<u>11,841,000</u>

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

(1) \$1,618,000 of the general fund—state appropriation for fiscal year 1998, \$1,520,000 of the general fund—state appropriation for fiscal year 1999, \$700,000 of the water quality account appropriation, and \$188,000 of the general fund—federal appropriation are provided solely for the implementation of the Puget Sound work plan and agency action items PSAT-01 through PSAT-06.

(2) \$12,000 of the general fund—state appropriation for fiscal year 1998 and \$13,000 of the general fund—state appropriation for fiscal year 1999 are provided for the state law enforcement medal of honor committee for the purposes of recognizing qualified law enforcement officers as provided by chapter 41.72 RCW.

(3) \$21,000 of the general fund—state appropriation for fiscal year 1998 and \$57,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the office of the family and children's ombudsman for the Wenatchee investigation, support staff, and increased travel costs.

(4) \$500,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for implementation of the salmon recovery office in accordance with sections 3 through 5 of Engrossed Substitute House Bill No. 2496 (salmon

recovery planning). If any of sections 3 through 5 of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

Sec. 110. 1997 c 149 s 116 (uncodified) is amended to read as follows:

FOR THE PUBLIC DISCLOSURE COMMISSION

General Fund Appropriation (FY 1998)	\$	((1,457,000))
		<u>1,568,000</u>
General Fund Appropriation (FY 1999)	\$	((1,206,000))
		<u>1,262,000</u>
TOTAL APPROPRIATION	\$	((2,663,000))
		<u>2,830,000</u>

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

(1) \$306,000 of the general fund fiscal year 1998 appropriation and \$72,000 of the general fund fiscal year 1999 appropriation are provided solely for technology for customer service improvements.

(2) \$111,000 of the fiscal year 1998 general fund appropriation is provided for attorney general services for the public disclosure commission's investigations of the Washington education association and the building industry association of Washington, and other cases.

Sec. 111. 1997 c 149 s 117 (uncodified) is amended to read as follows:

FOR THE SECRETARY OF STATE

General Fund Appropriation (FY 1998)	\$	((8,055,000))
		<u>7,970,000</u>
General Fund Appropriation (FY 1999)	\$	((5,901,000))
		<u>7,899,000</u>
Archives & Records Management Account—State		
Appropriation	\$	4,032,000
Archives & Records Management Account—Private/Local		
Appropriation	\$	((2,553,000))
		<u>2,833,000</u>
Department of Personnel Service Account		
Appropriation	\$	663,000
TOTAL APPROPRIATION	\$	((21,204,000))
		<u>23,397,000</u>

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

(1) ~~((2,355,000))~~ \$2,255,000 of the general fund appropriation for fiscal year 1998 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.

(2) \$2,011,000 of the general fund appropriation for fiscal year 1998 and \$2,536,000 of the general fund appropriation for fiscal year 1999 are provided solely for the verification of initiative and referendum petitions, maintenance of

related voter registration records, and the publication and distribution of the voters and candidates pamphlet.

(3) \$99,000 of the general fund appropriation is provided solely for the state's participation in the United States census block boundary suggestion program.

(4) \$125,000 of the fiscal year 1998 general fund appropriation is provided solely for legal advertising of state measures under RCW 29.27.072.

(5) \$45,000 of the general fund fiscal year 1998 appropriation is provided solely for an economic feasibility study of a state horse park.

(6) The election review section under chapter 29.60 RCW shall be administered in a manner consistent with Engrossed Senate Bill No. 5565 (election procedures review).

(7)(a) \$1,850,000 of the general fund appropriation for fiscal year 1999 is provided solely for contracting with a nonprofit organization to produce gavel-to-gavel television coverage of state government deliberations and other events of state-wide significance during fiscal year 1999. An eligible nonprofit organization must be formed solely for the purpose of, and be experienced in, providing gavel-to-gavel television coverage of state government deliberations and other events of state-wide significance and must have received a determination of tax-exempt status under section 501(c)(3) of the federal internal revenue code.

(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 four-year contract with the nonprofit organization to provide public affairs coverage through June 30, 2002. The funding level for each year of the contract shall be based on the amount provided in this subsection and adjusted to reflect the implicit price deflator for the previous year. 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,

(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.

(8) \$280,000 of the archives and records management account—private/local appropriation is provided solely for preserving and restoring security microfilm.

Sec. 112. 1997 c 149 s 120 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER

State Treasurer's Service Account

Appropriation	\$	((11,567,000))
		<u>12,382,000</u>

Sec. 113. 1997 c 149 s 121 (uncodified) is amended to read as follows:

FOR THE STATE AUDITOR

General Fund Appropriation (FY 1998)	\$	((678,000))
		<u>688,000</u>
General Fund Appropriation (FY 1999)	\$	((678,000))
		<u>1,193,000</u>
State Auditing Services Revolving Account		
Appropriation	\$	((11,928,000))
		<u>12,373,000</u>
TOTAL APPROPRIATION	\$	((13,284,000))
		<u>14,254,000</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) \$420,000 of the general fund appropriation for fiscal year 1998 and \$420,000 of the general fund appropriation for fiscal year 1999 are provided solely for staff and related costs to audit special education programs that exhibit unusual rates of growth, extraordinarily high costs, or other characteristics requiring attention of the state safety net committee, and other school districts for baseline purposes and to determine if there are common errors. The auditor shall consult with the superintendent of public instruction regarding training and other staffing assistance needed to provide expertise to the audit staff.

(3) \$250,000 of the general fund fiscal year 1998 appropriation and \$250,000 of the general fund fiscal year 1999 appropriation are provided solely for the budget and reporting system (BARS) to improve the reporting of local government fiscal data. Audits of counties and cities by the division of municipal corporations shall include findings regarding the completeness, accuracy, and timeliness of BARS data reported to the state auditor's office.

(4) The state auditor shall develop recommendations and curricula for preventing instances of improper governmental actions as defined in chapter 42.20 RCW, the state whistleblower act. In developing these recommendations and curricula, the state auditor shall involve the office of financial management, office of the attorney general, executive ethics board, department of personnel,

employee organizations, and other interested parties. These recommendations shall be submitted to the governor and the legislature by June 30, 1998.

(5) \$120,000 of the auditing services revolving fund appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 2881 (auditing state contractors). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(6) \$25,000 of the general fund fiscal year 1999 appropriation is provided solely to implement Engrossed Second Substitute House Bill No. 2831 (a joint report to the legislature on the results of cost studies and service quality and reliability reports from electric utilities). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse. No fee may be collected from the electric utilities for this joint report.

(7) \$10,000 of the general fund fiscal year 1998 appropriation and \$490,000 of the general fund fiscal year 1999 appropriation are provided solely for staff and related costs to: Verify the accuracy of reported school district data submitted for state funding purposes or program audits of state funded public school programs; and establish the specific amount of funds to be recovered whenever the amount is not firmly established in the course of any public school audits conducted by the state auditor's office. The results of the audits shall be submitted to the superintendent of public instruction for corrections of data and adjustments of funds.

Sec. 114. 1997 c 149 s 122 (uncodified) is amended to read as follows:

FOR THE CITIZENS' COMMISSION ON SALARIES FOR ELECTED OFFICIALS

General Fund Appropriation (FY 1998)	\$	((4,000))
		<u>11,000</u>
General Fund Appropriation (FY 1999)	\$	63,000
TOTAL APPROPRIATION	\$	((67,000))
		<u>74,000</u>

*Sec. 115. 1997 c 149 s 123 (uncodified) is amended to read as follows:

FOR THE ATTORNEY GENERAL

General Fund—State Appropriation (FY 1998) . . .	\$	((4,361,000))
		<u>4,161,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((3,631,000))
		<u>3,831,000</u>
General Fund—Federal Appropriation	\$	2,248,000
Public Safety and Education Account		
Appropriation	\$	((1,300,000))
		<u>1,291,000</u>
New Motor Vehicle Arbitration Account		
Appropriation	\$	1,094,000

Legal Services Revolving Account

Appropriation	\$	((125,008,000))
		<u>125,758,000</u>
TOTAL APPROPRIATION	\$	((137,642,000))
		<u>138,383,000</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.

(2) The attorney general shall include, at a minimum, the following information with each bill sent to agencies receiving legal services: (a) The number of hours and cost of attorney services provided during the billing period; (b) cost of support staff services provided during the billing period; (c) attorney general overhead and central support costs charged to the agency for the billing period; (d) direct legal costs, such as filing and docket fees, charged to the agency for the billing period; and (e) other costs charged to the agency for the billing period. The attorney general may, with approval of the office of financial management change its billing system to meet the needs of its user agencies.

(3) \$300,000 of the fiscal year 1998 general fund—state appropriation is provided for a comprehensive assessment of environmental and public health impacts and for other costs related to pursuing remedies for pollution in the Spokane river basin.

(4) ~~(((\$640,000))~~ \$440,000 of the fiscal year 1998 general fund—state appropriation and ~~(((\$210,000))~~ \$410,000 of the fiscal year 1999 general fund—state appropriation are provided solely to implement the supervision management and recidivist tracking program to allow the department of corrections and local law enforcement agencies to share information concerning the activities of offenders on community supervision. ~~((No information on any person may be entered into or retained in the program unless the person is under the jurisdiction of the department of corrections:))~~

(5) Within the amounts provided in this section, the attorney general shall implement Second Substitute House Bill No. 2027 (regulating travel sales). If the bill is not enacted by June 30, 1998, this subsection is null and void.

*Sec. 115 was partially vetoed. See message at end of chapter.

Sec. 116. 1997 c 149 s 124 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FINANCIAL INSTITUTIONS

Securities Regulation Account Appropriation	\$	((5,445,000))
		<u>5,482,000</u>

The appropriation in this section is subject to the following conditions and limitations: \$34,000 of the securities regulation account appropriation is provided

solely for the implementation of Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amount provided shall lapse.

*Sec. 117. 1997 c 454 s 103 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

General Fund—State Appropriation (FY 1998)	\$	((57,361,000))
		<u>57,078,000</u>
General Fund—State Appropriation (FY 1999)	\$	((56,351,000))
		<u>61,451,000</u>
General Fund—Federal Appropriation	\$	((155,278,000))
		<u>164,000,000</u>
General Fund—Private/Local Appropriation	\$	6,903,000
Public Safety and Education Account		
Appropriation	\$	((8,781,000))
		<u>8,720,000</u>
Public Works Assistance Account		
Appropriation	\$	2,223,000
Building Code Council Account Appropriation	\$	((1,318,000))
		<u>1,366,000</u>
Administrative Contingency Account		
Appropriation	\$	1,776,000
Low-Income Weatherization Assistance Account		
Appropriation	\$	923,000
Violence Reduction and Drug Enforcement Account		
Appropriation	\$	6,042,000
Manufactured Home Installation Training Account		
Appropriation	\$	250,000
Washington Housing Trust Account		
Appropriation	\$	7,999,000
Public Facility Construction Loan Revolving Account		
Appropriation	\$	515,000
<u>Clean Washington Account Appropriation (FY 1998) . .</u>	<u>\$</u>	<u>11,000</u>
TOTAL APPROPRIATION	\$	((305,720,000))
		<u>319,257,000</u>

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

(1) ~~((3,282,500))~~ \$2,962,500 of the general fund—state appropriation for fiscal year 1998 and ~~((3,282,500))~~ \$3,602,500 of the general fund—state appropriation for fiscal year 1999 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, the

center shall not pay any increased indirect rate nor increases in other indirect charges above the absolute amount paid during the 1995-97 biennium.

(2) \$155,000 of the general fund—state appropriation for fiscal year 1998 and (~~(\$155,000)~~) \$445,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for a contract with the Washington manufacturing extension partnership.

(3) \$9,964,000 of the general fund—federal appropriation is provided solely for the drug control and system improvement formula grant program, to be distributed in state fiscal year 1998 as follows:

(a) \$3,603,250 to local units of governments to continue the multi-jurisdictional narcotics task forces;

(b) \$500,000 to the department to continue the state-wide drug prosecution assistance program in support of multijurisdictional narcotics task forces;

(c) \$1,306,075 to the Washington state patrol for coordination, investigative, and supervisory support to the multijurisdictional narcotics task forces and for methamphetamine education and response;

(d) \$240,000 to the department for grants to support tribal law enforcement needs;

(e) \$900,000 to drug courts in eastern and western Washington;

(f) \$300,000 to the department for grants to provide sentencing alternatives training programs to defenders;

(g) \$200,000 for grants to support substance-abuse treatment in county jails;

(h) \$517,075 to the department for legal advocacy for victims of domestic violence and for training of local law enforcement officers and prosecutors on domestic violence laws and procedures;

(i) \$903,000 to the department to continue youth violence prevention and intervention projects;

(j) \$91,000 for the governor's council on substance abuse;

(k) \$99,000 for program evaluation and monitoring;

(l) \$100,000 for the department of corrections for a feasibility study of replacing or updating the offender based tracking system.

(m) \$498,200 for development of a state-wide system to track criminal history records; and

(n) No more than \$706,400 to the department for grant administration and reporting.

These amounts represent the maximum Byrne grant expenditure authority for each program. No program may expend Byrne grant funds in excess of the amounts provided in this section. If moneys in excess of those appropriated in this section become available, whether from prior or current fiscal year Byrne grant distributions, the department shall hold these moneys in reserve and may not expend them without a specific appropriation. These moneys shall be carried forward and applied to the pool of moneys available for appropriation for programs and projects in the succeeding fiscal year. As part of its budget request

for the succeeding fiscal year, the department shall estimate and request authority to spend any funds remaining in reserve as a result of this subsection.

(4) \$11,715,000 of the general fund—federal appropriation is provided solely for the drug control and system improvement formula grant program, to be distributed in state fiscal year 1999 as follows:

(a) \$3,878,250 to local units of government to continue multijurisdictional narcotics task forces;

(b) \$531,000 to the department to continue the drug prosecution assistance program in support of multijurisdictional narcotics task forces;

(c) \$1,363,075 to the Washington state patrol for coordination, investigative, and supervisory support to the multijurisdictional narcotics task forces and for methamphetamine education and response;

(d) \$256,000 to the department for grants to support tribal law enforcement needs;

(e) \$1,093,000 to drug courts in eastern and western Washington;

(f) \$312,000 to the department for grants assisting in the development, conduct, and training on sentencing alternatives;

(g) \$261,000 to the department to continue a substance-abuse treatment in jails program, to test the effect of treatment on future criminal behavior;

(h) \$581,075 to the department to continue domestic violence legal advocacy;

(i) \$949,000 to the department to continue youth violence prevention and intervention projects;

(j) \$91,000 to the department to continue the governor's council on substance abuse;

(k) \$99,000 to the department to continue evaluation of Byrne formula grant programs;

(l) \$1,496,200 to the office of financial management for the criminal history records improvement program; and

(m) \$804,400 to the department for required grant administration, monitoring and reporting on Byrne formula grant programs.

These amounts represent the maximum Byrne grant expenditure authority for each program. No program may expend Byrne grant funds in excess of the amounts provided in this subsection. If moneys in excess of those appropriated in this subsection become available, whether from prior or current fiscal year Byrne grant distributions, the department shall hold these moneys in reserve and may not expend them without specific appropriation. These moneys shall be carried forward and applied to the pool of moneys available for appropriation for programs and projects in the succeeding fiscal year. As part of its budget request for the succeeding year, the department shall estimate and request authority to spend any funds remaining in reserve as a result of this subsection.

((4)) (\$1,000,000 of the general fund fiscal year 1998 appropriation and \$1,000,000 of the general fund fiscal year 1999 appropriation are provided solely to implement Engrossed Substitute House Bill No. 1576 (buildable lands) or

Senate Bill No. 6094 (growth management). If neither bill is enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((5))~~ ~~(\$4,800,000)~~ (6) \$4,766,000 of the public safety and education account appropriation, \$1,000,000 of the fiscal year 1998 general fund—state appropriation, and ~~((1))~~ ~~(\$1,000,000)~~ \$1,034,000 of the fiscal year 1999 general fund—state appropriation are provided solely for indigent civil legal representation services contracts and contracts administration. The amounts provided in this subsection are contingent upon enactment of section 2 of Engrossed Substitute House Bill No. 2276 (civil legal services for indigent persons). If section 2 of the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

~~((6))~~ (7) \$643,000 of the general fund—state fiscal year 1998 appropriation and \$643,000 of the general fund—state fiscal year 1999 appropriation are provided solely to increase payment rates for contracted early childhood education assistance program providers. It is the legislature's intent that these amounts shall be used primarily to increase compensation for persons employed in direct, front-line service delivery.

~~((7))~~ (8) \$75,000 of the general fund—state fiscal year 1998 appropriation and \$75,000 of the general fund—state fiscal year 1999 appropriation are provided solely as a grant for the community connections program in Walla Walla county.

~~((8))~~ (9) \$300,000 of the general fund—state fiscal year 1998 appropriation and \$300,000 of the general fund—state fiscal year 1999 appropriation are provided solely to contract with the Washington state association of court-appointed special advocates/guardians ad litem (CASA/GAL) to establish pilot programs in three counties to recruit additional community volunteers to represent the interests of children in dependency proceedings. Of this amount, a maximum of \$30,000 shall be used by the department to contract for an evaluation of the effectiveness of CASA/GAL in improving outcomes for dependent children. The evaluation shall address the cost-effectiveness of CASA/GAL and to the extent possible, identify savings in other programs of the state budget where the savings resulted from the efforts of the CASA/GAL volunteers. The department shall report to the governor and legislature by October 15, 1998.

~~((9))~~ (10) \$75,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for state sponsorship of the "BIO 99" international biotechnology conference and exhibition in the Seattle area in 1999.

~~((10))~~ (11) \$698,000 of the general fund—state appropriation for fiscal year 1998, \$697,000 of the general fund—state appropriation for fiscal year 1999, and \$1,101,000 of the administrative contingency account appropriation are provided solely for contracting with associate development organizations.

~~((11))~~ (12) \$50,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to expand the long-term care ombudsman program.

~~((12))~~ (13) \$60,000 of the general fund—state appropriation for fiscal year 1998 and \$60,000 of the general fund—state appropriation for fiscal year 1999 are

provided solely for implementation of the Puget Sound work plan action item DCTED-01.

~~((+3))~~ (14) \$20,000 of the general fund—state appropriation for fiscal year 1998 is provided solely for a task force on tourism promotion and development. The task force shall report to the legislature on its findings and recommendations by January 31, 1998.

~~((+4))~~ (15) \$61,000 of the general fund—state appropriation for fiscal year 1998 and \$60,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the pacific northwest economic region (PNWER).

~~((+5))~~ (16) \$123,000 of the general fund—state appropriation for fiscal year 1998 and \$124,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the community development finance program.

~~((+6))~~ (17) Within the appropriations provided in this section, the department shall conduct a study of possible financial incentives to assist in revitalization of commercial areas and report its findings and recommendations to the appropriate committees of the legislature by November 15, 1997.

(18) \$49,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement section 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If section 11 of the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(19) \$1,000,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the development of housing for low-income temporary or migrant farm workers through grants awarded after the effective date of this act. The legislature finds that providing housing for low-income temporary or migrant workers is a public purpose. The department shall prioritize grants and shall award grants on a competitive basis to local governments, nonprofit corporations, or other nonprofit entities. Grant moneys awarded by the department under this subsection may be matched by nonstate sources on a dollar-for-dollar basis, in cash or in-kind. Of the amount provided in this subsection, \$100,000 is provided solely for restroom and shower facilities at the Horn Rapids Park in Benton county; no match need be provided for this project. The amount provided in this subsection is contingent upon enactment of sections 1 through 8 of Second Substitute Senate Bill No. 6168. If any of these sections of the bill are not enacted by June 30, 1998, this subsection is null and void, and the amounts provided in this subsection shall lapse. Any amounts provided in this subsection not committed to grants by June 30, 1999, shall lapse.

(20) \$275,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for coastal erosion project grants to the city of Ocean Shores.

(21) \$191,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Substitute House Bill No. 2556 (child abuse prevention and treatment). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(22) \$965,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Substitute Senate Bill No 6655 (Spokane intercollegiate research and technology institute).

(23) \$92,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Engrossed Substitute Senate Bill No. 6560 (electric power customer rights). For any portion of the appropriation that is expended for contracted services, the department shall: (a) Form an advisory committee consisting of representatives from public utility districts and residential, commercial, and industrial customers; and (b) submit for review and approval by the advisory committee the request for proposal and selection of the successful bidder or bidders. If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(24) \$383,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the emergency food assistance program.

(25) \$120,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for grants to licensed overnight youth shelters for the purpose of assisting the shelters in meeting the minimum requirements for receiving a license under chapter 74.15 RCW. The department may provide grants of up to twenty thousand dollars per year for each shelter. Only shelters that are currently licensed are eligible to receive the grants. Funds may be used for the following purposes, including but not limited to: Additional staff, food, facility maintenance, or beds, provided that these costs are necessary to meet the licensing and facility standards adopted by the department of social and health services. For purposes of this subsection, "overnight youth shelter" means a licensed facility operated by a nonprofit agency that provides overnight shelter to homeless or runaway youth because of family problems or dysfunctions.

(26) \$27,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the sexual assault program within the office of crime victims advocacy.

(27) \$37,000 of the general fund—state appropriation for fiscal year 1998 and \$128,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for deposit in the state trade fair fund. If Engrossed Second Substitute Senate Bill No. 6562 is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(28) \$1,100,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the early childhood education and assistance program.

*Sec. 117 was partially vetoed. See message at end of chapter.

Sec. 118. 1997 c 454 s 104 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

General Fund—State Appropriation (FY 1998) . . .	\$	((10,530,000))
		<u>10,626,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((10,253,000))
		<u>11,160,000</u>
General Fund—Federal Appropriation	\$	23,331,000

General Fund—Local Appropriation	\$	190,000
TOTAL APPROPRIATION	\$	((44,114,000))
		<u>45,307,000</u>

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

(1) The office of financial management, in cooperation with the higher education coordinating board and the state board for community and technical colleges, shall develop long-term higher education enrollment forecasting models for consideration by the legislature. To the extent possible, the pilot models shall incorporate trends in demography, higher education applications, K-12 graduation rates, labor market needs, and state and national higher education policy and economic considerations. The public institutions of education shall cooperate in the development of models by providing any necessary data in a timely and organized manner. The private education institutions of the state are encouraged to participate in this effort. A preliminary report shall be provided to the appropriate committees of the legislature by November 1, 1998, and a final report shall be provided by January 15, 1999.

(2) \$139,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement Engrossed Second Substitute House Bill No. 2880 (task force on vendor contracting practices). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(3) \$250,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to contract with an outside management consultant to review the department of fish and wildlife's financial operations and management practices.

(4) \$25,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the legislature and the office of financial management to contract jointly for a performance review of the state long-term care system. The review shall result in recommendations by October 1, 1998, on strategies for increasing the long-term affordability and cost-effectiveness of the system, and shall include a review of topics such as methods for matching service levels to recipient needs, options for managing growth in entitlement caseloads, and techniques for projecting the number of persons in need of publicly funded services.

Sec. 119. 1997 c 149 s 129 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF PERSONNEL

Department of Personnel Service Account

Appropriation	\$	((16,493,000))
		<u>16,593,000</u>

Higher Education Personnel Services Account

Appropriation	\$	1,632,000
TOTAL APPROPRIATION	\$	((18,125,000))
		<u>18,225,000</u>

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

(1) The department shall reduce its charge for personnel services to the lowest rate possible.

(2) \$32,000 of the department of personnel service fund appropriation is provided solely for the creation, printing, and distribution of the personal benefits statement for state employees.

(3) The department of personnel service account appropriation contains sufficient funds to continue the employee exchange program with the Hyogo prefecture in Japan.

(4) \$500,000 of the department of personnel service account appropriation is provided solely for the career transition program to assist state employees who are separated or are at risk of lay-off due to reduction-in-force. Services shall include employee retraining and career counseling.

(5) \$800,000 of the department of personnel service account appropriation is provided solely for the human resource data warehouse to: Expand the type and amount of information available on the state-wide work force; and to provide the office of financial management, legislature, and state agencies with direct access to the data for policy and planning purposes. The department of personnel shall establish uniform reporting procedures, applicable to all state agencies and higher education institutions, for reporting data to the data warehouse by June 30, 1998. The department of personnel will report quarterly to the legislative fiscal committees, the office of financial management, the information services board, and the office of information technology oversight of the department of information services the following items: (a) The number of state agencies that have received access to the data warehouse (it is anticipated that approximately 40 agencies will receive access during the 1997-99 biennium); (b) the change in requests for downloads from the mainframe computer by agencies with access to the data warehouse, to reflect transferring customers use of the mainframe computer to the more economical use of data warehouse information; and (c) a summary of customer feedback from agencies with access to the data warehouse. Authority to expend this amount is conditioned on compliance with section 902 of this act.

(6) The department of personnel has the authority to charge agencies for expenses associated with converting its payroll/personnel computer system to accommodate the year 2000 date change. Funding to cover these expenses shall be realized from the agency FICA savings associated with the pretax benefits contributions plan.

(7) The department of personnel shall charge all administrative services costs incurred by the department of retirement systems for the deferred compensation program. The billings to the department of retirement systems shall be for actual costs only.

****Sec. 120. 1997 c 149 s 130 (uncodified) is amended to read as follows:
FOR THE WASHINGTON STATE LOTTERY***

Industrial Insurance Premium Refund

Appropriation	\$	9,000
Lottery Administrative Account		
Appropriation	\$	19,966,000
TOTAL APPROPRIATION	\$	19,975,000

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

(1) The state lottery shall apportion 30 percent of fiscal year 1999 gross revenue to the state general fund. If a lower percentage is apportioned to the general fund in fiscal year 1999, a dollar amount equal to the difference between the actual apportionment and 30 percent of fiscal year 1999 gross revenue shall lapse from the lottery administrative account appropriation.

(2) If the state lottery provides cash bonuses or cash marketing incentives to retailers, a dollar amount equal to the total cash bonuses and marketing incentives shall lapse from the lottery administrative account appropriation.

(3) The requirements of subsections (1) and (2) of this section are contingent upon the enactment of Engrossed House Bill No. 3120 (lottery revenues). If the bill is not enacted by June 30, 1998, subsections (1) and (2) of this section are null and void.

*Sec. 120 was vetoed. See message at end of chapter.

Sec. 121. 1997 c 149 s 134 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF RETIREMENT SYSTEMS—OPERATIONS

Dependent Care Administrative Account

Appropriation	\$	357,000
Department of Retirement Systems Expense Account		
Appropriation	\$	((31,415,000))
		<u>34,481,000</u>
TOTAL APPROPRIATION	\$	((31,772,000))
		<u>34,838,000</u>

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

(1) \$1,373,000 of the department of retirement systems expense account appropriation is provided solely for the information systems project known as the electronic document image management system. Authority to expend this amount is conditioned on compliance with section 902 of this act.

(2) \$1,259,000 of the department of retirement systems expense account appropriation is provided solely for the information systems project known as the receivables management system. Authority to expend this amount is conditioned on compliance with section 902 of this act.

(3) The department of retirement systems shall complete a study examining whether it would be cost-effective to contract out the administration functions for the dependent care assistance program and shall report to the fiscal committees of the legislature by December 15, 1997.

(4) \$118,000 of the department of retirement systems expense account appropriation is provided solely to implement Engrossed Substitute House Bill No. 2491 (TRS/PERS plan I gain sharing). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(5) \$920,000 of the department of retirement systems expense account appropriation is provided solely to implement Substitute Senate Bill No. 6306 (creating the Washington school employees' retirement system). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(6) \$42,000 of the department of retirement systems expense account appropriation is provided solely for the implementation of Engrossed Senate Bill No. 6305 (death benefits for port and university police). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 122, 1997 c 149 s 136 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF REVENUE

General Fund Appropriation (FY 1998)	\$	65,033,000
General Fund Appropriation (FY 1999)	\$	((65,320,000))
		<u>65,623,000</u>
Timber Tax Distribution Account		
Appropriation	\$	4,778,000
<u>Enhanced 911 Account Appropriation</u>	<u>\$</u>	<u>100,000</u>
Waste Reduction/Recycling/Litter Control		
Appropriation	\$	100,000
State Toxics Control Account Appropriation	\$	67,000
Solid Waste Management Account		
Appropriation	\$	92,000
Oil Spill Administration Account		
Appropriation	\$	14,000
TOTAL APPROPRIATION	\$	((135,404,000))
		<u>135,807,000</u>

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

(1) \$1,540,000 of the general fund appropriation for fiscal year 1998 and ~~(((\$1,710,000))~~ \$1,799,000 of the general fund appropriation for fiscal year 1999 are provided solely for senior citizen property tax deferral distribution. If neither Substitute Senate Bill No. 6321 nor Engrossed Substitute Senate Bill No. 6533 (senior/disabled property tax) is enacted by June 30, 1998, \$89,000 of the general fund appropriation for fiscal year 1999 shall lapse.

(2) Within the amounts appropriated in this section the department shall conduct a study identifying the impacts of exempting all shellfish species from the tax imposed on enhanced food fish under chapter 82.27 RCW. The study shall include an estimate of the fiscal impacts to state revenues as well as an examination of how such an exemption would impact shellfish-based industries and communities where shellfish-based industries are located. The department

shall complete this study and report its findings to the legislature by December 1, 1997.

(3) \$60,000 of the general fund appropriation for fiscal year 1999 is provided solely for a study of the costs incurred by retailers in collecting and remitting state and local sales taxes. The department shall (a) identify and estimate the costs for small, medium, and large retailers, (b) estimate the cost to retailers of implementing changes in tax rates and/or the tax base, (c) identify current statutory and regulatory procedures that impose costs and burdens on retailers, as well as alternatives that would lessen these costs and burdens, (d) estimate any direct or indirect compensation retailers currently receive, if any, and (e) review how many other states provide compensation to retailers and the nature of the compensation. The department shall report its findings to the fiscal committees of the house of representatives and senate by December 31, 1998.

(4) \$100,000 of the enhanced 911 account appropriation is provided solely for costs associated with convening a study group on enhanced 911 wireless implementation. The department of revenue shall convene a study group consisting of, but not limited to, representatives of the following: The office of financial management, the military department, the state enhanced 911 advisory committee, the department of revenue, and the utilities and transportation commission. The study shall evaluate the most efficient and cost-effective manner to implement state-wide enhanced 911 emergency communications services for radio access telephone lines. The study will also include an evaluation of the technical issues affecting the implementation of wireless enhanced 911 and may hire a telecommunications consultant to conduct this evaluation. The study group shall present its findings and recommendations to the governor and the appropriate committees of the legislature no later than December 31, 1998.

(5) \$104,000 of the general fund appropriation for fiscal year 1999 is provided solely for the implementation of tax legislation enacted during the 1998 legislative session.

(6) \$50,000 of the general fund appropriation for fiscal year 1999 is provided solely to implement sections 3 and 4 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 3 and 4 of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 122 was partially vetoed. See message at end of chapter.

Sec. 123, 1997 c 149 s 141 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF INFORMATION SERVICES

Data Processing Revolving Account

Appropriation	\$	3,577,000
<u>Education Savings Account Appropriation</u>	<u>\$</u>	<u>6,900,000</u>
K-20 Technology Account Appropriation	\$	44,028,000
TOTAL APPROPRIATION	\$	((47,605,000))
		<u>54,505,000</u>

The appropriations in this section ~~((is))~~ are subject to the following conditions and limitations:

(1) The department shall provide a toll-free telephone number and operator service staff for the general public to call for information about state agencies. The department may provide such staff, equipment, and facilities as are necessary for this purpose. The director shall adopt rules to fix terms and charges for these services. All state agencies and the legislature shall participate in the information program and shall reimburse the department of information services in accordance with rules established by the director. The department shall also provide conference calling services for state and other public agencies on a fee-for-service basis.

(2) \$44,028,000 of the K-20 technology account appropriation shall be expended in accordance with the expenditures authorized by the K-20 telecommunications oversight and policy committee as currently existing or as modified by Substitute House Bill No. 1698, Substitute Senate Bill No. 5002, or substantially similar legislation (K-20 telecommunications network).

(3) \$6,900,000 of the education savings account appropriation is provided solely to complete the build-out of phase II of the K-12 portion of the K-20 network.

*Sec. 124, 1997 c 149 s 142 (uncodified) is amended to read as follows:

FOR THE INSURANCE COMMISSIONER

General Fund—Federal Appropriation	\$	106,000
Insurance Commissioners Regulatory Account		
Appropriation	\$	22,431,000
TOTAL APPROPRIATION	\$	22,537,000

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

(1) \$532,000 of the insurance commissioner's regulatory account appropriation is provided solely for the expenditure of funds received under the consent order with the Prudential insurance company. These funds are provided solely for implementing the Prudential remediation process and for examinations of the Prudential company.

~~(2) ((\$206,000 of the insurance commissioner's regulatory account appropriation is provided solely to implement Substitute House Bill No. 1387 (basic health plan benefits). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.~~

~~—(3))~~ \$298,000 of the insurance commissioner's regulatory account appropriation is provided solely for technology improvements that will support the electronic filing of insurance rates and contracts and enable regulators and the industry to share information about licensed agents to protect the public from fraudulent sales practices.

(3) \$50,000 of the insurance commissioner's regulatory account appropriation is provided solely to implement sections 10 and 12 of Engrossed

Second Substitute House Bill No. 2345 (revising administrative law). If sections 10 and 12 of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(4) \$100,000 of the insurance commissioner's regulatory account appropriation is provided solely for allocation to the traffic safety commission for implementation of Engrossed Substitute House Bill No. 2439, the Cooper Jones Act (bicycle/pedestrian safety education). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 124 was partially vetoed. See message at end of chapter.

*Sec. 125, 1997 c 149 s 145 (uncodified) is amended to read as follows:

FOR THE HORSE RACING COMMISSION

Horse Racing Commission Account Appropriation \$ 4,828,000

The appropriation in this section is subject to the following conditions and limitations: Within the amounts appropriated in this section, the horse racing commission, in consultation with the gambling commission, shall study the impact on the major live race tracks and the horse racing and breeding industry of allowing gambling activity currently authorized in Washington by state law or under a state/tribal compact agreement to be conducted at the live race track facilities. The horse racing commission shall report to the appropriate committees of the legislature by December 15, 1998.

*Sec. 125 was vetoed. See message at end of chapter.

Sec. 126, 1997 c 149 s 146 (uncodified) is amended to read as follows:

FOR THE LIQUOR CONTROL BOARD

General Fund Appropriation (FY 1998)	\$	1,603,000
General Fund Appropriation (FY 1999)	\$	((1,242,000))
		<u>1,294,000</u>
Liquor Control Board Construction and Maintenance		
Account Appropriation	\$	9,919,000
Liquor Revolving Account Appropriation	\$	((121,391,000))
		<u>122,607,000</u>
TOTAL APPROPRIATION	\$	((134,155,000))
		<u>135,423,000</u>

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

(1) \$1,250,000 of the liquor revolving account appropriation is provided solely for the agency information technology upgrade. This item is conditioned on satisfying the requirements of section 902 of this act, including the development of a project management plan, a project schedule, a project budget, a project agreement, and incremental funding based on completion of key milestones.

(2) \$1,603,000 of the general fund fiscal year 1998 appropriation and \$1,242,000 of the general fund fiscal year 1999 appropriation are provided solely to implement Substitute Senate Bill No. 6084 or Engrossed Substitute House Bill

No. 2272 (transferring enforcement provisions regarding cigarette and tobacco taxes to the liquor control board). If neither bill is enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(3) \$459,000 of the liquor revolving account appropriation is provided solely for implementation of Substitute Senate Bill No. 5664 (credit and debit cards purchases in state liquor stores). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(4) \$154,000 of the liquor revolving account appropriation is provided solely for the implementation of Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(5) \$944,000 of the liquor revolving account appropriation is provided solely for the increase in vendor commissions due to the higher than expected growth in sales volume.

(6) Within the amounts provided in this section, the liquor control board shall prepare and submit a report on the liquor agency vendor system to the legislature by December 1, 1998. The report shall provide information on: (a) The development and changes to the liquor agency vendor store system during the last twenty years; (b) the business profile of liquor agency vendors, including the number of liquor agency vendors that sell only liquor and the number of liquor agency vendors that sell other items besides liquor; (c) the growth in the number of liquor agency vendors during the last twenty years; (d) the locations served by liquor agency vendors; (e) the criteria used for establishing liquor agency vendors and determining whether to open a state liquor store in a particular location; (f) the average annual commission paid per liquor agency vendor during the last twenty years; (g) the commission rate and components of the commissions provided to liquor agency vendors during the last twenty years; (h) the basis for any changes to the commission rate or components of the commissions provided to liquor agency vendors during the last twenty years; and (i) gross liquor sales by liquor agency vendors during the last twenty years.

(7) \$272,000 of the liquor revolving account appropriation is provided solely for the implementation of Substitute Senate Bill No. 6253 (credit and debit card purchases in state liquor agency vendors). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(8) \$52,000 of the general fund appropriation for fiscal year 1999 is provided solely for equipment for cigarette tax enforcement activities.

Sec. 127. 1997 c 149 s 147 (uncodified) is amended to read as follows:

FOR THE UTILITIES AND TRANSPORTATION COMMISSION

Public Service Revolving Account—State

Appropriation	\$	(24,313,000)
		24,754,000

Public Service Revolving Account—Federal

Appropriation	\$	292,000
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TOTAL APPROPRIATION	\$	((24,605,000))
		<u>25,046,000</u>

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

(1) \$133,000 of the public service revolving account—state appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 6560 (electric power customer rights). For any portion of the appropriation that is expended for contracted services, the commission shall: (a) Form an advisory committee consisting of representatives from electrical companies regulated by the commission, and residential, commercial, and industrial customers served by those companies; and (b) submit for review and approval by the advisory committee the request for proposal and selection of the successful bidder or bidders. If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(2) \$308,000 of the public service revolving account—state appropriation is provided solely for the implementation of Engrossed Substitute Senate Bill No. 6622 (federal telecommunications act). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

Sec. 128. 1997 c 454 s 105 (uncodified) is amended to read as follows:

FOR THE MILITARY DEPARTMENT

General Fund—State Appropriation (FY 1998) . . .	\$	((8,151,000))
		<u>8,602,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((8,151,000))
		<u>9,390,000</u>
General Fund—Federal Appropriation	\$	34,314,000
General Fund—Private/Local Appropriation	\$	238,000
Flood Control Assistance Account Appropriation .	\$	3,000,000
Enhanced 911 Account Appropriation	\$	26,782,000
Disaster Response Account—State Appropriation .	\$	((23,977,000))
		<u>25,487,000</u>
Disaster Response Account—Federal Appropriation	\$	((95,419,000))
		<u>110,812,000</u>
TOTAL APPROPRIATION	\$	((200,035,000))
		<u>218,625,000</u>

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

(1) \$365,000 of the general fund—state appropriation for fiscal year 1998, \$1,145,000 of the general fund—state appropriation for fiscal year 1999, \$3,000,000 of the flood control assistance account appropriation, and \$6,197,000 of the general fund—federal appropriation are provided solely for deposit in the disaster response account to cover costs pursuant to subsection (2) of this section.

(2) ((23,977,000)) \$25,122,000 of the disaster response account—state appropriation is provided solely for the state share of response and recovery costs

associated with federal emergency management agency (FEMA) disaster number 1079 (November/December 1995 storms), FEMA disaster 1100 (February 1996 floods), FEMA disaster 1152 (November 1996 ice storm), FEMA disaster 1159 (December 1996 holiday storm), FEMA disaster 1172 (March 1997 floods) and to assist local governmental entities with the matching funds necessary to earn FEMA funds for FEMA disaster 1100 (February 1996 floods). \$356,000 of the disaster response account—state appropriation is provided solely for fire mobilization costs. \$9,000 of the disaster response account—state appropriation is provided solely for costs associated with FEMA disaster 1182 (Pend Oreille county 1997 spring flood).

(3) \$100,000 of the general fund—state fiscal year 1998 appropriation and \$100,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the implementation of a conditional scholarship program pursuant to chapter 28B.103 RCW.

(4) \$35,000 of the general fund—state fiscal year 1998 appropriation and \$35,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the north county emergency medical service.

(5) \$36,000 of the general fund—state fiscal year 1998 appropriation and \$72,000 of the general fund—state fiscal year 1999 appropriation are provided solely for emergency worker claims pursuant to chapter 38.52 RCW.

Sec. 129. 1997 c 149 s 152 (uncodified) is amended to read as follows:

FOR THE STATE CONVENTION AND TRADE CENTER

State Convention and Trade Center Operating Account

Appropriation	\$	((27,175,000))
		<u>27,394,000</u>

**PART II
HUMAN SERVICES**

Sec. 201. 1997 c 149 s 201 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES.

(1) Appropriations made in this act to the department of social and health services shall initially be allotted as required by this act. Subsequent allotment modifications shall not include transfers of moneys between sections of this act except as expressly provided in ~~((this act))~~ subsection (3) of this section, nor shall allotment modifications permit moneys that are provided solely for a specified purpose to be used for other than that purpose.

(2) The department of social and health services 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 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 providing

appropriation authority, and an equal amount of appropriated state general fund 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.

(3) (~~The appropriations in sections 202 through 213 of this act shall be expended for the programs and in the amounts listed in those sections:)~~)

(a) The appropriations to the department of social and health services in chapters 149 and 454, Laws of 1997, as amended, shall be expended for the programs and in the amounts specified therein. However, after May 1, 1998, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year 1998 among programs after approval by the director of financial management. However, the department shall not transfer general fund—state appropriations from the economic services program for the 1997-99 fiscal biennium.

(b) To the extent that the transfer of appropriations under subsection (a) of this section is insufficient to fund actual expenditures in fiscal year 1998 in the medical assistance program that exceed the expenditures projected in the November 1997 medical assistance caseload forecast, the department may transfer general fund appropriations, not to exceed five million dollars, within the medical assistance program from fiscal year 1999 into fiscal year 1998.

(c) The director of financial management shall notify the appropriate fiscal committees of the senate and house of representatives in writing prior to approving any allotment modifications.

Sec. 202. 1997 c 454 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 1998) . . . \$	((196,437,000)) <u>201,453,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((208,861,000)) <u>213,035,000</u>
General Fund—Federal Appropriation \$	((252,269,000)) <u>252,300,000</u>
General Fund—Private/Local Appropriation \$	400,000
Violence Reduction and Drug Enforcement Account Appropriation \$	((4,230,000)) <u>4,332,000</u>
TOTAL APPROPRIATION \$	((662,197,000)) <u>671,520,000</u>

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

(1) \$16,510,000 of the general fund—state appropriation for fiscal year 1998 and \$17,508,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for purposes consistent with the maintenance of effort requirements under the federal temporary assistance for needy families program established under P.L. 104-193.

(2) ~~\$(837,000)~~ 4,332,000 of the violence reduction and drug enforcement account appropriation and ~~\$(7,228,000)~~ 3,733,000 of the general fund—federal appropriation are provided solely for the operation of the family policy council, the community public health and safety networks, and delivery of services authorized under the federal family preservation and support act. Within the funds provided, the family policy council shall contract for an evaluation of the community networks with the institute for public policy and shall provide for audits of ten networks. Within the funds provided, the family policy council may build and maintain a geographic information system database tied to community network geography.

(3) \$577,000 of the general fund—state fiscal year 1998 appropriation and \$577,000 of the general fund—state fiscal year 1999 appropriation are provided solely to contract for the operation of one pediatric interim care facility. The facility shall provide residential care for up to twelve 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 also shall 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.

(4) \$481,000 of the general fund—state fiscal year 1998 appropriation and \$481,000 of the general fund—state fiscal year 1999 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.

(5) \$640,000 of the general fund—state appropriation for fiscal year 1998 and \$640,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to fund Second Substitute Senate Bill No. 5710 (juvenile care and treatment), including section 2 of the bill. Amounts provided in this subsection to implement Second Substitute Senate Bill No. 5710 must be used to serve families who are screened from the child protective services risk assessment process. Services shall be provided through contracts with community-based

organizations. If neither bill is enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(6) \$594,000 of the general fund—state appropriation for fiscal year 1998, \$556,000 of the general fund—state appropriation for fiscal year 1999, and \$290,000 of the general fund—federal appropriation are provided solely to fund the provisions of Engrossed Second Substitute House Bill No. 2046 (foster parent liaison). The department shall establish a foster parent liaison in each department of social and health services region of the state and contract with a private provider to implement a recruitment and retention program for foster parents and adoptive families. The department shall provide a minimum of two hundred additional adoptive and foster home placements by June 30, 1998. If the bill is not enacted by June 30, 1997, the amounts in this subsection shall lapse.

(7) \$433,000 of the fiscal year 1998 general fund—state appropriation, \$395,000 of the fiscal year 1999 general fund—state appropriation, and \$894,000 of the general fund—federal appropriation are provided solely to increase the rate paid to private child-placing agencies.

(8) \$580,000 of the general fund—state appropriation for fiscal year 1998 and \$580,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for development and expansion of child care training requirements and optional training programs. The department shall adopt rules to require annual training in early childhood development of all directors, supervisors, and lead staff at child care facilities. Directors, supervisors, and lead staff at child care facilities include persons licensed as family child care providers, and persons employed at child care centers or school age child care centers. The department shall establish a program to fund scholarships and grants to assist persons in meeting these training requirements. The department shall also develop criteria for approving training programs and establish a system for tracking who has received the required level of training. In adopting rules, developing curricula, setting up systems, and administering scholarship programs, the department shall consult with the child care coordinating committee and other community stakeholders.

(9) The department shall provide a report to the legislature by November 1997 on the growth in additional rates paid to foster parents beyond the basic monthly rate. This report shall explain why exceptional, personal, and special rates are being paid for an increasing number of children and why the amount paid for these rates per child has risen in recent years. This report must also recommend methods by which the legislature may improve the current foster parent compensation system, allow for some method of controlling the growth in costs per case, and improve the department's and the legislature's ability to forecast the program's needs in future years.

(10) \$100,000 of the general fund—state appropriation for fiscal year 1998 and \$100,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for legal costs associated with the defense of vendors operating

a secure treatment facility, for actions arising from the good faith performance of treatment services for behavioral difficulties or needs.

(11) \$2,745,000 of the fiscal year 1998 general fund—state appropriation, \$2,745,000 of the fiscal year 1999 general fund—state appropriation, and \$1,944,000 of the general fund—federal appropriation are provided solely for the category of services titled "intensive family preservation services."

(12) ~~\$(2,200,000))~~ 1,642,000 of the fiscal year 1998 general fund—state appropriation and ~~\$(2,200,000))~~ 1,207,000 of the fiscal year 1999 general fund—state appropriation and \$1,551,000 of the general fund—federal appropriation are provided solely to continue existing continuum of care and street youth projects.

(13) \$1,456,000 of the general fund—state appropriation for fiscal year 1998, \$1,474,000 of the general fund—state appropriation for fiscal year 1999 and \$1,141,000 of the general fund—federal appropriation are provided solely for the improvement of quality and capacity of the child care system and related consumer education. The activities funded by this appropriation shall include, but not be limited to: Expansion of child care resource and referral network services to serve additional families, to provide technical assistance to child care providers, and to cover currently unserved areas of the state; development of and incentives for child care during nonstandard work hours; and the development of care for infants, toddlers, preschoolers, and school age youth. These amounts are provided in addition to funding for child care training and fire inspections of child care facilities. These activities shall also improve the quality and capacity of the child care system.

(14)(a) \$6,565,000 of the general fund—state appropriation for fiscal year 1998 and \$7,454,000 of the general fund—state appropriation for fiscal year 1999 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 department shall not retain any portion of these funds to cover administrative or any other departmental costs. The department, 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 quarter during the 1997-1999 fiscal biennium, each county shall report the number of petitions processed and the total costs of processing the petitions in each of the following categories: Truancy, children in need of services, and at-risk youth. Counties shall submit the reports to the department no later than 45 days after the end of the quarter. The department shall forward this information to the chair and ranking minority member of the house appropriations committee and the senate ways and means committee no later than 60 days after a quarter ends. These reports are deemed informational in nature and are not for the purpose of distributing funds.

(15) \$70,000 of the fiscal year 1999 general fund—state appropriation is provided solely for foster parent intervention support teams.

(16) \$255,000 of the general fund—state appropriation for fiscal year 1999 and \$67,000 of the general fund—federal appropriation are provided solely for implementation of Substitute House Bill No. 2556 (child abuse prevention and treatment). If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(17) The department and the attorney general shall jointly make recommendations to the legislature to reduce or limit the state's liability for damages in child welfare cases, including shelter care and dependency proceedings. The recommendations shall be submitted to the appropriate committees of the legislature by December 1, 1998.

(18) To the extent funds are available, the department shall pay the expense of fingerprint criminal history record checks for low-income family day care homes through the federal bureau of investigation. The department may promulgate rules to set eligibility levels.

(19) Sufficient funding is provided in this section to implement Engrossed Substitute Senate Bill No. 6238 (dependent children).

Sec. 203. 1997 c 454 s 203 (uncodified) is amended to read as follows:

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

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 1998) . . .	\$	((32,305,000))
		<u>35,894,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((32,348,000))
		<u>35,522,000</u>
General Fund—Federal Appropriation	\$	((+6,125,000))
		<u>13,365,000</u>
General Fund—Private/Local Appropriation	\$	378,000
Violence Reduction and Drug Enforcement Account Appropriation	\$	((+1,256,000))
		<u>14,080,000</u>
TOTAL APPROPRIATION	\$	((92,412,000))
		<u>99,239,000</u>

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

(a) \$527,000 of the violence reduction and drug enforcement account appropriation is provided solely for deposit in the county criminal justice assistance account solely for costs to the criminal justice system associated with the implementation of Engrossed Third Substitute House Bill No. 3900 (revising the juvenile code). If Engrossed Third Substitute House Bill No. 3900 is not enacted by June 30, 1997, the amount provided in this subsection shall lapse. The amount provided in this subsection is intended to provide funding for county adult court costs associated with the implementation of Engrossed Third Substitute House Bill No. 3900 and shall be distributed in accordance with RCW 82.14.310.

(b) \$2,917,000 of the violence reduction and drug enforcement account is provided solely for the implementation of Engrossed Third Substitute Senate Bill No. 3900 (revising the juvenile code). The amount provided in this subsection is intended to provide funding for county impacts associated with the implementation of Third Substitute Senate Bill No. 3900 and shall be distributed to counties as prescribed in the current consolidated juvenile services (CJS) formula. If the bill is not enacted by June 30, 1997, the amounts provided shall lapse.

(c) \$2,350,000 of the general fund—state fiscal year 1998 appropriation and \$2,350,000 of the general fund—state fiscal year 1999 appropriation are provided solely for an early intervention program to be administered at the county level. Moneys shall be awarded on a competitive basis to counties that have submitted plans for implementation of an early intervention program consistent with proven methodologies currently in place in the state. 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.

(d) \$1,221,000 of the violence reduction and drug enforcement appropriation is provided solely to implement alcohol and substance abuse treatment for locally committed offenders. The juvenile rehabilitation administration shall award these moneys on a competitive basis to counties that have submitted a plan for the provision of treatment 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. If Engrossed Third Substitute House Bill No. 3900 (juvenile code revisions) is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(e) \$100,000 of the general fund—state fiscal year 1998 appropriation and \$100,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the juvenile rehabilitation administration to contract with the institute for public policy for the responsibilities assigned in Engrossed Third Substitute House Bill No. 3900 (juvenile code revisions). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(f) \$400,000 of the violence reduction and drug enforcement account appropriation is provided solely for the development of standards measuring the effectiveness of chemical dependency treatment and for conducting evaluations of chemical dependency programs pursuant to Engrossed Third Substitute House Bill No. 3900 (revising the juvenile code). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse. The juvenile rehabilitation administration shall consult with the division of alcohol and substance abuse and contract with the University of Washington to develop the standards and conduct the evaluations.

(g) \$150,000 of the general fund—state fiscal year 1998 appropriation and \$150,000 of the general fund—state fiscal year 1999 appropriation are provided

solely for a contract to expand the services of the teamchild project to additional sites. Priority use of these funds shall be to provide teamchild service to early repeat offenders to help ensure they receive appropriate child welfare and educational services.

(h) \$2,700,000 of the violence reduction and drug enforcement account appropriation is provided solely to implement community juvenile accountability grants pursuant to chapter 338, Laws of 1997 (juvenile justice). 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.

(i) \$2,175,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Second Substitute Senate Bill No. 6445 (child community facility placement). If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse. The funds are intended to improve the security of state-operated and privately contracted group homes. By June 30, 1999, the juvenile rehabilitation administration shall report to the appropriate policy and fiscal committees of the legislature on the specific actions, and the cost of each action, taken to improve security at both state-operated and contracted group homes.

(j) \$150,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the Skagit county delinquency prevention project.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 1998) . . .	\$	((44,782,000))
		43,909,000
General Fund—State Appropriation (FY 1999) . . .	\$	((44,662,000))
		45,977,000
General Fund—Private/Local Appropriation	\$	727,000
Violence Reduction and Drug Enforcement Account		
Appropriation	\$	15,281,000
TOTAL APPROPRIATION	\$	((105,452,000))
		105,894,000

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

(a) \$3,680,000 of the violence reduction and drug enforcement account appropriation is provided solely for the implementation of Engrossed Third Substitute House Bill No. 3900 (juvenile code revisions). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(b) \$105,000 of the general fund—state appropriation for fiscal year 1998 and \$377,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for costs associated with implementing chapter 386, Laws of 1997 (juvenile care and treatment).

(c) \$44,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement House Bill No. 1172 (sex offender registration). If

the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 1998) . . . \$	((+922,000))
	<u>1,930,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((+610,000))
	<u>1,654,000</u>
General Fund—Federal Appropriation \$	156,000
Violence Reduction and Drug Enforcement Account	
Appropriation \$	421,000
TOTAL APPROPRIATION \$	((4,109,000))
	<u>4,161,000</u>

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

(a) \$92,000 of the general fund—state fiscal year 1998 appropriation and \$36,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the implementation of Substitute Senate Bill No. 5759 (risk classification). If the bill is not enacted by June 30, 1997, the amounts provided shall lapse.

(b) \$206,000 of the general fund—state fiscal year 1998 appropriation is provided solely for the implementation of Engrossed Second Substitute Senate Bill No. 5710 (juvenile care and treatment). If the bill is not enacted by June 30, 1997, the amount provided shall lapse.

(c) \$97,000 of the general fund—state fiscal year 1998 appropriation and \$36,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the implementation of Engrossed Third Substitute House Bill No. 3900 (juvenile code revisions). If the bill is not enacted by June 30, 1997, the amounts provided shall lapse.

(d) Within the amounts provided in this subsection, the juvenile rehabilitation administration (JRA) shall develop by January 1, 1998, a staffing model for noncustody functions at JRA institutions and work camps. The models should, whenever possible, reflect the most efficient practices currently being used within the system.

(e) \$15,000 of the general fund—state appropriation for fiscal year 1998 and \$175,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the study required in Second Substitute Senate Bill No. 6445 (child community facility placement). If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse. The juvenile rehabilitation administration (JRA) shall contract with the institute for public policy for the studies required by the bill.

***Sec. 204. 1997 c 149 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 1998) . . .	\$	((167,577,000))	<u>170,940,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((170,803,000))	<u>173,645,000</u>
General Fund—Federal Appropriation	\$	((296,006,000))	<u>299,651,000</u>
General Fund—Private/Local Appropriation	\$		4,000,000
TOTAL APPROPRIATION	\$	((638,386,000))	<u>648,236,000</u>

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

(a) Regional support networks shall use portions of the general fund—state appropriation for implementation of working agreements with the vocational rehabilitation program which will maximize the use of federal funding for vocational programs.

(b) 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 adult services program for the general fund—state cost of medicaid personal care services that enrolled regional support network consumers use because of their psychiatric disability.

~~(c) ((\$2,413,000 of the general fund—state appropriation for fiscal year 1998 and \$2,393,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to directly reimburse eligible providers for the medicaid share of mental health services provided to persons eligible for both medicaid and medicare. To be reimbursed, the service must be covered by and provided in accordance with the state medicaid plan.~~

~~(d))~~ (d) \$1,304,000 of the general fund—state appropriation for fiscal year 1998, \$3,356,000 of the general fund—state appropriation for fiscal year 1999, and \$5,056,000 of the general fund—federal appropriation are provided solely for distribution to those regional support networks whose 1997-99 allocation would otherwise be less than the regional support network would receive if all funding appropriated in this subsection (I) of this section for medicaid outpatient mental health services were distributed among all regional support networks at the state-wide average per capita rate for each eligibility category.

~~((e))~~ (d) At least thirty days prior to entering contracts that would capitate payments for voluntary psychiatric hospitalizations, the mental health division shall report the proposed capitation rates, and the assumptions and calculations by which they were established, to the budget and forecasting divisions of the office of financial management, the appropriations committee of the house of representatives, and the ways and means committee of the senate.

(e) \$533,000 of the general fund—state appropriation for fiscal year 1999 and \$587,000 of the general fund—federal appropriation are provided solely for the implementation of the Second Substitute Senate Bill No. 6214 (mentally ill

commitment). If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 1998) . . . \$	((59,496,000))
	<u>62,368,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((59,508,000))
	<u>60,698,000</u>
General Fund—Federal Appropriation \$	((127,118,000))
	<u>133,504,000</u>
General Fund—Private/Local Appropriation \$	((30,940,000))
	<u>25,007,000</u>
TOTAL APPROPRIATION \$	((277,062,000))
	<u>281,577,000</u>

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

(a) The state mental 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) The mental health program at Western state hospital shall continue to use labor provided by the Tacoma prerelease program of the department of corrections.

(c) \$246,000 of the general fund—state fiscal year 1998 appropriation and \$318,000 of the general fund—state fiscal year 1999 appropriation are provided solely for funding outside medical costs. The mental health division shall provide a report on outside medical costs to the fiscal committees of the legislature by September 30, 1998, and September 30, 1999. The report shall detail the monthly and per capita expenditures for outside medical costs at each state hospital.

(d) \$256,000 of the general fund—state fiscal year 1998 appropriation and \$254,000 of the general fund—state fiscal year 1999 appropriation are provided solely for funding pharmacy and new drug costs. The mental health division shall provide a report on pharmacy and new drug costs to the fiscal committees of the legislature by September 30, 1998, and September 30, 1999. The report shall detail monthly and per capita expenditures for pharmacy and new drug costs for each state hospital. Expenditures for each new generation atypical antipsychotic medication including clozapine, resperidone, olanzapine, and any newly introduced medications of this nature shall be specifically reported.

(e) \$1,700,000 of the general fund—state fiscal year 1998 appropriation is provided solely for replacing lost federal revenues in fiscal year 1998 due to a changed definition of discharge for medicare reimbursement purposes. The mental health division must aggressively pursue the prompt resolution of issues resulting in this loss of revenues with the federal health care financing administration. In the event any or all of the lost federal revenues are restored,

an equal amount of the general fund—state fiscal year 1998 appropriation shall lapse.

(f) Within the funds provided in this section, the mental health division shall develop by October 1, 1998, a staffing model for direct and indirect functions for the wards at each of the state hospitals. The model should, whenever possible, reflect the most efficient practices for providing treatment and therapeutic services appropriate to the characteristics and needs of the individual patient.

(g) \$1,508,000 of the general fund—state appropriation for fiscal year 1999, \$92,000 of the general fund—federal appropriation, and \$107,000 of the general fund private/local appropriation are provided solely for the implementation of the Second Substitute Senate Bill No. 6214 (mentally ill commitment). If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(3) CIVIL COMMITMENT

General Fund Appropriation (FY 1998)	\$	(5,423,000)
		7,174,000
General Fund Appropriation (FY 1999)	\$	(6,082,000)
		7,779,000
TOTAL APPROPRIATION	\$	(+1,505,000)
		14,953,000

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

(a) \$2,088,000 of the general fund—state fiscal year 1998 appropriation and \$2,415,000 of the general fund—state fiscal year 1999 appropriation are provided solely for court-related costs for residents at the special commitment center.

(b) Within the funds provided in this subsection, the mental health division shall develop by October 1, 1998, a staffing model for direct and indirect functions at the special commitment center. The model should, whenever possible, reflect the most efficient practices for providing treatment and therapeutic services appropriate to the characteristics and needs of the individual patient.

(4) SPECIAL PROJECTS

General Fund—State Appropriation (FY 1998) . . .	\$	50,000
General Fund—State Appropriation (FY 1999) . . .	\$	450,000
General Fund—Federal Appropriation	\$	3,826,000
TOTAL APPROPRIATION	\$	4,326,000

The appropriations in this subsection are subject to the following conditions and limitations: \$50,000 of the general fund—state appropriation for fiscal year 1998 and \$450,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for development and operation of the pilot project for mentally ill offenders described in Substitute Senate Bill No. 6002 (mentally ill offenders). If the bill is not enacted by June 30, 1997, the amounts provided shall lapse.

(5) PROGRAM SUPPORT

General Fund—State Appropriation (FY 1998) . . . \$	((2,560,000))
	<u>2,537,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((2,395,000))
	<u>2,569,000</u>
General Fund—Federal Appropriation \$	((3,111,000))
	<u>3,085,000</u>
TOTAL APPROPRIATION \$	((8,066,000))
	<u>8,191,000</u>

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

(a) \$60,000 of the general fund—state appropriation for fiscal year 1998 is provided solely to increase the department's capacity to carry out legislative intent set forth in RCW 71.24.400 through 71.24.415. To facilitate this activity, the secretary shall appoint an oversight committee of project stakeholders including representatives from: Service providers, mental health regional support networks, the department's mental health division, the department's division of alcohol and substance abuse, the department's division of children and family services, and the department's medical assistance administration. The oversight group shall continue to seek ways to streamline service delivery as set forth in RCW 71.24.405 until at least July 1, 1998.

(b) \$96,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Second Substitute Senate Bill No. 6214 (mentally ill commitment). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(c) \$100,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the evaluation required by Second Substitute Senate Bill No. 6214 (mentally ill commitment). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse. The mental health division shall contract with the institute for public policy for this evaluation.

*Sec. 204 was partially vetoed. See message at end of chapter.

***Sec. 205. 1997 c 149 s 205 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
DEVELOPMENTAL DISABILITIES PROGRAM**

Notwithstanding any other limitations in this section, the secretary shall transfer \$1,140,000 of the general fund—state appropriation, and \$1,060,000 of the general fund—federal appropriation, or so much thereof as may be necessary, among subsections of this section to implement Second Substitute Senate Bill No. 6751 (developmental disabilities service options).

(1) COMMUNITY SERVICES

General Fund—State Appropriation (FY 1998) . . . \$	((140,172,000))
	<u>147,757,000</u>

General Fund—State Appropriation (FY 1999) . . . \$	((142,643,000))
	<u>166,773,000</u>
General Fund—Federal Appropriation \$	((194,347,000))
	<u>226,737,000</u>
Health Services Account Appropriation \$	((1,695,000))
	<u>639,000</u>
TOTAL APPROPRIATION \$	((478,857,000))
	<u>541,906,000</u>

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

(a) ~~(\$1,695,000 of)~~ The health services account appropriation and \$((1,835,000)) 692,000 of the general fund—federal appropriation are provided solely for the enrollment in the basic health plan of home care workers with family incomes below 200 percent of the federal poverty level who are employed through state contracts. Enrollment in the basic health plan for home care workers with family incomes at or above 200 percent of poverty shall be covered with general fund—state and matching general fund—federal revenues that were identified by the department to have been previously appropriated for health benefits coverage, to the extent that these funds had not been contractually obligated for worker wage increases prior to March 1, 1996.

(b) \$365,000 of the general fund—state appropriation for fiscal year 1998 and \$1,543,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for employment, or other day activities and training programs, for young people who complete their high school curriculum in 1997 or 1998.

(c) ~~\$(22,974,000)) 24,399,000~~ of the general fund—state appropriation for fiscal year 1998 and ~~\$(25,111,000)) 28,729,000~~ of the general fund—state appropriation for fiscal year 1999 ~~(, plus any vendor rate increases allotted in accordance with section 213 of this act,))~~ are provided solely to deliver personal care services ~~((to an average of 6,250 children and adults in fiscal year 1998 and an average of 7,100 children and adults in fiscal year 1999)).~~ Within these amounts, sufficient funding is provided to restore funding for medicaid personal care exceptional rates to the fiscal year 1997 level. If the secretary of social and health services determines that total expenditures are likely to exceed these appropriated amounts, the secretary shall take action as required by RCW 74.09.520 to adjust either functional eligibility standards or service levels or both sufficiently to maintain expenditures within appropriated levels. Such action may include the adoption of emergency rules and may not be taken to the extent that projected over-expenditures are offset by under-expenditures elsewhere within the program's general fund—state appropriation. Prior to making eligibility changes which would terminate all services to some persons, the secretary should first exercise all opportunities to manage the average cost per person served, through methods such as promoting the use of informal care; assuring that local offices are effectively and consistently authorizing the least expensive level of care which can meet recipient needs; and reducing on a sliding-scale basis the amount of

service authorized per functional need level, with smaller reductions for greater levels of need.

(d) \$(453,000) 144,000 of the general fund—state appropriation for fiscal year 1998, \$(214,000) 453,000 of the general fund—state appropriation for fiscal year 1999, and \$(719,000) 654,000 of the general fund—federal appropriation are provided solely to continue operation of the united cerebral palsy residential center during the period in which its residents are phasing into new community residences.

(e) \$197,000 of the general fund—state appropriation for fiscal year 1998 and \$197,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to contract with the Washington initiative for supported employment for the purpose of continuing the promotion of supported employment services for persons with disabilities.

(f) The department shall not reduce the number of persons served in community residential, employment and day program, or family support services below the levels identified in the Legislative Budget Notes, 1997-99 Biennium, (August 1997) as published by the legislative fiscal committees, in order to undertake activities proposed by the department but not funded in this 1998 supplemental appropriations act.

(g) \$2,151,000 of the general fund—state appropriation for fiscal year 1998, \$5,782,000 of the general fund—state appropriation for fiscal year 1999, and \$8,362,000 of the general fund—federal appropriation are provided solely to develop and operate secure residential and day program placements for persons who seem likely to present a significant risk to the public safety if their current residential arrangement were to continue.

(h) \$426,000 of the general fund—state appropriation for fiscal year 1999 and \$469,000 of the general fund—federal appropriation are provided solely to develop and operate community services for persons residing at eastern and western state hospitals whose needs are such that they cannot be served in existing community vacancies.

(i) \$200,000 of the general fund—state appropriation for fiscal year 1998 and \$1,592,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for employment and day program services for adults who are not currently able to participate in such services because of funding limitations.

(j) \$105,000 of the general fund—state appropriation for fiscal year 1998, \$933,000 of the general fund—state appropriation for fiscal year 1999, and \$1,029,000 of the general fund—federal appropriation are provided solely to develop and operate community services for persons moving from the residential habilitation centers as a result of an agreement with the federal department of justice or a settlement agreement to a lawsuit.

(k) Within amounts appropriated in this subsection, the division shall contract for a pilot program to test an alternative service delivery model for services to persons with autism. The division must use a competitive process to determine the site of the pilot. The pilot program must be time-limited and

subject to an evaluation of client outcomes to determine the effectiveness and efficiency of the pilot program compared to the standard service model for persons with autism.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 1998) . . .	\$	((63,982,000))
		<u>65,277,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((63,206,000))
		<u>64,187,000</u>
General Fund—Federal Appropriation	\$	((142,955,000))
		<u>145,897,000</u>
General Fund—Private/Local Appropriation	\$	9,729,000
TOTAL APPROPRIATION	\$	((279,872,000))
		<u>285,090,000</u>

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

(a) With the funds appropriated in this subsection, the secretary of social and health services shall develop an eight-bed program at Yakima valley school specifically for the purpose of providing respite services to all eligible individuals on a state-wide basis, with an emphasis on those residing in central Washington.

(b) \$112,000 of the general fund—state appropriation for fiscal year 1998, \$113,000 of the general fund—state appropriation for fiscal year 1999, and \$75,000 of the general fund—federal appropriation are provided solely for a nursing community outreach project at Yakima valley school. Registered nursing staff are to provide nursing assessments, consulting services, training, and quality assurance on behalf of individuals residing in central Washington.

(c) \$200,000 of the general fund—state appropriation for fiscal year 1998, \$200,000 of the general fund—state appropriation for fiscal year 1999, and \$400,000 of the general fund—federal appropriation are provided solely for the development of a sixteen-bed program at Yakima valley school specifically for the purpose of providing respite services to all eligible individuals on a state-wide basis, with an emphasis on those residing in central Washington.

(3) PROGRAM SUPPORT

General Fund—State Appropriation (FY 1998) . . .	\$	((2,543,000))
		<u>2,530,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((2,517,000))
		<u>2,501,000</u>
General Fund—Federal Appropriation	\$	((1,645,000))
		<u>1,637,000</u>
TOTAL APPROPRIATION	\$	((6,705,000))
		<u>6,668,000</u>

(4) SPECIAL PROJECTS

General Fund—Federal Appropriation	\$	12,030,000
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*Sec. 205 was partially vetoed. See message at end of chapter.

Sec. 206. 1997 c 149 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 1998) . . . \$	((392,045,000)) <u>409,469,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((416,304,000)) <u>425,130,000</u>
General Fund—Federal Appropriation \$	((878,169,000)) <u>910,685,000</u>
<u>General Fund—Local Appropriation \$</u>	<u>1,781,000</u>
Health Services Account Appropriation \$	((6,087,000)) <u>2,232,000</u>
TOTAL APPROPRIATION \$	((1,692,605,000)) <u>1,749,297,000</u>

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

(1) The entire health services account appropriation and ~~\$(6,076,000)~~ 2,175,000 of the general fund—federal appropriation are provided solely for the enrollment in the basic health plan of home care workers with family incomes below 200 percent of the federal poverty level who are employed through state contracts. Enrollment in the basic health plan for home care workers with family incomes at or above 200 percent of poverty shall be covered with general fund—state and matching general fund—federal revenues that were identified by the department to have been previously appropriated for health benefits coverage, to the extent that these funds had not been contractually obligated for worker wage increases prior to March 1, 1996.

(2) \$1,277,000 of the general fund—state appropriation for fiscal year 1998 and \$1,277,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for operation of the volunteer chore program.

(3) ~~\$(107,997,000))~~ 113,534,000 of the general fund—state appropriation for fiscal year 1998 ~~((and \$120,397,000)),~~ \$125,310,000 of the general fund—state appropriation for fiscal year 1999, ~~((plus any vendor rate increases allocated to these services in accordance with section 213 of this act))~~ of which no less than forty-nine percent shall be allotted for expenditure during the first six months of fiscal year 1999, and \$7,374,000 of the general fund—federal social services block grant appropriation, are provided solely to deliver chore, COPES, and medicaid personal care services. If the secretary of social and health services determines that total expenditures are likely to exceed these amounts, the secretary shall take action as required by RCW 74.09.520, 74.39A.120, and 74.09.530 to adjust functional eligibility standards and/or service levels sufficiently to maintain expenditures within appropriated levels. Such action may include the adoption of emergency rules, and shall not be taken to the extent that projected over-expenditures are offset by under-expenditures resulting from lower than budgeted

nursing home caseloads. Prior to making eligibility changes which would terminate all services to some persons, the secretary should first exercise all opportunities to manage the average cost per person served, through methods such as promoting the use of informal care; assuring that local offices are effectively and consistently authorizing the least expensive level of care that can meet recipient needs; using waiting lists for individuals with lower levels of need in order to limit monthly growth; and reducing on a sliding-scale basis the amount of service authorized per functional need level, with smaller reductions for greater levels of need.

(4) \$1,080,000 of the general fund—state appropriation for fiscal year 1999 is provided to maintain service eligibility for persons receiving services through the chore, COPEs, or medicaid personal care programs in the event eligibility adjustments may be necessary or are made in accordance with subsection (3) of this section. The department may use seventy-five percent of amounts not needed for that purpose to implement quality of care enhancements.

(5) \$26,000 of the general fund—state appropriation for fiscal year 1998, \$59,000 of the general fund—state appropriation for fiscal year 1999, and \$85,000 of the general fund—federal appropriation are provided solely to employ registered nurses rather than social workers to fill six of the new field positions to be filled in fiscal year 1998 and seven more of the new positions to be filled in fiscal year 1999. These registered nurses shall conduct assessments, develop and monitor service plans, and consult with social work staff to assure that persons with medical needs are placed in and receive the appropriate level of care.

~~((5))~~ (6) \$425,000 of the general fund—state appropriation for fiscal year 1998 and \$882,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement Second Substitute Senate Bill No. 5179 (nursing facility reimbursement). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((6) A maximum of \$2,193,000 of the general fund—state appropriation for fiscal year 1998 and \$2,351,000 of the general fund—federal appropriation for fiscal year 1998 are provided to fund the medicaid share of any new prospective payment rate adjustments as may be necessary in accordance with RCW 74.46.460:))~~

(7) \$242,000 of the general fund—state appropriation for fiscal year 1998, \$212,000 of the general fund—state appropriation for fiscal year 1999, and \$498,000 of the general fund—federal appropriation are provided solely for operation of a system for investigating allegations of staff abuse and neglect in nursing homes, as provided in Second Substitute House Bill No. 1850 (long-term care standards of care).

~~((8) \$350,000 of the general fund—state appropriation for fiscal year 1998 and \$382,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to supplement the incomes of disabled legal immigrants who, because of loss of their federal supplemental security income benefit, would otherwise be at risk of placement into a more expensive long-term care setting.~~

~~—(9)(a) The department shall establish a shadow case mix payment system to educate facilities about payment system alternatives. The department shall provide shadow rates beginning July 1, 1997, based on the following:~~

~~—(i) The direct care portion of the rate, usually called "nursing services," shall be set under a case mix methodology that classifies residents under the Resource Utilization Group III (RUG-III) Version 5.10 (or subsequent revision) 44 group index maximizing model based on the Minimum Data Set (MDS) Version 2.0.~~

~~—(ii) Payment to a facility shall be based on facility weighted average case mix data which provides one rate to a facility reflecting its mix of residents. For purposes of determining the facility's cost per case mix unit, the facility average case mix score will be based on the case mix of all residents. For purposes of determining the facility's payment rate, the facility average case mix score shall be based on the case mix of medicaid residents.~~

~~—(iii) The direct care rates shall be adjusted prospectively each quarter based on the facility's MDS 2.0 data from the quarter commencing six months preceding the rate effective date. For example, the MDSs for 1/1/97 - 3/31/97 shall be used to establish shadow rates for 7/1/97 - 9/30/97.~~

~~—(iv) Those costs which currently comprise nursing services as defined by chapter 74.46 RCW, excluding therapies, shall be included in the direct care component for case mix.~~

~~—(v) Data from 1994 cost reports (allowable and audited costs) shall be used to establish the shadow rates. The costs shall be inflated comparable to fiscal year 1998 payment rates, according to RCW 74.46.420.~~

~~—(vi) Separate prices, ceilings, and corridors shall be established for the peer groups of metropolitan statistical area and nonmetropolitan statistical area.~~

~~—(b) The following methods shall be used to establish the shadow case mix rates:~~

~~—(i) A pricing system in which payment to a facility shall be based on a price multiplied by each facility's medicaid case mix. The price, per peer group, shall be established at the median direct care cost per case mix unit.~~

~~—(ii) A pricing system in which payment to a facility shall be based on a price multiplied by each facility's medicaid case mix. The price, per peer group, shall be based on the cost per case mix unit of a group of cost-effective benchmark facilities which meet quality standards.~~

~~—(iii) A corridor-based system in which payment to a facility shall be the facility's allowable cost per case mix unit adjusted for case mix up to a ceiling and no less than a floor. The floor, per peer group, shall be established at 90 percent of the cost per case mix unit of a group of cost-effective benchmark facilities which meet quality standards. The ceiling, per peer group, shall be established at 110 percent of the cost per case mix unit of the group of benchmark facilities.~~

~~—(iv) A corridor-based system in which payment to a facility shall be the facility's allowable cost per case mix unit adjusted for case mix up to a ceiling and no less than a floor. The floor, per peer group, shall be established at 90~~

~~percent of the industry-wide median direct care cost per case-mix unit. The ceiling, per peer group, shall be established at 110 percent of the industry-wide median direct care cost per case-mix unit.~~

~~—(c) The department shall provide all data, information, and specifications of the methods used in establishing the shadow case-mix rates to the nursing home provider associations:~~

~~—(d) It is the legislature's intent that the average state payment for nursing facility services under the new system increase by no more than 175 percent of the health care financing administration nursing home input price index, excluding capital costs. In designing the new payment system, the department shall develop and propose options for the combined direct and indirect rate components that assure this:~~

~~—(10)) (8) For purposes of implementing Second Substitute House Bill No. 2935 (nursing facility payment rates), the weighted average nursing facility payment rate for fiscal year 1999 shall be no more than \$117.36, excluding nurse's aide training. Each nursing facility's July 1 through September 30, 1998, medicaid payment rate shall be its June 30, 1998, rate increased by 2.0 percent, except for the property and return on investment component rates, which shall not be increased. Beginning October 1, 1998, component rates rebased on 1996 costs shall be adjusted for economic trends and conditions by 5.18 percent.~~

(9) \$50,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for payments to any nursing facility licensed under chapter 18.51 RCW which meets all of the following criteria: (a) The nursing home entered into an arm's length agreement for a facility lease prior to January 1, 1980; (b) the lessee purchased the leased nursing home after January 1, 1980; and (c) the lessor defaulted on its loan or mortgage for the assets of the home after January 1, 1991, and prior to January 1, 1992. Payments provided pursuant to this subsection shall not be subject to the settlement, audit, or rate-setting requirements contained in chapter 74.46 RCW.

~~(((\$546,000)) (10) \$506,000 of the general fund—state appropriation for fiscal year 1998, (((\$583,000)) \$502,000 of the general fund—state appropriation for fiscal year 1999, and (((\$1,220,000)) \$1,095,000 of the general fund—federal appropriation are provided solely for an increase in the state payment rates for adult residential care and enhanced adult residential care.~~

(11) \$274,000 of the general fund—state appropriation for fiscal year 1998, \$1,357,000 of the general fund—state appropriation for fiscal year 1999, and the entire general fund—local appropriation are provided solely for boarding home licensure and quality assurance by the department of social and health services only if Engrossed House Bill No. 2410 (boarding home administration) is enacted by June 30, 1998. If the bill is not enacted, the amounts provided in this subsection shall be allocated to the department of health, which will manage the boarding home licensure and quality assurance program.

*Sec. 207. 1997 c 454 s 204 (uncodified) is amended to read as follows:

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

General Fund—State Appropriation (FY 1998) . . . \$	((543,150,000)) <u>508,243,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((529,985,000)) <u>512,200,000</u>
General Fund—Federal Appropriation \$	((952,618,000)) <u>951,615,000</u>
TOTAL APPROPRIATION \$	((2,025,753,000)) <u>1,972,058,000</u>

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

((~~2~~)) (1) The legislature finds that, with the passage of the federal personal responsibility and work opportunity act and Engrossed House Bill No. 3901, the temporary assistance for needy families is no longer an entitlement. The legislature declares that the currently appropriated level for the program is sufficient for the next few budget cycles. To the extent, however, that currently appropriated amounts exceed costs during the 1997-99 biennium, the department is encouraged to set aside excess federal funds for use in future years.

((~~3~~)) (2) \$485,000 of the general fund—state fiscal year 1998 appropriation, \$3,186,000 of the general fund—state fiscal year 1999 appropriation, and \$3,168,000 of the general fund—federal appropriation are provided solely to continue to implement the previously competitively procured electronic benefits transfer system through the western states EBT alliance for distribution of cash grants and food stamps so as to meet the requirements of P.L. 104-193.

((~~4~~)) (3) \$50,000 of the fiscal year 1998 general fund—state appropriation is provided solely for a study of child care affordability as directed in section 403 of Engrossed House Bill No. 3901 (implementing welfare reform). The study shall be performed by the Washington institute for public policy. If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

((~~5~~)) (4) \$500,000 of the fiscal year 1998 general fund—state appropriation and \$500,000 of the fiscal year 1999 general fund—state appropriation are provided solely for an evaluation of the WorkFirst program as directed in section 705 of Engrossed House Bill No. 3901 (implementing welfare reform). The study shall be performed by the joint legislative audit and review committee. If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

((~~6~~)) (5) \$73,129,000 of the general fund—federal appropriation is provided solely for child care assistance for low-income families in the WorkFirst program and for low-income working families as authorized in Engrossed House Bill No. 3901 (implementing welfare reform). All child care assistance provided shall be subject to a monthly copay to be paid by the family receiving the assistance.

((~~7~~)) (6) \$7,624,000 of the fiscal year 1998 general fund—state appropriation, \$18,489,000 of the fiscal year 1999 general fund—state

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General Fund—State Appropriation (FY 1999) . . . \$	((14,334,000))
	<u>15,330,000</u>
General Fund—Federal Appropriation \$	((80,497,000))
	<u>81,112,000</u>
General Fund—Private/Local Appropriation \$	630,000
<u>Public Safety and Education Account</u>	
<u>Appropriation</u> \$	<u>3,210,000</u>
Violence Reduction and Drug Enforcement Account	
Appropriation \$	((72,900,000))
	<u>74,889,000</u>
TOTAL APPROPRIATION \$	((182,827,000))
	<u>190,630,000</u>

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

(1) \$2,062,000 of the general fund—federal appropriation and \$7,482,000 of the violence reduction and drug enforcement account appropriation are provided solely for the grant programs for school districts and educational service districts set forth in RCW 28A.170.080 through 28A.170.100, including state support activities, as administered through the office of the superintendent of public instruction.

(2) \$1,902,000 of the general fund—state fiscal year 1998 appropriation, \$1,902,000 of the general fund—state fiscal year 1999 appropriation, and \$1,592,000 of the general fund—federal appropriation are provided solely for alcohol and substance abuse assessment, treatment, including treatment for drug affected infants and toddlers, and child care services for clients of the division of children and family services. Assessment shall be provided by approved chemical dependency treatment programs as requested by child protective services personnel in the division of children and family services. Child care shall be provided as deemed necessary by the division of children and family services while parents requiring alcohol and substance abuse treatment are attending treatment programs.

(3) \$760,000 of the fiscal year 1998 general fund—state appropriation and \$760,000 of the fiscal year 1999 general fund—state appropriation are provided solely to fund a program serving mothers of children affected by fetal alcohol syndrome and related conditions, known as the birth-to-three program. The program may be operated in two cities in the state.

(4) \$3,210,000 of the public safety and education account appropriation is provided solely for the continuation of treatment alternatives to street crimes (TASC) programs in Pierce, Snohomish, Clark, King, Spokane, and Yakima counties.

**Sec. 209. 1997 c 149 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 1998) . . . \$	((684,033,000))
	<u>666,815,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((684,885,000))
	<u>681,372,000</u>
General Fund—Federal Appropriation \$	((2,038,101,000))
	<u>2,086,149,000</u>
General Fund—Private/Local Appropriation \$	((223,900,000))
	<u>306,601,000</u>
Health Services Account Appropriation \$	((253,004,000))
	<u>254,506,000</u>
Emergency Medical and Trauma Care Services	
Account Appropriation \$	4,600,000
TOTAL APPROPRIATION \$	((3,888,523,000))
	<u>4,000,043,000</u>

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

(1) The department shall continue to make use of the special eligibility category created for children through age 18 and in households with incomes below 200 percent of the federal poverty level made eligible for medicaid as of July 1, 1994.

(2) It is the intent of the legislature that Harborview medical center continue to be an economically viable component of the health care system and that the state's financial interest in Harborview medical center be recognized.

(3) Funding is provided in this section for the adult dental program for Title XIX categorically eligible and medically needy persons and to provide foot care services by podiatric physicians and surgeons.

(4) \$1,622,000 of the general fund—state appropriation for fiscal year 1998 and \$1,622,000 of the general fund—state appropriation for fiscal year 1999 are provided for treatment of low-income kidney dialysis patients.

(5) \$80,000 of the general fund—state appropriation for fiscal year 1998, \$80,000 of the general fund—state appropriation for fiscal year 1999, and \$160,000 of the general fund—federal appropriation are provided solely for the prenatal triage clearinghouse to provide access and outreach to reduce infant mortality.

(6) The department shall employ the managed care contracting and negotiation strategies defined in Substitute Senate Bill No. 5125 to assure that the average per-recipient cost of managed care services for temporary assistance to needy families and expansion populations increases by no more than two percent per year in calendar years 1998 and 1999.

(7) The department shall seek federal approval to require adult medicaid recipients who are not elderly or disabled to contribute ten dollars per month toward the cost of their medical assistance coverage. The department shall report on the progress of this effort to the house of representatives and senate health care and fiscal committees by September 1 and November 15, 1997.

(8) \$325,000 of the general fund—state appropriation for fiscal year 1998 and \$325,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to increase rates paid for air ambulance services.

(9) \$1,468,000 of the general fund—state appropriation for fiscal year 1999 is to be expended solely to the extent necessary because the federal government has not approved the department's request to require certain recipients to pay ten dollars per month toward the cost of their medical assistance.

(10) By November 1, 1998, the department shall report to the health care and fiscal committees of the legislature on the estimated average monthly number of nongrant medical assistance recipients who do not meet the earned income eligibility standards that were in effect prior to November 1997.

**Sec. 210. 1997 c 149 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 1998) . . . \$	((8,652,000))
	<u>9,046,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((8,592,000))
	<u>8,603,000</u>
General Fund—Federal Appropriation \$	((79,542,000))
	<u>79,080,000</u>
General Fund—Private/Local Appropriation \$	2,904,000
TOTAL APPROPRIATION \$	((99,690,000))
	<u>99,633,000</u>

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

(1) The division of vocational rehabilitation shall negotiate cooperative interagency agreements with local organizations, including higher education institutions, mental health regional support networks, and county developmental disabilities programs to improve and expand employment opportunities for people with severe disabilities served by those local agencies.

(2) \$363,000 of the general fund—state appropriation for fiscal year 1998, \$506,000 of the general fund—state appropriation for fiscal year 1999, and \$3,208,000 of the general fund—federal appropriation are provided solely for vocational rehabilitation services for individuals enrolled for services with the developmental disabilities program who complete their high school curriculum in 1997 or 1998.

***Sec. 211. 1997 c 454 s 206 (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 1998) . . . \$	((24,572,000))
	<u>25,818,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((23,956,000))
	<u>25,744,000</u>

General Fund—Federal Appropriation	\$	((40,352,000))
		<u>43,037,000</u>
General Fund—Private/Local Appropriation	\$	270,000
TOTAL APPROPRIATION	\$	((89,150,000))
		<u>94,869,000</u>

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

(1) The department may transfer up to \$1,289,000 of the general fund—state appropriation for fiscal year 1998, \$1,757,000 of the general fund—state appropriation for fiscal year 1999, and \$2,813,000 of the general fund—federal appropriation to the administration and supporting services program from various other programs to implement administrative reductions.

(2) The secretary of social and health services and the director of labor and industries shall report to the appropriate fiscal and policy committees of the legislature by July 1, 1997, and every six months thereafter on the measurable changes in employee injury and time-loss rates that have occurred in the state developmental disabilities, juvenile rehabilitation, and mental health institutions as a result of the upfront loss-control discount agreement between the agencies.

~~((4))~~ (3) \$60,000 of the general fund—state appropriation for fiscal year 1998 is provided solely for a welfare fraud pilot program as described by House Bill No. 1822 (welfare fraud investigation).

~~((5))~~ (4) \$55,000 of the fiscal year 1998 general fund—state appropriation, \$64,000 of the fiscal year 1999 general fund—state appropriation, and \$231,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(5) \$192,000 of the general fund—state appropriation for fiscal year 1999 and \$131,000 of the general fund—federal appropriation are provided solely to implement sections 3, 4, and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 3, 4, and 11 of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(6) The department shall report on the allowance for clothing, personal maintenance, and necessary incidentals provided to persons who receive services funded by state and federal moneys under Title XIX of the social security act. The report shall discuss the range of allowances granted for different populations and programs and compare the allowances to those provided to similar populations in other western states. The report shall also evaluate the need for a uniform amount provided to all populations and, if a uniform allowance is provided, at what level that allowance should be set. In compiling the report, the department shall consult with affected parties and divisions. The report shall be submitted by December 1, 1998, to the chairs and the ranking minority members of the appropriate committees of the legislature.

*Sec. 211 was partially vetoed. See message at end of chapter.

Sec. 212. 1997 c 454 s 207 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES—
CHILD SUPPORT PROGRAM**

General Fund—State Appropriation (FY 1998) . . . \$	((21,122,000)) <u>21,344,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((20,877,000)) <u>20,965,000</u>
General Fund—Federal Appropriation \$	((145,739,000)) <u>145,321,000</u>
General Fund—Private/Local Appropriation \$	((33,207,000)) <u>32,673,000</u>
TOTAL APPROPRIATION \$	((220,945,000)) <u>220,303,000</u>

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

(1) The department shall contract with private collection agencies to pursue collection of AFDC child support arrearages in cases that might otherwise consume a disproportionate share of the department's collection efforts. The department's child support collection staff shall determine which cases are appropriate for referral to private collection agencies. In determining appropriate contract provisions, the department shall consult with other states that have successfully contracted with private collection agencies to the extent allowed by federal support enforcement regulations.

~~((3))~~ (2) The amounts appropriated in this section for child support legal services shall be expended only by means of contracts with local prosecutor's offices.

~~((4))~~ (3) \$305,000 of the general fund—state fiscal year 1998 appropriation, \$494,000 of the general fund—state fiscal year 1999 appropriation, and \$1,408,000 of the general fund—federal appropriation are provided solely to implement Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

Sec. 213. 1997 c 454 s 208 (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 1998) . . . \$	((47,435,000)) <u>25,292,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((47,514,000)) <u>24,792,000</u>
General Fund—Federal Appropriation \$	((54,366,000)) <u>18,966,000</u>
((Health Services Account Appropriation \$	1,502,000
Violence Reduction and Drug Enforcement Account	

Appropriation	\$ 2,215,000))
TOTAL APPROPRIATION	((+53,032,000))
	<u>69,050,000</u>

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

~~((1) \$22,893,000 of the general fund—state appropriation for fiscal year 1998, \$22,835,000 of the general fund—state appropriation for fiscal year 1999, \$35,431,000 of the general fund—federal appropriation, \$2,215,000 of the violence reduction and drug enforcement account appropriation, and \$1,502,000 of the health services account appropriation are provided solely to increase the rates of contracted service providers. The department need not provide all vendors with the same percentage rate increase. Rather, the department is encouraged to use these funds to help assure an adequate supply of qualified vendors. Vendors providing services in markets where recruitment and retention of qualified providers is a problem may receive larger rate increases than other vendors. It is the legislature's intent that these amounts shall be used primarily to increase compensation for persons employed in direct, front-line service delivery. Any rate increases granted as a result of this section must be implemented so that the carry-forward costs into the 1999-01 biennium do not exceed the amounts provided in this subsection. Within thirty days of granting a vendor rate increase under this section, the department shall report the following information to the fiscal committees of the legislature: (a) The amounts and effective dates of any increases granted; (b) the process and criteria used to determine the increases; and (c) any data used in that process. In accordance with RCW 43.88.110(1), the department and the office of financial management shall allot funds appropriated in this section to the programs and budget units from which the funds will be expended. Such allotments shall be completed no later than September 15, 1997.~~

~~—(2)) (1) \$263,000 of the fiscal year 1998 general fund—state appropriation, \$349,000 of the fiscal year 1999 general fund—state appropriation, and \$1,186,000 of the general fund—federal appropriation are provided solely for implementation of Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.~~

~~(2) \$113,000 of the fiscal year 1999 general fund—state appropriation and \$31,000 of the general fund—federal appropriation are provided solely for the implementation of Substitute House Bill No. 2556 (child abuse prevention and treatment). If this bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.~~

Sec. 214. 1997 c 454 s 210 (uncodified) is amended to read as follows:

FOR THE STATE HEALTH CARE AUTHORITY

General Fund—State Appropriation (FY 1998) . . . \$	6,316,000
General Fund—State Appropriation (FY 1999) . . . \$	6,317,000

State Health Care Authority Administration		
Account Appropriation	\$	((14,719,000))
		<u>14,969,000</u>
Health Services Account Appropriation	\$	((330,628,000))
		<u>341,800,000</u>
TOTAL APPROPRIATION	\$	((357,980,000))
		<u>369,402,000</u>

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

(1) The general fund—state appropriations are provided solely for health care services provided through local community clinics.

(2) Within funds appropriated in this section and sections 205 and 206 of chapter 149, Laws of 1997, the health care authority shall continue to provide an enhanced basic health plan subsidy option for foster parents licensed under chapter 74.15 RCW and workers in state-funded homecare programs. Under this enhanced subsidy option, foster parents and homecare workers with family incomes below 200 percent of the federal poverty level shall be allowed to enroll in the basic health plan at a cost of ten dollars per covered worker per month.

(3)(a) Effective October 1997, the health care authority shall require organizations and individuals that are paid to deliver basic health plan services to contribute a minimum of thirty dollars per enrollee per month if the organization or individual chooses to sponsor an individual's enrollment in the subsidized basic health plan.

(b) Effective July 1998, the health care authority shall require organizations and individuals which are paid to deliver basic health plan services and which choose to sponsor enrollment in the subsidized basic health plan to pay the following: (i) A minimum of fifteen dollars per enrollee per month for persons below 100 percent of the federal poverty level; and (ii) a minimum of twenty dollars per enrollee per month for persons whose family income is 100 percent to 200 percent of the federal poverty level.

(4) \$150,000 of the health services account appropriation is provided solely to implement health care savings accounts. If legislation requiring a pilot project of such accounts is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

~~((6))~~ (5) \$270,000 of the health services account appropriation is provided solely to pay commissions to agents and brokers in accordance with RCW 70.47.015(5) for application assistance provided to persons on the reservation list as of June 30, 1997, who enroll in the subsidized basic health plan on or after July 1, 1997.

(6) \$250,000 of the state health care authority administrative account appropriation is provided solely to process claims arising from the settlement in *Retired State Employees v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1).

(7) The health care authority administrator is directed to pay claims resulting from a court-approved stipulated settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1) using funds in the public employees' and retirees' insurance account. The legislature recognizes that payment of these claims may reduce premium stabilization reserves below target levels on an interim basis. It is the legislature's intent that the viability of health care authority-administered programs be preserved and that the benefit levels for health care authority-administered programs not be reduced in the event premium stabilization reserves are used to pay such claims.

(8) \$330,000 of the health services account appropriation is provided solely to implement Substitute House Bill No. 3109 (basic health plan enrollee income verification). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 215. 1997 c 149 s 215 (uncodified) is amended to read as follows:

FOR THE HUMAN RIGHTS COMMISSION

General Fund—State Appropriation (FY 1998) . . . \$	2,019,000
General Fund—State Appropriation (FY 1999) . . . \$	((2,036,000))
	<u>2,538,000</u>
General Fund—Federal Appropriation \$	1,444,000
General Fund—Private/Local Appropriation \$	259,000
TOTAL APPROPRIATION \$	((5,758,000))
	<u>6,260,000</u>

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

(1) \$432,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for elimination of caseload backlog by January 1, 1999, and reduction of case processing time.

(2) \$70,000 of the general fund appropriation for fiscal year 1999 is provided solely to implement section 4 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If section 4 of the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 215 was partially vetoed. See message at end of chapter.

Sec. 216. 1997 c 149 s 217 (uncodified) is amended to read as follows:

FOR THE CRIMINAL JUSTICE TRAINING COMMISSION

General Fund—State Appropriation (FY 1998) . . . \$	15,000
General Fund—State Appropriation (FY 1999) . . . \$	285,000
General Fund—Federal Appropriation \$	100,000
Death Investigations Account Appropriation \$	38,000
Public Safety and Education Account	
Appropriation \$	((13,434,000))
	<u>13,341,000</u>

Violence Reduction and Drug Enforcement Account

Appropriation	\$	346,000
TOTAL APPROPRIATION	\$	((13,918,000))
		<u>14,125,000</u>

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

(1) \$80,000 of the public safety and education account appropriation is provided solely to continue the study of law enforcement and corrections training begun in 1996. In conducting the study, the criminal justice training commission shall consult with the appropriate policy and fiscal committees of the legislature. Specific elements to be addressed in the study include: (a) The feasibility and the rationale for increasing basic law enforcement training from 440 to 600 hours; (b) the feasibility and rationale for creating a certification process for law enforcement officers; (c) the feasibility and rationale for expanding the correctional officers academy; (d) the feasibility and rationale for expanding the juvenile service workers academy and/or the adult services academy; and (e) any other items considered relevant by the commission. Any recommendations made shall include a plan and timeline for how they would be implemented. The board on correctional training standards and education and the board on law enforcement training standards and education shall be actively involved in the study effort. Copies of the study shall be provided to the appropriate policy and fiscal committees of the legislature and the director of financial management by October 1, 1997.

(2) \$50,000 of the public safety and education account appropriation is provided solely to prepare a cost and fee study of the current and proposed criminal justice course offerings. The analysis shall identify total costs and major cost components for: (a) Any current training classes which are considered mandatory; and (b) any proposed or modified training courses which are considered mandatory. Mandatory classes include, but are not limited to, the following: Basic law enforcement academy, correctional officers academy, supervisory and management training of law enforcement officers, supervisory and management training of correctional officers, juvenile service workers academy, and the adult service academy. The study shall also recommend a methodology for estimating the future demand for these classes. The study shall also estimate the cost of implementing any recommendations made pursuant to subsection (1) of this section. The study shall be conducted by a private sector consultant selected by the office of financial management in consultation with the executive director of the criminal justice training commission. The final report shall be completed by January 1, 1998.

(3) \$92,000 of the public safety and education account appropriation is provided solely for the purpose of training law enforcement managers and supervisors.

(4) \$40,000 of the public safety and education account appropriation is provided solely to implement the provisions of Substitute House Bill No. 1423

(criminal justice training commission). If this bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(5) \$225,000 of the general fund—state fiscal year 1999 appropriation is provided solely for information technology upgrades and improvements for the criminal justice training commission.

(6) \$15,000 of the general fund—state fiscal year 1998 appropriation and \$25,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the relocation and new lease costs of the criminal justice training commission's headquarters in Thurston county.

(7) \$35,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for costs associated with the implementation of incident-based crime reporting.

*Sec. 217. 1997 c 454 s 211 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LABOR AND INDUSTRIES

General Fund Appropriation (FY 1998)	\$	6,805,000
General Fund Appropriation (FY 1999)	\$	((6,848,000))
		<u>7,069,000</u>
Public Safety and Education Account—		
State Appropriation	\$	((16,246,000))
		<u>16,082,000</u>
Public Safety and Education Account—		
Federal Appropriation	\$	6,002,000
Public Safety and Education Account—		
Private/Local Appropriation	\$	((2,014,000))
		<u>2,178,000</u>
Electrical License Account Appropriation	\$	22,542,000
Farm Labor Revolving Account Appropriation	\$	28,000
Worker and Community Right-to-Know Account		
Appropriation	\$	2,187,000
Public Works Administration Account		
Appropriation	\$	((1,975,000))
		<u>1,975,000</u>
Accident Account—State Appropriation	\$	((146,901,000))
		<u>151,634,000</u>
Accident Account—Federal Appropriation	\$	9,112,000
Medical Aid Account—State Appropriation	\$	((155,276,000))
		<u>154,142,000</u>
Medical Aid Account—Federal Appropriation	\$	1,592,000
Plumbing Certificate Account Appropriation	\$	947,000
Pressure Systems Safety Account Appropriation	\$	2,106,000
TOTAL APPROPRIATION	\$	((380,581,000))
		<u>384,401,000</u>

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

(1) Expenditures of funds appropriated in this section for the information systems projects identified in agency budget requests as "claims service delivery", "electrical permitting and inspection system", and "credentialing information system" are conditioned upon compliance with section 902 of this act.

(2) Pursuant to RCW 7.68.015, the department shall operate the crime victims compensation program within the public safety and education account funds appropriated in this section. In the event that cost containment measures are necessary, the department may (a) institute copayments for services; (b) develop preferred provider and managed care contracts; (c) coordinate with the department of social and health services to use the public safety and education account as matching funds for federal Title XIX reimbursement, to the extent this maximizes total funds available for services to crime victims.

(3) \$54,000 of the general fund appropriation for fiscal year 1998 and \$54,000 of the general fund appropriation for fiscal year 1999 are provided solely for an interagency agreement to reimburse the board of industrial insurance appeals for crime victims appeals.

(4) The secretary of social and health services and the director of labor and industries shall report to the appropriate fiscal and policy committees of the legislature by July 1, 1997, and every six months thereafter on the measurable changes in employee injury and time-loss rates that have occurred in the state developmental disabilities, juvenile rehabilitation, and mental health institutions as a result of the upfront loss-control discount agreement between the agencies.

(5) The expenditures of the elevator, factory assembled structures, and contractors' registration and compliance programs may not exceed the revenues generated by these programs.

(6) \$101,000 of the plumbing certificate account appropriation is provided solely for the implementation of Substitute Senate Bill No. 5749 (pipe installer). If the bill is not enacted by June 30, 1997, the amount provided shall lapse.

(7) \$56,000 of the medical aid account appropriation and \$52,000 of the accident account appropriation are provided solely for evaluating agency operational improvements.

(8) \$593,000 of nonappropriated funds from the medical aid account shall be provided solely for allocation to the joint legislative audit and review committee for a performance audit and operations review of the state workers' compensation system pursuant to Substitute Senate Bill No. 6030.

(9) \$170,000 of the accident account—state appropriation and \$170,000 of the medical aid account—state appropriation are provided solely for payment to the office of the attorney general for legal services provided in the 1995-97 biennium.

(10) \$686,000 of the accident account appropriation and \$686,000 of the medical aid account appropriation for fiscal year 1999 are provided solely to fund 24 claims manager positions in fiscal year 1999 (12 worker compensation adjudicator 2 and 12 worker compensation adjudicator 3 positions). With these

new positions, the department is expected to reduce time-loss duration in claims by 5 percent by June 30, 2000, and an additional 2.5 percent by June 30, 2001. The average caseload for level 2 claims managers should also drop to approximately 190 by June 30, 2000. The director of the department shall report to the appropriate fiscal and policy committees of the legislature and the office of financial management by June 30, 1998, and every year thereafter, on the measurable progress made toward attaining these goals. The 1998 report shall indicate the baseline figures from July 1, 1997. If substantial progress has not been achieved by June 30, 2000, the 24 claims manager positions and the funding associated with these positions shall be discontinued.

(11) \$41,000 of the general fund appropriation for fiscal year 1999, \$160,000 of the accident account—state appropriation, and \$53,000 of the medical aid account—state appropriation are provided solely to implement sections 4 and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 4 and 11 of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

*Sec. 217 was partially vetoed. See message at end of chapter.

Sec. 218. 1997 c 454 s 209 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

(1) HEADQUARTERS

General Fund Appropriation (FY 1998)	\$	((1,409,000))
		<u>1,609,000</u>
General Fund Appropriation (FY 1999)	\$	1,404,000
Industrial Insurance Premium Refund Account		
Appropriation	\$	80,000
Charitable, Educational, Penal, and Reformatory		
Institutions Account Appropriation	\$	4,000
TOTAL APPROPRIATION	\$	((2,897,000))
		<u>3,097,000</u>

The appropriations in this subsection are subject to the following conditions and limitations: \$200,000 of the general fund appropriation for fiscal year 1998 is provided solely as the state's contribution to the construction of a memorial on the state capitol grounds to the men and women who served in the nation's armed forces during the second world war. The department shall raise the remaining two-thirds of the memorial's cost from individual and corporate contributions.

(2) FIELD SERVICES

General Fund—State Appropriation (FY 1998) . . .	\$	2,418,000
General Fund—State Appropriation (FY 1999) . . .	\$	2,420,000
General Fund—Federal Appropriation	\$	26,000
General Fund—Private/Local Appropriation	\$	85,000
TOTAL APPROPRIATION	\$	4,949,000

(3) INSTITUTIONAL SERVICES

WASHINGTON LAWS, 1998

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General Fund—State Appropriation (FY 1998) . . . \$	((6,401,000))
	<u>6,576,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((5,369,000))
	<u>5,522,000</u>
General Fund—Federal Appropriation \$	((19,556,000))
	<u>18,950,000</u>
General Fund—Private/Local Appropriation \$	((14,583,000))
	<u>14,561,000</u>
TOTAL APPROPRIATION \$	45,609,000

*Sec. 219. 1997 c 454 s 212 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF HEALTH

General Fund—State Appropriation (FY 1998) . . . \$	((62,996,000))
	<u>63,189,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((65,741,000))
	<u>73,170,000</u>
General Fund—Federal Appropriation \$	((259,139,000))
	<u>262,504,000</u>
General Fund—Private/Local Appropriation \$	((24,351,000))
	<u>23,578,000</u>
Hospital Commission Account Appropriation \$	3,089,000
Health Professions Account Appropriation \$	((36,038,000))
	<u>36,255,000</u>
Emergency Medical and Trauma Care Services	
Account Appropriation \$	21,042,000
Safe Drinking Water Account Appropriation \$	2,494,000
Death Investigations Account Appropriation \$	((1,000,000))
	<u>650,000</u>
Drinking Water Assistance Account—Federal	
Appropriation \$	5,385,000
Waterworks Operator Certification Appropriation . . \$	588,000
Water Quality Account Appropriation \$	3,065,000
Violence Reduction and Drug Enforcement	
Account Appropriation \$	469,000
State Toxics Control Account Appropriation \$	2,854,000
Medical Test Site Licensure Account	
Appropriation \$	1,624,000
Youth Tobacco Prevention Account Appropriation \$	1,812,000
Health Services Account Appropriation \$	((12,474,000))
	<u>6,115,000</u>
TOTAL APPROPRIATION \$	((504,161,000))
	<u>507,883,000</u>

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

(1) \$2,134,000 of the health professions account appropriation is provided solely for the development and implementation of a licensing and disciplinary management system. Expenditures are conditioned upon compliance with section 902 of this act. These funds shall not be expended without appropriate project approval by the department of information systems.

(2) Funding provided in this section for the drinking water program data management system shall not be expended without appropriate project approval by the department of information systems. Expenditures are conditioned upon compliance with section 902 of this act.

(3) The department or any successor agency is authorized to raise existing fees charged to the nursing professions and midwives(~~(:)~~); chemical dependency counselors; by the pharmacy board(~~(:)~~); and for boarding home; hospital; and home health, home care, and hospice agency licenses, in excess of the fiscal growth factor established by Initiative Measure No. 601, if necessary, to meet the actual costs of conducting business and the appropriation levels in this section.

(4) ~~\$(+633,000)~~ 1,526,000 of the general fund—state fiscal year 1998 appropriation and ~~\$(+634,000)~~ 1,741,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the implementation of the Puget Sound water work plan and agency action items, DOH-01, DOH-02, DOH-03, DOH-04, DOH-05, DOH-06, DOH-07, DOH-08, DOH-09, DOH-10, DOH-11, and DOH-12.

(5) \$10,000,000 of the health services account appropriation is provided solely for distribution to local health departments for distribution on a per capita basis. Prior to distributing these funds, the department shall adopt rules and procedures to ensure that these funds are not used to replace current local support for public health programs.

(6) \$500,000 of the general fund—state appropriation for fiscal year 1998 and \$500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for operation of a youth suicide prevention program at the state level, including a state-wide public educational campaign to increase knowledge of suicide risk and ability to respond and provision of twenty-four hour crisis hotlines, staffed to provide suicidal youth and caregivers a source of instant help.

(7) 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 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.

(8) \$259,000 of the health professions account appropriation is provided solely to implement Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(9) \$150,000 of the general fund—state fiscal year 1998 appropriation and \$150,000 of the general fund—state fiscal year 1999 appropriation are provided solely for community-based oral health grants that may fund sealant programs, education, prevention, and other oral health interventions. The grants may be awarded to state or federally funded community and migrant health centers, tribal clinics, or public health jurisdictions. Priority shall be given to communities with established oral health coalitions. Grant applications for oral health education and prevention grants shall include (a) an assessment of the community's oral health education and prevention needs; (b) identification of the population to be served; and (c) a description of the grant program's predicted outcomes.

(10) \$21,042,000 of the emergency medical and trauma care services account appropriation is provided solely for implementation of Substitute Senate Bill No. 5127 (trauma care services). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(11) \$500,000 of the general fund—state appropriation for fiscal year 1998 and \$500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for family support and provider training services for children with special health care needs.

(12) \$300,000 of the general fund—federal appropriation is provided solely for an abstinence education program which complies with P.L. 104-193. \$400,000 of the general fund—federal appropriation is provided solely for abstinence education projects at the office of the superintendent of public instruction and shall be transferred to the office of the superintendent of public instruction for the 1998-99 school year. The department shall apply for abstinence education funds made available by the federal personal responsibility and work opportunity act of 1996 and implement a program that complies with the requirements of that act.

(13) \$50,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of Second Substitute House Bill No. 1191 (mandated health benefit review). If the bill is not enacted by June 30, 1997, the amounts provided in this section shall lapse.

(14) \$100,000 of the general fund—state appropriation for fiscal year 1998 and \$100,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the volunteer retired provider program. Funds shall be used to increase children's access to dental care services in rural and underserved communities by paying malpractice insurance and professional licensing fees for retired dentists participating in the program.

(15) \$852,000 of the drinking water assistance account—federal appropriation is provided solely for an interagency agreement with the department of community, trade, and economic development to administer, in cooperation with the public works board, loans to local governments and public water systems for projects and activities to protect and improve the state's drinking water facilities and resources.

(16) \$3,347,000 of the fiscal year 1998 general fund—state appropriation and \$3,347,000 of the fiscal year 1999 general fund—state appropriation are provided solely for the AIDS prescription drug program and HIV intervention program. The department shall operate the program within total appropriations. The department shall take such actions as are necessary to control expenditures, including administrative efficiencies such as reductions to provider reimbursement rates, modifications to financial eligibility, modifications to the scope of services, and client cost sharing mechanisms. The department shall identify program policy changes required to manage within the amounts provided.

(17) Funding provided in this section is sufficient to implement section 8 of Engrossed Substitute House Bill No. 2264 (eliminating the health care policy board).

(18) \$2,075,000 of the fiscal year 1998 general fund—state appropriation and \$2,075,000 of the fiscal year 1999 general fund—state appropriation are provided solely for the Washington poison center.

(19) ~~\$(1,000,000)~~ 650,000 of the death investigations account appropriation is provided solely for the implementation of state-wide child mortality reviews. Local health jurisdictions shall coordinate child mortality reviews for children from birth to eighteen years of age, develop local child mortality review protocols, and serve as the appointing authority and lead agency for local child death review teams. The department of health shall develop standard aggregate data elements, collect and analyze local child mortality review data, provide technical assistance to local child mortality review teams, and approve local child death review protocols. If House Bill No. 1269 (death investigations account) is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(20) \$1,125,000 of the fiscal year 1998 general fund—state appropriation and \$1,125,000 of the fiscal year 1999 general fund—state appropriation are provided solely for deposit in the county public health account.

(21) \$60,000 of the general fund—state appropriation for fiscal year 1998 and \$60,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for attorney general services and such other activities not covered by fee revenues as are necessary for implementation of Engrossed Substitute House Bill No. 2264 (health care policy). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(22) \$250,000 of the fiscal year 1998 general fund—state appropriation \$250,000 of the fiscal year 1999 general fund—state appropriation are provided solely for operation of a naturopathic health clinic constructed in 1996.

(23) \$60,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Second Substitute Senate Bill No. 6168 (temporary worker housing). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(24) \$250,000 of the general fund—federal appropriation is provided solely to conduct monitoring for thyroid diseases for eligible people exposed to radiation from Hanford between 1945 and 1951, and is contingent upon the execution of an agreement with the state of Oregon that the state of Washington will function as a subrecipient for the Hanford medical monitoring program grant. If such an agreement is not executed by September 30, 1998, the amount provided in this subsection shall lapse.

(25) \$730,000 of the health professions account appropriation is provided solely for the purposes of the impaired physician program. If Second Substitute House Bill No. 1618 (impaired physician program) or substantially similar legislation is enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(26) \$1,000,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the breast and cervical cancer screening program.

(27) Within existing resources, the department shall maintain funding support for neurodevelopmental centers and in no case shall that support in fiscal year 1999 be reduced below the total sum awarded by contract to neurodevelopmental centers in fiscal year 1998.

(28) \$37,000 of the general fund—state appropriation and \$3,000 of the health professions account appropriation for fiscal year 1999 are provided solely to implement sections 1, 4, and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 1, 4, and 11 of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(29) \$300,000 of the general fund—state appropriation is provided solely for the implementation of a hepatitis A emergency vaccination program. This entire amount shall be passed through to county health districts that have employed a public education effort and have infection rates in excess of 100 per 100,000 population.

*Sec. 219 was partially vetoed. See message at end of chapter.

**Sec. 220. 1997 c 454 s 213 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF CORRECTIONS**

The appropriations to the department of corrections in chapter 454, Laws of 1997, as amended, shall be expended for the programs and in the amounts specified therein. However, after April 1, 1998, unless specifically prohibited by this act, the department may transfer general fund—state appropriations for fiscal year 1998 between the institutional services and community corrections programs after approval by the director of financial management. The director of financial management shall notify the appropriate fiscal committees of the senate and

house of representatives in writing prior to approving any deviations from appropriation levels.

(1) ADMINISTRATION AND PROGRAM SUPPORT

General Fund Appropriation (FY 1998)	\$	13,926,000
General Fund Appropriation (FY 1999)	\$	13,910,000
Violence Reduction and Drug Enforcement Account		
Appropriation	\$	500,000
TOTAL APPROPRIATION	\$	28,336,000

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

(a) \$187,000 of the general fund fiscal year 1998 appropriation and \$155,000 of the general fund fiscal year 1999 appropriation are provided solely for implementation of Substitute Senate Bill No. 5759 (risk classification). If the bill is not enacted by July 1, 1997, the amounts provided shall lapse.

(b) \$500,000 of the violence reduction and drug enforcement account appropriation is provided solely for a feasibility study regarding the replacement of the department's offender based tracking system. This appropriation is conditioned on the department satisfying the requirements of section 902, chapter 149, Laws of 1997.

(2) INSTITUTIONAL SERVICES

General Fund—State Appropriation (FY 1998) . . .	\$	((291,745,000))
		<u>289,665,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((304,000,000))
		<u>303,830,000</u>
General Fund—Federal Appropriation	\$	18,097,000
Industrial Insurance Premium Rebate Account		
Appropriation	\$	673,000
Violence Reduction and Drug Enforcement Account		
Appropriation	\$	1,614,000
TOTAL APPROPRIATION	\$	((616,129,000))
		<u>613,879,000</u>

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

(a) The department shall provide funding for the pet partnership program at the Washington corrections center for women at a level at least equal to that provided in the 1995-97 biennium.

(b) ~~((4,839,000))~~ \$3,978,000 of the general fund—state fiscal year 1998 appropriation and ~~((6,481,000))~~ \$5,381,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the criminal justice costs associated with the implementation of Engrossed Third Substitute House Bill No. 3900 (revising the juvenile code). If Engrossed Third Substitute House Bill No. 3900 is not enacted by June 30, 1997, the amounts provided shall lapse.

(c) The department of corrections 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.

~~((e))~~ (d) \$296,000 of the general fund—state appropriation for fiscal year 1998 and \$297,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to increase payment rates for contracted education providers. It is the legislature's intent that these amounts shall be used primarily to increase compensation for persons employed in direct, front-line service delivery.

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

(f) \$70,000 of the general fund—state fiscal year 1999 appropriation is provided solely for the implementation of Senate Bill No. 6139 (amphetamine crimes). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(g) \$36,000 of the general fund—state fiscal year 1999 appropriation is provided solely for the implementation of House Bill No. 1172 (sex offender registration). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(h) \$8,000 of the general fund—state fiscal year 1999 appropriation is provided solely for the implementation of House Bill No. 2628 (methamphetamine manufacture). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(3) COMMUNITY CORRECTIONS

General Fund Appropriation (FY 1998)	\$	((89,377,000))
		<u>88,830,000</u>
General Fund Appropriation (FY 1999)	\$	((90,495,000))
		<u>90,670,000</u>
TOTAL APPROPRIATION	\$	((179,872,000))
		<u>179,500,000</u>

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

(a) \$27,000 of the general fund fiscal year 1998 appropriation and \$185,000 of the general fund fiscal year 1999 appropriation are provided solely for the criminal justice costs associated with the implementation of Engrossed Third Substitute House Bill No. 3900 (revising the juvenile code). If Engrossed Third Substitute House Bill No. 3900 is not enacted by June 30, 1997, the amounts provided shall lapse.

(b) The department of corrections 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) \$467,000 of the general fund appropriation for fiscal year 1998 and \$505,000 of the general fund appropriation for fiscal year 1999 are provided solely to increase payment rates for contracted education providers and contracted work release facilities. It is the legislature's intent that these amounts shall be used primarily to increase compensation for persons employed in direct, front-line service delivery.

(d) \$45,000 of the general fund—state fiscal year 1999 appropriation is provided solely for the implementation of Substitute Senate Bill No. 5760 (mentally ill offenders). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(e) \$609,000 of the general fund—state fiscal year 1998 appropriation and \$226,000 of the general fund—state fiscal year 1999 appropriation are provided solely for costs associated with allowing community corrections officers to carry firearms.

(4) CORRECTIONAL INDUSTRIES

General Fund Appropriation (FY 1998)	\$	4,055,000
General Fund Appropriation (FY 1999)	\$	4,167,000
TOTAL APPROPRIATION	\$	8,222,000

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

(a) \$100,000 of the general fund fiscal year 1998 appropriation and \$100,000 of the general fund fiscal year 1999 appropriation 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.

(b) \$50,000 of the general fund appropriation for fiscal year 1998 and \$50,000 of the general fund appropriation for fiscal year 1999 are provided solely for the correctional industries board of directors to hire one staff person, responsible directly to the board, to assist the board in fulfilling its duties.

(5) INTERAGENCY PAYMENTS

General Fund Appropriation (FY 1998)	\$	(6,945,000)
		<u>6,851,000</u>
General Fund Appropriation (FY 1999)	\$	(6,444,000)
		<u>6,538,000</u>
TOTAL APPROPRIATION	\$	13,389,000

Sec. 221. 1997 c 149 s 224 (uncodified) is amended to read as follows:

FOR THE SENTENCING GUIDELINES COMMISSION

General Fund Appropriation (FY 1998)	\$	714,000
General Fund Appropriation (FY 1999)	\$	713,000
TOTAL APPROPRIATION	\$	1,427,000

The appropriations in this section are subject to the following conditions and limitations: The commission shall study the feasibility and desirability of allowing certain older or physically infirm offenders to be released from institutional confinement, with the assumption that these released offenders would remain on community custody for the remainder of their length of confinement. The study shall identify: (1) Groups who would be potential candidates for such a program; (2) how individual offenders in these groups could be screened to maintain public safety; (3) how these offenders, if released, could be supervised in such a way as to maintain public safety; (4) what statutory changes would be necessary to implement such a program; (5) how much savings such a program would generate; and (6) any other items the commission deems relevant. The study shall be transmitted to the chairs and ranking minority members of the appropriate policy and fiscal committees of the legislature not later than December 15, 1998.

*Sec. 222. 1997 c 454 s 214 (uncodified) is amended to read as follows:

FOR THE EMPLOYMENT SECURITY DEPARTMENT

General Fund—State Appropriation (FY 1998) . . .	\$	1,260,000
General Fund—State Appropriation (FY 1999) . . .	\$	1,261,000
General Fund—Federal Appropriation	\$	((173,595,000))
		<u>198,628,000</u>
General Fund—Private/Local Appropriation	\$	((24,842,000))
		<u>28,650,000</u>
Unemployment Compensation Administration		
Account—Federal Appropriation	\$	((181,985,000))
		<u>182,312,000</u>
Administrative Contingency Account		
Appropriation	\$	((12,579,000))
		<u>13,527,000</u>
Employment Service Administrative Account		
Appropriation	\$	((13,176,000))
		<u>14,500,000</u>
Employment & Training Trust Account		
Appropriation	\$	600,000
TOTAL APPROPRIATION	\$	((409,298,000))
		<u>440,738,000</u>

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

- (1) Expenditures of funds appropriated in this section for the information systems projects identified in agency budget requests as "claims and adjudication call centers", "data/wage quality initiative", and "one stop information connectivity" are conditioned upon compliance with section 902 of this act.

(2) \$600,000 of the employment and training trust account appropriation is provided solely for the account's share of unemployment insurance tax collection costs.

(3) \$1,126,000 of the general fund—federal appropriation is provided solely for the continuation of job placement centers colocated on community and technical college campuses. The department shall maintain the current level of service at all 32 colocation sites through the remainder of the 1997-99 biennium.

(4) The employment security department shall spend no more than \$25,049,511 of the unemployment compensation administration account—federal appropriation for the general unemployment insurance development effort (GUIDE) project, except that the department may exceed this amount by up to \$2,600,000 to offset the cost associated with any vendor-caused delay. The additional spending authority is contingent upon the department fully recovering these moneys from any project vendors failing to perform in full. Authority to spend the amount provided by this subsection is conditioned on compliance with section 902 of this act.

(5) \$60,000 of the general fund—state fiscal year 1998 appropriation and \$61,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the King county reemployment support center.

(6) \$1,200,000 of the general fund—state fiscal year 1998 appropriation and \$1,200,000 of the general fund—state fiscal year 1999 appropriation are provided solely for labor market information and employer outreach activities.

(7) \$948,000 of the administrative contingency account appropriation and \$838,000 of the employment service administrative account appropriation are provided solely for the department to evaluate the tax determination system compared to other systems, improve the disclosure of information on the employer rate notice, and address deficiencies in the tax information system (TAXIS).

(8)(a) Within the amounts appropriated in this section, the commissioner shall improve the disclosure of information on the employer rate notice for 1999 rate year unemployment contributions. The information disclosed on the notice must be for the 1997 calendar year and for the period used to calculate the employer's experience rating for the 1999 rate year. The notice must include an explanation in plain language of the disclosed information and the disclosed information relationship to the employer's contributions. The information disclosed must include to the greatest extent possible:

(i) The contributions paid by the employer;

(ii) The benefits charged to the employer's experience rating account; and

(iii) The dollar amount that represents the difference between (a)(i) and (ii) of this subsection.

(b) In addition, the commissioner shall include the following information paid from the trust fund for each of the three most recently completed calendar years for: (i) Total benefits paid; (ii) benefits paid that were in excess of one

percent of the base year earnings of all claimants; (iii) benefits paid to claimants and not charged to any employer due to a voluntary quit; and (iv) benefits paid to a claimant but not charged to any employer because of marginal labor force attachment, along with a generic explanation of why these benefits were paid.

(9) \$20,156,000 of the general fund—federal appropriation is provided solely to implement the federal welfare-to-work program only if the governor successfully obtains an approved federal waiver for use of an alternative agency or agents to administer the welfare-to-work grants. If this waiver is not obtained, the amount provided in this subsection shall lapse.

(10) \$327,000 of the unemployment compensation administration account—federal appropriation and \$486,000 of the employment service administrative account appropriation are provided solely for the department to replace field office computers that are not compliant with Year 2000 conversion standards.

*Sec. 222 was partially vetoed. See message at end of chapter.

**PART III
NATURAL RESOURCES**

Sec. 301. 1997 c 454 s 301 (uncodified) is amended to read as follows:

FOR THE COLUMBIA RIVER GORGE COMMISSION

General Fund—State Appropriation (FY 1998) . . . \$	213,000
General Fund—State Appropriation (FY 1999) . . . \$	222,000
General Fund—Private/Local Appropriation \$	((435,000))
	<u>442,000</u>
TOTAL APPROPRIATION \$	((870,000))
	<u>877,000</u>

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

(1) \$120,000 of the general fund—state appropriation for fiscal year 1998(;) and \$120,000 of the general fund—state appropriation for fiscal year 1999(—and \$240,000 of the general fund—local appropriation)) are provided solely for each Washington Columbia river gorge county to receive an \$80,000 grant for the purposes of implementing the scenic area management plan. If a Columbia river gorge county has not adopted an ordinance to implement the scenic area management plan in accordance with the national scenic area act (P.L. 99-663), then the grant funds for that county may be used by the commission to implement the plan for that county.

(2) \$30,000 of the general fund—state appropriation for fiscal year 1998 and \$30,000 of the general fund—state appropriation for fiscal year 1999 provided to Clark county under subsection (1) of this section shall be transferred through an inter-local agreement to Skamania county solely for implementing the national scenic area act.

*Sec. 302. 1997 c 454 s 302 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 1998)	\$	((27,748,000)) <u>26,013,000</u>
General Fund—State Appropriation (FY 1999)	\$	((27,795,000)) <u>25,860,000</u>
General Fund—Federal Appropriation	\$	((45,315,000)) <u>46,240,000</u>
General Fund—Private/Local Appropriation	\$	((643,000)) <u>1,200,000</u>
Special Grass Seed Burning Research Account Appropriation	\$	((42,000)) <u>71,000</u>
Reclamation Revolving Account Appropriation	\$	2,441,000
Flood Control Assistance Account Appropriation	\$	4,850,000
State Emergency Water Projects Revolving Account Appropriation	\$	319,000
Waste Reduction/Recycling/Litter Control Appropriation	\$	10,316,000
State and Local Improvements Revolving Account (Waste Facilities) Appropriation	\$	601,000
State and Local Improvements Revolving Account (Water Supply Facilities) Appropriation	\$	1,366,000
Basic Data Account Appropriation	\$	182,000
Vehicle Tire Recycling Account Appropriation	\$	((1,194,000)) <u>357,000</u>
Water Quality Account Appropriation	\$	2,892,000
Wood Stove Education and Enforcement Account Appropriation	\$	((1,055,000)) <u>848,000</u>
Worker and Community Right-to-Know Account Appropriation	\$	469,000
State Toxics Control Account Appropriation	\$	53,715,000
Local Toxics Control Account Appropriation	\$	((4,342,000)) <u>4,759,000</u>
Water Quality Permit Account Appropriation	\$	20,378,000
Underground Storage Tank Account Appropriation	\$	((2,443,000)) <u>2,638,000</u>

Solid Waste Management Account		
Appropriation	\$	((1,021,000))
		<u>971,000</u>
Hazardous Waste Assistance Account		
Appropriation	\$	3,615,000
Air Pollution Control Account		
Appropriation	\$	16,224,000
Oil Spill Administration Account		
Appropriation	\$	((6,958,000))
		<u>6,998,000</u>
Air Operating Permit Account Appropriation	\$	((4,033,000))
		<u>3,808,000</u>
Freshwater Aquatic Weeds Account		
Appropriation	\$	1,829,000
Oil Spill Response Account		
Appropriation	\$	7,078,000
Metals Mining Account Appropriation	\$	42,000
Water Pollution Control Revolving Account—State		
Appropriation	\$	349,000
Water Pollution Control Revolving Account—Federal		
Appropriation	\$	1,726,000
Biosolids Permit Account Appropriation	\$	567,000
Environmental Excellence Account		
Appropriation	\$	247,000
TOTAL APPROPRIATION	\$	((251,795,000))
		<u>248,969,000</u>

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

(1) \$3,211,000 of the general fund—state appropriation for fiscal year 1998, \$3,211,000 of the general fund—state appropriation for fiscal year 1999, \$394,000 of the general fund—federal appropriation, \$2,017,000 of the oil spill administration account, \$819,000 of the state toxics control account appropriation, and \$3,591,000 of the water quality permit fee account are provided solely for the implementation of the Puget Sound work plan and agency action items DOE-01, DOE-02, DOE-03, DOE-04, DOE-05, DOE-06, DOE-07, DOE-08, and DOE-09.

(2) \$2,000,000 of the state toxics control account appropriation is provided solely for the following purposes:

(a) To conduct remedial actions for sites for which there are no potentially liable persons, for which potentially liable persons cannot be found, or for which potentially liable persons are unable to pay for remedial actions; and

(b) To provide funding to assist potentially liable persons under RCW 70.105D.070(2)(d)(xi) to pay for the cost of the remedial actions; and

(c) To conduct remedial actions for sites for which potentially liable persons have refused to conduct remedial actions required by the department; and

(d) To contract for services as necessary to support remedial actions.

~~((6))~~ (3) \$200,000 of the general fund—state appropriation for fiscal year 1998 is provided solely for the implementation of Engrossed Substitute House Bill No. 1118 (reopening a water rights claim filing period). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

~~((7))~~ (4) \$3,600,000 of the general fund—state appropriation for fiscal year 1998 and \$3,600,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the auto emissions inspection and maintenance program. Expenditures of the amounts provided in this subsection are contingent upon a like amount being deposited in the general fund from the auto emission inspection fees in accordance with RCW 70.120.170(4).

~~((8))~~ (5) \$170,000 of the oil spill administration account appropriation is provided solely for implementation of the Puget Sound work plan action item UW-02 through a contract with the University of Washington's Sea Grant program in order to develop an educational program that targets small spills from commercial fishing vessels, ferries, cruise ships, ports, and marinas.

~~((9))~~ (6) The merger of the office of marine safety into the department of ecology shall be accomplished in a manner that will maintain a priority focus on oil spill prevention, as well as maintain a strong oil spill response capability. The merged program shall be established to provide a high level of visibility and ensure that there shall not be a diminution of the existing level of effort from the merged programs.

~~((10))~~ (7) The entire environmental excellence account appropriation is provided solely for the implementation of Engrossed Second Substitute House Bill No. 1866 (environmental excellence). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse. In implementing the bill, the department shall organize the needed expertise to process environmental excellence applications after an application has been received.

~~((11))~~ (8) \$200,000 of the freshwater aquatic weeds account appropriation is provided solely to address saltcedar weed problems.

~~((12))~~ (9) \$4,498,000 of the waste reduction, recycling, and litter control account appropriation is provided for fiscal year 1998 and \$5,818,000 is provided for fiscal year 1999 to be expended in the following ratios: Fifty percent for a litter patrol program to employ youth and correctional work crews to remove litter from places that are most visible to the public; twenty percent for grants to local governments for litter cleanup under RCW 70.93.250; and thirty percent for public education and awareness programs and programs to foster local waste reduction and recycling efforts. From the amounts provided in this subsection, the department shall provide \$352,000 through an interagency agreement to the department of corrections to hire correctional crews to remove litter in areas that are not accessible to youth crews.

~~((13))~~ (10) The entire biosolids permit account appropriation is provided solely for implementation of Engrossed Senate Bill No. 5590 (biosolids

management). If the bill is not enacted by June 30, 1997, the entire appropriation is null and void.

~~((14))~~ (11) \$29,000 of the general fund—state appropriation for fiscal year 1998 and \$99,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of Substitute House Bill No. 1985 (landscape management plans). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((15))~~ (12) \$60,000 of the freshwater aquatic weeds account appropriation is provided solely for a grant to the department of fish and wildlife to control and eradicate purple loosestrife using the most cost-effective methods available, including chemical control where appropriate.

~~((16))~~ (13) \$250,000 of the flood control assistance account appropriation is provided solely as a reappropriation to complete the Skokomish valley flood reduction plan. The amount provided in this subsection shall be reduced by the amount expended from this account for the Skokomish valley flood reduction plan during the biennium ending June 30, 1997.

~~((18))~~ (14) \$600,000 of the flood control assistance account appropriation is provided solely to complete flood control projects that were awarded funds during the 1995-97 biennium. These funds shall be spent only to complete projects that could not be completed during the 1995-97 biennium due to delays caused by weather or delays in the permitting process.

~~((19))~~ (15) \$113,000 of the general fund—state appropriation for fiscal year 1998 and \$112,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for implementation of Substitute Senate Bill No. 5505 (assistance to water applicants). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((20))~~ (16) \$70,000 of the general fund—state appropriation for fiscal year 1998 and \$70,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for implementation of Substitute Senate Bill No. 5785 (consolidation of groundwater rights). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((21))~~ (17) \$20,000 of the general fund—state appropriation for fiscal year 1998 and \$20,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for implementation of Substitute Senate Bill No. 5276 (water right applications). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((23))~~ (18) *\$500,000 of the general fund—state appropriation for fiscal year 1998 and \$500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the continuation of the southwest Washington coastal erosion study and for coastal erosion project grants. Fifty percent of the amount for fiscal year 1999 shall be allocated to the department of community, trade, and economic development for coastal erosion project grants.*

(19) It is the intent of the legislature that, within the general fund—state appropriations provided in this section, the department shall prioritize its

resources to provide expedited assistance to businesses seeking permitting and technical assistance for rural economic development projects. Top priority shall be given to pending economic development projects which are located in rural counties and which have invoked the coordinated permit process pursuant to chapter 90.60 RCW, and the relative priority among such projects shall be based upon the date of execution of the project's coordinated permit agreement, with the earliest agreement having top priority.

(20) Within the amounts provided in this section, the department shall contract for a scientific review by a panel selected by the society of environmental toxicology and chemistry of the following documents: 1992 environmental impact statement on aquatic weeds; the KCM phase I study of Lake Steilacoom; the conditions and requirements of the first permit issued for the 1997 treatment season for Lake Steilacoom; and, studies done in respect to the listing of Lake Steilacoom as a possible model toxic control act site.

(21) \$195,000 of the underground storage tank account appropriation is provided solely for the implementation of Substitute Senate Bill No. 6130 (underground storage tanks). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(22) \$417,000 of the local toxics control account appropriation is provided solely to implement Substitute Senate Bill No. 6474 (fertilizer regulation). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(23) Using up to \$19,000 of the special grass seed burning research account appropriation the department shall provide funding to Washington State University to conduct a grass burning emissions study.

(24) Within the amounts provided in this section, the department shall conduct a demonstration project on the effectiveness of the state-registered herbicide "Navigate" for the control of Eurasian water milfoil in Loon Lake in Stevens county. The department shall provide a grant to the Stevens county weed board to cover fifty percent of the cost of application of the herbicide. A local match of fifty percent of the cost of application of the herbicide is required. Permits and approvals necessary to implement the demonstration project may be conditioned by the department to protect public health and the environment, but approval may not be withheld.

(25) Within the amounts provided in this section, the department shall provide funds to Yakima county superior court for staff and associated costs to support the Yakima river basin water rights adjudication.

*Sec. 302 was partially vetoed. See message at end of chapter.

***NEW SECTION.** Sec. 303. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

General Fund—State Appropriation (FY 1998) . . . \$	1,700,000
General Fund—State Appropriation (FY 1999) . . . \$	4,420,000
General Fund—Federal Appropriation \$	18,000

Water Quality Permit Account Appropriation \$	9,000
Air Pollution Control Account Appropriation \$	9,000
TOTAL APPROPRIATION \$	6,156,000

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

(1) \$1,400,000 of the general fund—state appropriation for fiscal year 1998 and \$3,600,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement sections 1 through 9 of Engrossed Substitute House Bill No. 2514 (integrated watershed management). If any of these sections of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse. Of the amounts in this subsection, \$1,400,000 of the general fund—state appropriation for fiscal year 1998 and \$2,500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for grants to local watershed planning units, and \$1,100,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for technical assistance to local watershed planning groups. The department may provide moneys to other state agencies that provide technical assistance to local watershed planning groups through an interagency agreement.

(2) \$400,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement Substitute Senate Bill No. 6161 (dairy nutrient management). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(3) \$300,000 of the general fund—state appropriation for fiscal year 1998 is provided solely for the department to conduct a preconstruction analysis of Pine Hollow, located near the communities of Wiley City and Tampico in Yakima county, regarding its suitability as a site for the construction of a retainment dam and water storage reservoir and the reservoir site's potential to enhance and maintain anadromous fish and other aquatic life and agriculture. The analysis shall include, but is not limited to, a hydrologic and water rights assessment of the Ahtanum Creek watershed to determine water availability to Pine Hollow, an analysis of the geology and hydrology of the site and appropriate dam design and dynamics, its impact on water-related issues, and on Yakama Indian Nation and other water rights. Using amounts appropriated in this section and the associated local match, the department shall conduct portions of its analysis through contracts with private entities and through contracts with, or by providing grant moneys to, the Yakama Indian Nation and other public entities, which may include other state agencies, irrigation districts local to the area, cities, Yakima county, and federal agencies. The department shall consult with stakeholders before conducting this preconstruction analysis. The analysis shall be completed by June 30, 1999. The amount provided in this subsection is contingent upon the provision of an equal cash match from the Ahtanum irrigation district, and if such a match is not received the amount provided in this subsection shall lapse.

(4) \$200,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement Engrossed Substitute Senate Bill No. 5703

(water right beneficial use). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(5) \$24,000 of the general fund—state appropriation for fiscal year 1999, \$18,000 of the general fund—federal appropriation, \$9,000 of the water quality permit account appropriation, and \$9,000 of the air pollution control account appropriation are provided solely to implement sections 1, 4, and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 1, 4, and 11 of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(6) \$196,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement Engrossed Second Substitute House Bill No. 2339 (wetlands mitigation banking). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 303 was partially vetoed. See message at end of chapter.

Sec. 304. 1997 c 454 s 303 (uncodified) is amended to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

General Fund—State Appropriation (FY 1998) . . . \$	((20,526,000))
	<u>20,489,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((20,335,000))
	<u>20,595,000</u>
General Fund—Federal Appropriation \$	((2,428,000))
	<u>3,122,000</u>
General Fund—Private/Local Appropriation \$	59,000
Winter Recreation Program Account	
Appropriation \$	((759,000))
	<u>779,000</u>
Off Road Vehicle Account Appropriation \$	251,000
Snowmobile Account Appropriation \$	((2,290,000))
	<u>3,260,000</u>
Aquatic Lands Enhancement Account	
Appropriation \$	321,000
Public Safety and Education Account	
Appropriation \$	48,000
Industrial Insurance Premium Refund	
Appropriation \$	10,000
Waste Reduction/Recycling/Litter Control	
Appropriation \$	34,000
Water Trail Program Account Appropriation \$	14,000
Parks Renewal and Stewardship Account	
Appropriation \$	((25,344,000))
	<u>25,894,000</u>
TOTAL APPROPRIATION \$	((72,419,000))
	<u>74,876,000</u>

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

(1) \$189,000 of the aquatic lands enhancement account appropriation is provided solely for the implementation of the Puget Sound work plan agency action items P&RC-01 and P&RC-03.

(2) \$264,000 of the general fund—federal appropriation is provided for boater programs state-wide and for implementation of the Puget Sound work plan.

(3) \$45,000 of the general fund—state appropriation for fiscal year 1998 is provided solely for a feasibility study of a public/private effort to establish a reserve for recreation and environmental studies in southwest Kitsap county.

(4) Within the funds provided in this section, the state parks and recreation commission shall provide to the legislature a status report on implementation of the recommendations contained in the 1994 study on the restructuring of Washington state parks. This status report shall include an evaluation of the campsite reservation system including the identification of any incremental changes in revenues associated with implementation of the system and a progress report on other enterprise activities being undertaken by the commission. The report may also include recommendations on other revenue generating options. In preparing the report, the commission is encouraged to work with interested parties to develop a long-term strategy to support the park system. The commission shall provide this report by December 1, 1997.

(5) ~~(\$85,000)~~ \$48,000 of the general fund—state appropriation for fiscal year 1998 and ~~(\$165,000)~~ \$202,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for development of underwater park programs and facilities. The department shall work with the underwater parks program task force to develop specific plans for the use of these funds.

(6) Fees approved by the state parks and recreation commission in 1997 for camping, snow parks, wood debris collection, and Fort Worden state park are authorized to exceed the fiscal growth factor under RCW 43.135.055.

(7) \$20,000 of the winter recreation program account appropriation and \$20,000 of the snowmobile account appropriation are provided solely for a grant for the operation of the Northwest avalanche center.

Sec. 305. 1997 c 149 s 304 (uncodified) is amended to read as follows:

FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

Firearms Range Account Appropriation	\$	46,000
Recreation Resources Account—State		
Appropriation	\$	2,352,000
Recreation Resources Account—Federal		
Appropriation	\$	11,000
NOVA Program Account Appropriation	\$	590,000
TOTAL APPROPRIATION	\$	((2,988,000))
		<u>2,999,000</u>

The appropriations in this section are subject to the following conditions and limitations: Any proceeds from the sale of the PRISM software system shall be deposited into the recreation resources account.

Sec. 306. 1997 c 149 s 306 (uncodified) is amended to read as follows:

FOR THE CONSERVATION COMMISSION

General Fund Appropriation (FY 1998)	\$	838,000
General Fund Appropriation (FY 1999)	\$	((840,000))
		<u>3,840,000</u>
Water Quality Account Appropriation	\$	440,000
TOTAL APPROPRIATION	\$	((2,118,000))
		<u>5,118,000</u>

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

(1) \$181,000 of the general fund appropriation for fiscal year 1998, \$181,000 of the general fund appropriation for fiscal year 1999, and \$130,000 of the water quality account appropriation are provided solely for the implementation of the Puget Sound work plan agency action item CC-01.

(2) \$1,000,000 of the general fund appropriation for fiscal year 1999 is provided solely for grants to conservation districts to provide technical assistance to landowners enrolling in the conservation reserve enhancement program.

(3) \$200,000 of the general fund appropriation for fiscal year 1999 is provided solely for technical assistance for dairy farmers to implement Substitute Senate Bill No. 6161 (dairy nutrient management). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(4) \$800,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to conduct limiting factor analysis in accordance with sections 7 through 10 of Engrossed Substitute House Bill No. 2496 (salmon recovery planning). If any of these sections of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse. To the extent possible, the commission shall establish partnerships with the federal natural resources conservation service and other entities conducting watershed or limiting factor analysis. Of this amount, \$150,000 is provided for limiting factor analysis in the Snake river evolutionarily significant unit.

(5) \$1,000,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a contract with a nonprofit entity on a pilot program basis to develop and implement a volunteer habitat initiative. The initiative must include: A training program for volunteers; a public outreach and education program; and a program to encourage landowners and land managers to use volunteers in salmon habitat improvement projects.

*Sec. 307. 1997 c 454 s 304 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

General Fund—State Appropriation (FY 1998) . . . \$	((36,049,000))
	<u>35,857,000</u>

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General Fund—State Appropriation (FY 1999) . . . \$	((36,571,000))
	<u>44,998,000</u>
General Fund—Federal Appropriation \$	((73,015,000))
	<u>75,037,000</u>
General Fund—Private/Local Appropriation \$	((26,758,000))
	<u>26,983,000</u>
Off Road Vehicle Account Appropriation \$	488,000
Aquatic Lands Enhancement Account	
Appropriation \$	5,593,000
Public Safety and Education Account	
Appropriation \$	((590,000))
	<u>586,000</u>
Industrial Insurance Premium Refund	
Appropriation \$	120,000
Recreational Fisheries Enhancement	
Appropriation \$	2,387,000
Warm Water Game Fish Account Appropriation . . \$	2,419,000
Wildlife Account Appropriation \$	((52,372,000))
	<u>44,122,000</u>
Game Special Wildlife Account—State	
Appropriation \$	1,911,000
Game Special Wildlife Account—Federal	
Appropriation \$	10,844,000
Game Special Wildlife Account—Private/Local	
Appropriation \$	350,000
Oil Spill Administration Account Appropriation . . \$	843,000
Environmental Excellence Account Appropriation \$	20,000
Eastern Washington Pheasant Enhancement Account	
Appropriation \$	547,000
<u>Regional Fisheries Enhancement—Federal</u>	
<u>Appropriation \$</u>	<u>750,000</u>
TOTAL APPROPRIATION \$	((250,877,000))
	<u>253,855,000</u>

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

(1) \$1,181,000 of the general fund—state appropriation for fiscal year 1998 and \$1,181,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of the Puget Sound work plan agency action items DFW-01, DFW-03, DFW-04, and DFW-8 through DFW-15.

(2) \$188,000 of the general fund—state appropriation for fiscal year 1998 and \$155,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for a maintenance and inspection program for department-owned dams. The department shall submit a report to the governor and the appropriate legislative committees by October 1, 1998, on the status of department-owned

dams. This report shall provide a recommendation, including a cost estimate, on whether each facility should continue to be maintained or should be decommissioned.

(3) \$832,000 of the general fund—state appropriation for fiscal year 1998 and \$825,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement salmon recovery activities and other actions required to respond to federal listings of salmon species under the endangered species act.

(4) \$350,000 of the wildlife account appropriation, \$72,000 of the general fund—state appropriation for fiscal year 1998, and \$73,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for control and eradication of class B designate weeds on department owned and managed lands. The amounts from the general fund—state appropriations are provided solely for control of spartina.

(5) \$140,000 of the wildlife account appropriation is provided solely for a cooperative effort with the department of agriculture for research and eradication of purple loosestrife on state lands.

(6) In controlling weeds on state-owned lands, the department shall use the most cost-effective methods available, including chemical control where appropriate, and the department shall report to the appropriate committees of the legislature by January 1, 1998, on control methods, costs, and acres treated during the previous year.

~~(7) ((A maximum of \$1,000,000 is provided from the wildlife fund for fiscal year 1998. The amount provided in this subsection is for the emergency feeding of deer and elk that may be starving and that are posing a risk to private property due to severe winter conditions during the winter of 1997-98. The amount expended under this subsection must not exceed the amount raised pursuant to section 3 of Substitute House Bill No. 1478. Of the amount expended under this subsection, not more than fifty percent may be from fee revenue generated pursuant to section 3 of Substitute House Bill No. 1478. If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.~~

~~(8))~~ (8)) \$193,000 of the general fund—state appropriation for fiscal year 1998, \$194,000 of the general fund—state appropriation for fiscal year 1999, and \$300,000 of the wildlife account appropriation are provided solely for the design and development of an automated license system.

~~((9))~~ (8) The department is directed to offer for sale its Cessna 421 aircraft by June 30, 1998. Proceeds from the sale shall be deposited in the wildlife account.

~~((+0))~~ (9) \$500,000 of the general fund—state appropriation for fiscal year 1998 and \$500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to continue the department's habitat partnerships program during the 1997-99 biennium.

~~((+1))~~ (10) \$350,000 of the general fund—state appropriation for fiscal year 1998 and \$350,000 of the general fund—state appropriation for fiscal year 1999

are provided solely for purchase of monitoring equipment necessary to fully implement mass marking of coho salmon.

~~((+2))~~ (11) \$238,000 of the general fund—state appropriation for fiscal year 1998 and \$219,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of Substitute House Bill No. 1985 (landscape management plans). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((+2))~~ (12) \$150,000 of the general fund—state appropriation for fiscal year 1998 and \$150,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for a contract with the United States department of agriculture to carry out animal damage control projects throughout the state related to cougars, bears, and coyotes.

~~((+4))~~ (13) \$97,000 of the general fund—state appropriation for fiscal year 1998 and \$98,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement animal damage control programs for Canada geese in the lower Columbia river basin.

~~((+5))~~ (14) \$170,000 of the general fund—state appropriation for fiscal year 1998, \$170,000 of the general fund—state appropriation for fiscal year 1999, and \$360,000 of the wildlife account appropriation are provided solely to hire additional enforcement officers to address problem wildlife throughout the state.

~~((+7))~~ (13) \$133,000 of the general fund—state appropriation for fiscal year 1998 and \$133,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement Substitute Senate Bill No. 5442 (flood control permitting). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((+8))~~ (16) \$100,000 of the aquatic lands enhancement account appropriation is provided solely for grants to the regional fisheries enhancement groups.

~~((+9))~~ (17) \$547,000 of the eastern Washington pheasant enhancement account appropriation is provided solely for implementation of Substitute Senate Bill No. 5104 (pheasant enhancement program). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

~~((+20))~~ (18) \$150,000 of the general fund—state appropriation for fiscal year 1998 and \$150,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to hire Washington conservation corps crews to maintain department-owned and managed lands.

~~((+2+))~~ (19) The entire environmental excellence account appropriation is provided solely for implementation of Engrossed Second Substitute House Bill No. 1866 (environmental excellence). If the bill is not enacted by June 30, 1997, the entire appropriation is null and void.

~~((+22))~~ (20) \$156,000 of the recreational fisheries enhancement appropriation is provided solely for Substitute Senate Bill No. 5102 (fishing license surcharge). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

~~((23))~~ (21) \$25,000 of the general fund—state appropriation for fiscal year 1998 and \$25,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for staffing and operation of the Tennant Lake interpretive center.

(22) It is the intent of the legislature that, within the general fund—state appropriations provided in this section, the department shall prioritize its resources to provide expedited assistance to businesses seeking permitting and technical assistance for rural economic development projects.

(23) \$750,000 of the regional fisheries enhancement—federal appropriation is provided solely for the regional fisheries enhancement groups. The amount in this section may be spent for project identification, design, permitting, and implementation; volunteer coordination; and administrative costs as approved under RCW 75.50.100 and 75.50.115(1)(d). All amounts not committed to approved project, volunteer coordination, or administrative costs by May 31, 1998, shall be made available to any of the regional fisheries enhancement groups that have submitted project approval requests that exceed their available funding from the regional fisheries enhancement group account and the regional fisheries enhancement salmonid recovery account. Redistribution of the moneys shall be based on the criteria established in RCW 75.50.115(1)(e), and shall ensure to the greatest extent possible that the funds are spent during the 1998 in-stream season.

(24) \$700,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for grants to habitat restoration lead entities formed in accordance with sections 7 through 10 of Engrossed Substitute House Bill No. 2496 (salmon recovery planning) for administrative activities and development of habitat-restoration project lists. If any of these sections of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse. Of this amount, \$100,000 is provided as a grant to the regional committee lead entity for administrative activities in the Snake river evolutionarily significant unit.

(25) \$50,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for operation of the independent science panel in accordance with section 6 of Engrossed Substitute House Bill No. 2496 (salmon recovery planning). If this section of the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(26) \$450,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for fish passage technical assistance to local governments, volunteer groups, and regional fisheries enhancement groups in accordance with Engrossed Substitute House Bill No. 2496 (salmon recovery planning). The department shall also contract with the department of transportation to train staff at the department of transportation to become proficient in providing fish passage technical assistance. If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(27) \$250,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for excessive deer and elk damage claims.

(28) \$393,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the implementation of Substitute Senate Bill No. 6324 (fish

remote site incubators). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(29) \$1,000,000 of the general fund—state appropriation for fiscal year 1999, \$400,000 of the general fund—federal appropriation, and \$225,000 of the general fund—local appropriation are provided solely to contract for the mass marking of all appropriate state-wide department chinook salmon hatchery production in accordance with Second Substitute Senate Bill No. 6264 (chinook salmon mass marking). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(30) \$3,500,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for salmon restoration projects funded according to sections 7 through 10 of Second Substitute House Bill No. 2496 (salmon recovery planning). Of this amount, \$500,000 is provided solely for a block grant to the conservation districts located in the Snake river evolutionarily significant unit for habitat restoration projects. If any of these sections of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(31) \$1,170,000 of the general fund—state appropriation for fiscal year 1999 and \$3,500,000 of the general fund—federal appropriation are provided solely to implement a license buy-back program for commercial fishing licenses.

(32) \$5,000 of the general fund—state appropriation for fiscal year 1998 and \$40,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for implementation of Substitute Senate Bill No. 6114 (nonindigenous aquatic species). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(33) \$1,000,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for purchasing computer equipment to support implementation of Second Substitute Senate Bill No. 6330 (fish and wildlife licenses). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(34) \$70,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement sections 1, 4, and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 1, 4, and 11 of the bill are not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 307 was partially vetoed. See message at end of chapter.

*Sec. 308. 1997 c 454 s 305 (uncodified) is each amended to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

General Fund—State Appropriation (FY 1998) . . .	\$	23,767,000
General Fund—State Appropriation (FY 1999) . . .	\$	((24,168,000))
		<u>24,410,000</u>
General Fund—Federal Appropriation	\$	1,156,000
General Fund—Private/Local Appropriation	\$	422,000
Forest Development Account Appropriation	\$	((49,923,000))
		<u>49,963,000</u>

Off Road Vehicle Account Appropriation	\$	3,628,000
Surveys and Maps Account Appropriation	\$	2,088,000
Aquatic Lands Enhancement Account		
Appropriation	\$	4,869,000
Resource((s)) Management Cost Account		
Appropriation	\$	((89,613,000))
		<u>89,769,000</u>
Waste Reduction/Recycling/Litter Control		
Appropriation	\$	450,000
Surface Mining Reclamation Account		
Appropriation	\$	1,420,000
Aquatic Land Dredged Material Disposal Site		
Account Appropriation	\$	751,000
Natural Resources Conservation Areas Stewardship		
Account Appropriation	\$	77,000
Air Pollution Control Account Appropriation	\$	890,000
Metals Mining Account Appropriation	\$	62,000
<u>Natural Resources Equipment Account</u>		
<u>Appropriation</u>	\$	<u>750,000</u>
TOTAL APPROPRIATION	\$	((203,284,000))
		<u>204,472,000</u>

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

(1) \$7,017,000 of the general fund—state appropriation for fiscal year 1998 and \$6,900,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for emergency fire suppression.

(2) \$18,000 of the general fund—state appropriation for fiscal year 1998, \$18,000 of the general fund—state appropriation for fiscal year 1999, and \$957,000 of the aquatic lands enhancement account appropriation are provided solely for the implementation of the Puget Sound work plan agency action items DNR-01, DNR-02, and DNR-04.

(3) \$450,000 of the resource management cost account appropriation is provided solely for the control and eradication of class B designate weeds on state lands. The department shall use the most cost-effective methods available, including chemical control where appropriate, and report to the appropriate committees of the legislature by January 1, 1998, on control methods, costs, and acres treated during the previous year.

(4) \$1,332,000 of the general fund—state appropriation for fiscal year 1998 and \$1,713,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for fire protection activities.

(5) \$541,000 of the general fund—state appropriation for fiscal year 1998 and \$549,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the stewardship of natural area preserves, natural resource conservation areas, and the operation of the natural heritage program.

(6) \$2,300,000 of the aquatic lands enhancement account appropriation is provided for the department's portion of the Eagle Harbor settlement.

(7) \$195,000 of the general fund—state appropriation for fiscal year 1998 and \$220,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of Substitute House Bill No. 1985 (landscape management plans). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(8) \$600,000 of the general fund—state appropriation for fiscal year 1998 and \$600,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the cooperative monitoring, evaluation, and research projects related to implementation of the timber-fish-wildlife agreement.

(9) \$6,568,000 of the forest development account appropriation is provided solely for silviculture activities on forest board lands. To the extent that forest board counties apply for reconveyance of lands pursuant to Substitute Senate Bill No. 5325 (county land transfers), the amount provided in this subsection shall be reduced by an amount equal to the estimated silvicultural expenditures planned in each county that applies for reconveyance.

(10) The entire natural resources equipment account appropriation is provided solely for replacement of equipment and development of infrastructure necessary to meet new federal communications commission regulations.

(11) \$75,000 of the general fund—state appropriation for fiscal year 1999, \$35,000 from the resource management cost account appropriation, and \$40,000 from the forest development account appropriation are provided solely to implement sections 1, 4, and 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If sections 1, 4, and 11 of the bill are not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(12) \$71,000 of the resource management cost account appropriation is provided solely for a study of the current method for determining water-dependent rents in accordance with Second Substitute Senate Bill No. 6156 (state aquatic lands leases). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(13) \$117,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a geographic information systems inventory of Washington sand, gravel, and construction rock resources.

(14) \$50,000 of the resource management cost account appropriation is provided solely for a field study of biological control methods for eradication of spartina.

(15) \$50,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a study of potential finfish net-pen aquaculture sites in the Strait of Juan de Fuca and along the Pacific coast.

*Sec. 308 was partially vetoed. See message at end of chapter.

*Sec. 309, 1997 c 149 s 309 (uncodified) is each amended to read as follows:
FOR THE DEPARTMENT OF AGRICULTURE

General Fund—State Appropriation (FY 1998) . . .	\$	((7,596,000))
		<u>7,605,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((7,008,000))
		<u>8,285,000</u>
General Fund—Federal Appropriation	\$	((4,716,000))
		<u>5,077,000</u>
General Fund—Private/Local Appropriation	\$	405,000
Aquatic Lands Enhancement Account		
Appropriation	\$	806,000
Industrial Insurance Premium Refund		
Appropriation	\$	184,000
State Toxics Control Account Appropriation	\$	1,338,000
<u>Local Toxics Control Account Appropriation</u>	<u>\$</u>	<u>258,000</u>
TOTAL APPROPRIATION	\$	((22,053,000))
		<u>23,958,000</u>

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

(1) \$35,000 of the general fund—state appropriation for fiscal year 1998 and \$36,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for technical assistance on pesticide management including the implementation of the Puget Sound work plan agency action item DOA-01.

(2) \$461,000 of the general fund—state appropriation for fiscal year 1998, \$421,000 of the general fund—state appropriation for fiscal year 1999, and ~~((361,000))~~ \$722,000 of the general fund—federal appropriation are provided solely to monitor and eradicate the Asian gypsy moth.

(3) \$138,000 of the general fund—state appropriation for fiscal year 1998 and \$138,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for two additional staff positions in the plant protection program.

(4) \$12,000 of the general fund—state appropriation for fiscal year 1998 and \$13,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the implementation of Substitute Senate Bill No. 5077 (integrated pest management). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(5) \$258,000 of the local toxics control account appropriation is provided solely to implement Senate Bill No. 6474 (fertilizer regulation). The amount provided in this subsection shall be used to conduct a comprehensive study of plant uptake of metals and to implement new fertilizer registration requirements. If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(6) \$50,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement section 11 of Engrossed Second Substitute House Bill No. 2345 (revising administrative law). If section 11 of the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(7) \$95,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for deposit into the livestock identification account to implement sections 2 and 98 of Engrossed Substitute Senate Bill No. 6204 (livestock identification). If either of these sections of the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

*Sec. 309 was partially vetoed. See message at end of chapter.

Sec. 310. 1997 c 149 s 310 (uncodified) is each amended to read as follows:
FOR THE WASHINGTON POLLUTION LIABILITY REINSURANCE PROGRAM

Pollution Liability Insurance Program Trust Account	
Appropriation	\$ (909,000)
	<u>1,009,000</u>

**PART IV
TRANSPORTATION**

Sec. 401. 1997 c 149 s 401 (uncodified) is each amended to read as follows:
FOR THE DEPARTMENT OF LICENSING

General Fund Appropriation (FY 1998)	\$ ((4,536,000))
	<u>4,686,000</u>
General Fund Appropriation (FY 1999)	\$ ((4,409,000))
	<u>4,717,000</u>
Architects' License Account Appropriation	\$ ((857,000))
	<u>829,000</u>
Cemetery Account Appropriation	\$ ((188,000))
	<u>197,000</u>
Professional Engineers' Account Appropriation . . .	\$ ((2,674,000))
	<u>2,700,000</u>
Real Estate Commission Account Appropriation . .	\$ ((6,708,000))
	<u>7,062,000</u>
Master License Account Appropriation	\$ ((6,998,000))
	<u>6,963,000</u>
Uniform Commercial Code Account Appropriation	\$ ((4,291,000))
	<u>3,521,000</u>
Real Estate Education Account Appropriation . . .	\$ 606,000
Funeral Directors And Embalmers Account	
Appropriation	\$ ((409,000))
	<u>418,000</u>
TOTAL APPROPRIATION	\$ ((31,676,000))
	<u>31,699,000</u>

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

- (1) \$21,000 of the general fund fiscal year 1998 appropriation and \$22,000 of the general fund fiscal year 1999 appropriation are provided solely to implement House Bill No. 1827 or Senate Bill No. 5754 (boxing, martial arts,

wrestling). If neither bill is enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(2) \$40,000 of the master license account appropriation is provided solely to implement Substitute Senate Bill No. 5483 (whitewater river outfitters). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(3) \$229,000 of the general fund fiscal year 1998 appropriation and \$195,000 of the general fund fiscal year 1999 appropriation are provided solely for the implementation of Senate Bill No. 5997 (cosmetology inspections). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(4) \$31,000 of the general fund fiscal year 1998 appropriation, \$1,000 of the general fund fiscal 1999 appropriation, \$7,000 of the architects' license account appropriation, \$18,000 of the professional engineers' account appropriation, \$14,000 of the real estate commission account appropriation, \$40,000 of the master license account appropriation, and \$3,000 of the funeral directors and embalmers account appropriation are provided solely for the implementation of Engrossed House Bill No. 3901 (implementing welfare reform). If the bill is not enacted by June 30, 1997, the amounts provided in this subsection shall lapse.

(5) \$17,000 of the professional engineers' account appropriation is provided solely to implement Senate Bill No. 5266 (engineers/land surveyors). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(6) \$110,000 of the general fund fiscal year 1998 appropriation is provided solely to implement Senate Bill No. 5998 (cosmetology advisory board). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.

~~(7) (\$74,000 of the uniform commercial code account appropriation is provided solely to implement Engrossed Senate Bill No. 5163 (UCC filing). If the bill is not enacted by June 30, 1997, the amount provided in this subsection shall lapse.~~

~~—(8))~~ \$11,000 of the general fund fiscal year 1998 appropriation and \$2,000 of the general fund fiscal year 1999 appropriation are provided solely to implement Substitute House Bill No. 1748 or Substitute Senate Bill No. 5513 (vessel registration). If neither bill is enacted by June 30, 1997, the amount provided in this subsection shall lapse.

(8)(a) Pursuant to RCW 43.135.055, during the 1997-99 fiscal biennium, the department may increase fees in excess of the fiscal growth factor in the appraisers and camp resorts programs; however, such increases shall not exceed an annual increase of eight percent.

(b) Pursuant to RCW 43.135.055, during the 1997-99 fiscal biennium, the department may increase fees in excess of the fiscal growth factor in the professional athletics, employment agencies, and security guards programs to the extent necessary to defray the costs of the administration of these programs as set forth in RCW 43.24.086.

(c) Before raising fees in excess of the fiscal growth factor pursuant to this subsection, the department shall notify the chairs and ranking minority members of the appropriate fiscal committees of the legislature.

(9) Within the amounts provided in this section, the department shall provide information detailing each specific component of the overhead costs allocated to each program within the business and professions division. The department shall establish procedures to allow each program within the business and professions division to review and modify its business processes in order to reduce administrative costs. The department of licensing shall provide a report to the fiscal committees of the legislature by October 1, 1998, detailing the specific procedures established pursuant to the requirements of this subsection.

(10) \$110,000 of the general fund fiscal year 1999 appropriation is provided solely for the implementation of the Substitute Senate Bill No. 6507 (cosmetology advisory board). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(11) \$75,000 of the general fund fiscal year 1999 appropriation is provided solely for costs associated with fully implementing chapter 178, Laws of 1997 (cosmetology inspections).

Sec. 402. 1997 c 149 s 402 (uncodified) is each amended to read as follows:

FOR THE STATE PATROL

General Fund—State Appropriation (FY 1998) . . . \$	((7,712,000)) <u>8,312,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((7,850,000)) <u>21,791,000</u>
General Fund—Federal Appropriation \$	((3,990,000)) <u>5,784,000</u>
General Fund—Private/Local Appropriation \$	341,000
Public Safety and Education Account Appropriation \$	((4,652,000)) <u>4,483,000</u>
County Criminal Justice Assistance Account Appropriation \$	3,905,000
Municipal Criminal Justice Assistance Account Appropriation \$	1,573,000
Fire Service Trust Account Appropriation \$	92,000
Fire Service Training Account Appropriation \$	((1,762,000)) <u>2,295,000</u>
State Toxics Control Account Appropriation \$	439,000
Violence Reduction and Drug Enforcement Account Appropriation \$	((310,000)) <u>570,000</u>
Fingerprint Identification Account Appropriation \$	((3,082,000)) <u>3,220,000</u>

TOTAL APPROPRIATION	\$	((35,708,000))
		<u>52,805,000</u>

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

(1) \$254,000 of the fingerprint identification account appropriation is provided solely for an automated system that will facilitate the access of criminal history records remotely by computer or telephone for preemployment background checks and other non-law enforcement purposes. The agency shall submit an implementation status report to the office of financial management and the legislature by September 1, 1997.

(2) \$264,000 of the general fund—federal appropriation is provided solely for a feasibility study to develop a criminal investigation computer system. The study will report on the feasibility of developing a system that uses incident-based reporting as its foundation, consistent with FBI standards. The system will have the capability of connecting with local law enforcement jurisdictions as well as fire protection agencies conducting arson investigations. The study will report on the system requirements for incorporating case management, intelligence data, imaging, and geographic information. The system will also provide links to existing crime information databases such as WASIS and WACIC. The agency shall submit a copy of the proposed study workplan to the office of financial management and the department of information services for approval prior to expenditure. A final report shall be submitted to the appropriate committees of the legislature, the office of financial management, and the department of information services no later than June 30, 1998.

(3) Pursuant to chapter 43.135 RCW, during the 1997-99 fiscal biennium, the Washington state patrol is authorized to raise existing fees charged for background fingerprint checks on current and potential school district and educational service district employees by six dollars.

(4) \$166,000 of the general fund—state appropriation for fiscal year 1998 and \$499,000 of the general fund—state appropriation for fiscal year 1999 are provided solely as state matching funds required to complete changes to the WACIC and WASIS systems.

(5) To address year 2000 concerns about the automated fingerprint identification system (AFIS), the Washington state patrol may contract with an intergovernmental consortium for the use of a year 2000 compatible AFIS system. Under this approach, the state patrol would begin paying a monthly usage fee starting in fiscal year 2000.

(6) \$58,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement House Bill No. 1172 (sex offender registration). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

**PART V
EDUCATION**

NEW SECTION. Sec. 501. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR A STUDY OF K-12 FINANCE. A study of the system of finance of the Washington common schools shall be conducted by the joint legislative audit and review committee subject to the following conditions and limitations:

(1) The study shall address:

(a) The revenue and expenditure practices of local school districts. To the extent data is available, the study shall identify patterns of resource allocations to selected districts, buildings, and classrooms. The study shall document the extent to which meaningful analysis of resource allocations is limited by data currently available and shall identify means necessary to obtain information necessary to analyze the efficiency and effectiveness of common school expenditures. The study shall also seek to identify districts that have financial data available in a form that facilitates understanding by persons without specialized expertise in public finance.

(b) The ratio of students to teachers and other personnel in selected districts, buildings, and classrooms. To the extent data is obtainable, class-size shall include analysis of the use of certificated and noncertificated classroom instructors and assistants, the education and experience of instructional staff, the composition of students in classrooms by status including students who qualify for special education, learning assistance, bilingual education, gifted education, free and reduced-price lunch and other characteristics, including educational outcomes relevant to understanding the nature of class-size and the nature of students and teachers in those classes.

(2) The final report shall be presented no later than June 30, 1999. Before the final report is presented, an interim briefing shall be presented to the fiscal committees of the legislature for review and comment.

(3) Funds appropriated to the joint legislative audit and review committee for the study specified in this section may be used for consulting services as deemed necessary, including, but not limited to, review of studies of a similar nature and consultation with experts in the field of public school finance on the feasibility and best approaches to a state fiscal study with the objectives specified in this section.

Sec. 502. 1997 c 454 s 501 (uncodified) is each amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR STATE ADMINISTRATION

General Fund—State Appropriation (FY 1998) . . . \$	((20,758,000))
	<u>20,423,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((40,775,000))
	<u>58,171,000</u>
General Fund—Federal Appropriation \$	49,439,000

Public Safety and Education Account	
Appropriation	\$ 2,598,000
Violence Reduction and Drug Enforcement Account	
Appropriation	\$ 3,672,000
Education Savings Account Appropriation	\$ 39,312,000
TOTAL APPROPRIATION	\$ ((156,554,000))
	<u>173,615,000</u>

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

(1) AGENCY OPERATIONS

(a) \$394,000 of the general fund—state appropriation for fiscal year 1998 and \$394,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the operation and expenses of the state board of education, including basic education assistance activities.

(b)(i) \$250,000 of the general fund—state appropriation for fiscal year 1998 and \$250,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for enhancing computer systems and support in the office of superintendent of public instruction. These amounts shall be used to: Make a database of school information available electronically to schools, state government, and the general public; reduce agency and school district administrative costs through more effective use of technology; and replace paper reporting and publication to the extent feasible with electronic media. The superintendent, in cooperation with the commission on student learning, shall develop a state student record system including elements reflecting student achievement. The system shall be made available to the office of financial management and the legislature with suitable safeguards of student confidentiality. The superintendent shall report to the office of financial management and the legislative fiscal committees by December 1 of each year of the biennium on the progress and plans for the expenditure of these amounts.

(ii) The superintendent, in cooperation with the commission on student learning, shall develop a feasibility plan for a state student record system, including elements reflecting student academic achievement on goals 1 and 2 under RCW 28A.150.210. The feasibility plan shall be made available to the office of financial management and the fiscal and education committees of the legislature for approval before a student records database is established, and shall identify data elements to be collected and suitable safeguards of student confidentiality and proper use of database records, with particular attention to eliminating unnecessary and intrusive data about nonacademic related information.

(c) \$348,000 of the public safety and education account appropriation is provided solely for administration of the traffic safety education program, including in-service training related to instruction in the risks of driving while under the influence of alcohol and other drugs.

(d) \$50,000 of the general fund—state appropriation for fiscal year 1998 and \$50,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement Substitute Senate Bill No. 5394 (school audit resolutions).

(e) The superintendent shall conduct a study and make recommendations to the 1999 legislature regarding a definition of and standards for skills centers. The standards shall be related to the cost differential of skills centers as compared to secondary vocational education allocations provided in the appropriations act and other relevant factors. The study shall also address proposals for new skills centers known as of August 31, 1998, and compare and analyze, insofar as possible, the proposals with the recommended standards. The study shall be submitted to the governor and the appropriate committees of the legislature by November 25, 1998.

(f) The superintendent shall prepare a study which compares the state's administrative and statutory requirements to provide special education with the requirements of federal law. A preliminary report shall be provided to the policy and fiscal committees of the legislature by October 15, 1998, and a final report shall be provided by December 15, 1998.

(2) STATE-WIDE PROGRAMS

(a) \$2,174,000 of the general fund—state appropriation is provided for in-service training and educational programs conducted by the Pacific Science Center.

(b) \$63,000 of the general fund—state appropriation is provided for operation of the Cispus environmental learning center.

(c) \$2,754,000 of the general fund—state appropriation is provided for educational centers, including state support activities. \$100,000 of this amount is provided to help stabilize funding through distribution among existing education centers that are currently funded by the state at an amount less than \$100,000 a biennium.

(d) \$100,000 of the general fund—state appropriation is provided for an organization in southwest Washington that received funding from the Spokane educational center in the 1995-97 biennium and provides educational services to students who have dropped out.

(e) ~~(\$2,500,000)~~ \$2,148,000 of the general fund—state fiscal year 1998 appropriation and ~~(\$2,500,000)~~ \$2,151,000 of the general fund—state fiscal year 1999 appropriation are provided solely for implementation of reading initiatives to improve reading in early grades as enacted by the 1997 legislature. Of this amount ~~(+(-+))~~, \$4,300,000 is provided solely to implement Engrossed Substitute House Bill No. 2042. Funds shall be used solely for the selection and purchase of the second grade reading tests in accordance with section 2 of the bill, scoring costs associated with the administration of the tests in the 1998-99 school year in accordance with section 5 of the bill, and grants to school districts in accordance with sections 4 and 7 of the bill.

(f) \$3,672,000 of the violence reduction and drug enforcement account appropriation and \$2,250,000 of the public safety education account appropriation

are provided solely for matching grants to enhance security in schools. Not more than seventy-five percent of a district's total expenditures for school security in any school year may be paid from a grant under this subsection. The grants shall be expended solely for the costs of employing or contracting for building security monitors in schools during school hours and school events. Of the amount provided in this subsection, at least \$2,850,000 shall be spent for grants to districts that, during the 1988-89 school year, employed or contracted for security monitors in schools during school hours. However, these grants may be used only for increases in school district expenditures for school security over expenditure levels for the 1988-89 school year.

(g) \$200,000 of the general fund—state appropriation for fiscal year 1998, \$200,000 of the general fund—state appropriation for fiscal year 1999, and \$400,000 of the general fund—federal appropriation transferred from the department of health are provided solely for a program that provides grants to school districts for media campaigns promoting sexual abstinence and addressing the importance of delaying sexual activity, pregnancy, and childbearing until individuals are ready to nurture and support their children. Grants to the school districts shall be for projects that are substantially designed and produced by students. The grants shall require a local private sector match equal to one-half of the state grant, which may include in-kind contribution of technical or other assistance from consultants or firms involved in public relations, advertising broadcasting, and graphics or video production or other related fields.

(h) \$1,500,000 of the general fund—state appropriation for fiscal year 1998 and \$1,500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for school district petitions to juvenile court for truant students as provided in RCW 28A.225.030 and 28A.225.035. Allocation of this money to school districts shall be based on the number of petitions filed.

(i) \$300,000 of the general fund—state appropriation is provided for alcohol and drug prevention programs pursuant to RCW 66.08.180.

(j)(i) \$19,656,000 of the education savings account appropriation for fiscal year 1998 and \$19,656,000 of the education savings account appropriation for fiscal year 1999 are provided solely for matching grants and related state activities to provide school district consortia with programs utilizing technology to improve learning. A maximum of (~~(\$100,000)~~) \$150,000 each fiscal year of this amount is provided for administrative support and oversight of the K-20 network by the superintendent of public instruction. The superintendent of public instruction shall convene a technology grants committee representing private sector technology, school districts, and educational service districts to recommend to the superintendent grant proposals that have the best plans for improving student learning through innovative curriculum using technology as a learning tool and evaluating the effectiveness of the curriculum innovations. After considering the technology grants committee recommendations, the superintendent shall make matching grant awards, including granting at least

fifteen percent of funds on the basis of criteria in (ii)(A) through (C) of this subsection (2)(j).

(ii) Priority for award of funds will be to (A) school districts most in need of assistance due to financial limits, (B) school districts least prepared to take advantage of technology as a means of improving student learning, and (C) school districts in economically distressed areas. The superintendent of public instruction, in consultation with the technology grants committee, shall propose options to the committee for identifying and prioritizing districts according to criteria in (i) and (ii) of this subsection (2)(j).

(iii) Options for review criteria to be considered by the superintendent of public instruction include, but are not limited to, free and reduced lunches, levy revenues, ending fund balances, equipment inventories, and surveys of technology preparedness. An "economically distressed area" is (A) a county with an unemployment rate that is at least twenty percent above the state-wide average for the previous three years; (B) a county that has experienced sudden and severe or long-term and severe loss of employment, or erosion of its economic base resulting in decline of its dominant industries; or (C) a district within a county which (I) has at least seventy percent of its families and unrelated individuals with incomes below eighty percent of the county's median income for families and unrelated individuals; and (II) has an unemployment rate which is at least forty percent higher than the county's unemployment rate.

(k) \$50,000 of the general fund—state appropriations is provided as matching funds for district contributions to provide analysis of the efficiency of school district business practices. The superintendent of public instruction shall establish criteria, make awards, and provide a report to the fiscal committees of the legislature by December 15, 1997, on the progress and details of analysis funded under this subsection (2)(k).

(l) (~~(\$19,977,000)~~) \$19,797,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for the purchase of classroom instructional materials and supplies. The superintendent shall allocate the funds at a maximum rate of \$20.82 per full-time equivalent student, beginning September 1, 1998, and ending June 30, 1999. The expenditure of the funds shall be determined at each school site by the (~~(school building staff, parents, and the community)~~) individual teacher. School districts shall distribute all funds received to school buildings without deduction.

(m) \$15,000 of the general fund—state appropriation is provided solely to assist local districts vocational education programs in applying for low frequency FM radio licenses with the federal communications commission.

(n) \$35,000 of the general fund—state appropriation is provided solely to the state board of education to design a program to encourage high school students and other adults to pursue careers as vocational education teachers in the subject matter of agriculture.

(o) \$25,000 of the general fund—state appropriation for fiscal year 1998 and \$25,000 of the general fund—state appropriation for fiscal year 1999 are provided

solely for allocation to the primary coordinators of the state geographic alliance to improve the teaching of geography in schools.

(p) \$1,000,000 of the general fund—state appropriation is provided for state administrative costs and start-up grants for alternative programs and services that improve instruction and learning for at-risk and expelled students consistent with the objectives of Engrossed House Bill No. 1581 (disruptive students/offenders). Each grant application shall contain proposed performance indicators and an evaluation plan to measure the success of the program and its impact on improved student learning. Applications shall contain the applicant's plan for maintaining the program and/or services after the grant period, shall address the needs of students who cannot be accommodated within the framework of existing school programs or services and shall address how the applicant will serve any student within the proposed program's target age range regardless of the reason for truancy, suspension, expulsion, or other disciplinary action. Up to \$50,000 per year may be used by the superintendent of public instruction for grant administration. The superintendent shall submit an evaluation of the alternative program start-up grants provided under this section, and section 501(2)(q), chapter 283, Laws of 1996, to the fiscal and education committees of the legislature by November 15, 1998. Grants shall be awarded to applicants showing the greatest potential for improved student learning for at-risk students including:

- (i) Students who have been suspended, expelled, or are subject to other disciplinary actions;
- (ii) Students with unexcused absences who need intervention from community truancy boards or family support programs;
- (iii) Students who have left school; and
- (iv) Students involved with the court system.

The office of the superintendent of public instruction shall prepare a report describing student recruitment, program offerings, staffing practices, and available indicators of program effectiveness of alternative education programs funded with state and, to the extent information is available, local funds. The report shall contain a plan for conducting an evaluation of the educational effectiveness of alternative education programs.

(q) \$1,600,000 of the general fund—state appropriation is provided for grants for magnet schools to be distributed as recommended by the superintendent of public instruction pursuant to chapter 232, section 516(13), Laws of 1992.

(r) \$4,300,000 of the general fund—state appropriation is provided for complex need grants. Grants shall be provided according to amounts shown in LEAP Document 30C as developed on April 27, 1997, at 03:00 hours.

(s) \$17,000,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to implement Engrossed Second Substitute Senate Bill No. 6509 (successful readers act). Of this amount, \$9,000,000 is provided solely for beginning reading instructional programs pursuant to section 2(1) of the bill and \$8,000,000 is provided solely for volunteer tutor and mentor programs pursuant to section 2(2) of the bill. The superintendent shall notify districts of the

availability of the funds by April 15th, 1998, and shall include in the notification limitations on rates for stipends and other cost factors. Stipends authorized under section 2(5) of the bill shall not exceed five days per program at a rate not to exceed \$222 per five-hour day, including fringe benefits. The superintendent shall establish allocation guidelines for other cost factors associated with providing the programs. If the bill is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

(t) \$15,000 of the general fund—state appropriation for fiscal year 1998 and \$100,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for a study and recommendations related to education of offenders prosecuted as adults in accordance with Engrossed Substitute Senate Bill No. 6600 (correctional facilities education program). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(u) \$375,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for increased costs of providing a norm-referenced test to all third grade students and retests of certain third grade students and other costs in accordance with Second Substitute House Bill No. 2849 (student achievement). If the bill is not enacted by June 30, 1998, the amount provided in this subsection shall lapse.

(v) \$50,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for development and operation of a skills center in Port Angeles, contingent on meeting the standard for qualifying for skills center funding as developed by the superintendent of public instruction in subsection (1)(e) of this section.

(w) \$400,000 of the fiscal year 1999 general fund—state appropriation is provided solely for matching funds to improve the fiscal and student data capabilities of the Washington school information processing cooperative. The funds shall be allocated only if at least 267 school districts remain members of the cooperative for the 1998-99 school year.

**Sec. 503. 1997 c 149 s 502 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
GENERAL APPORTIONMENT (BASIC EDUCATION)**

General Fund Appropriation (FY 1998)	\$	((3,429,727,000)) 3,405,645,000
General Fund Appropriation (FY 1999)	\$	((3,511,157,000)) 3,473,603,000
TOTAL APPROPRIATION	\$	((6,940,884,000)) 6,879,248,000

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

(1) The appropriation for fiscal year 1998 includes such funds as are necessary for the remaining months of the 1996-97 school year.

(2) Allocations for certificated staff salaries for the 1997-98 and 1998-99 school years shall be determined using formula-generated staff units calculated pursuant to this subsection. Staff allocations for small school enrollments in (d) through (f) 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 (c) through (f) of this subsection:

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

(ii) 49 certificated instructional staff units per thousand full-time equivalent students in grades K-3;

(iii) An additional 5.3 certificated instructional staff units for grades K-3. Any funds allocated for these additional certificated units shall not be considered as basic education funding;

(A) Funds provided under this subsection (2)(a)(iii) in excess of the amount required to maintain the statutory minimum ratio established under RCW 28A.150.260(2)(b) shall be allocated only if the district documents an actual ratio equal to or greater than 54.3 certificated instructional staff per thousand full-time equivalent students in grades K-3. For any school district documenting a lower certificated instructional staff ratio, the allocation shall be based on the district's actual grades K-3 certificated instructional staff ratio achieved in that school year, or the statutory minimum ratio established under RCW 28A.150.260(2)(b), if greater;

(B) Districts at or above 51.0 certificated instructional staff per one thousand full-time equivalent students in grades K-3 may dedicate up to 1.3 of the 54.3 funding ratio to employ additional classified instructional assistants assigned to basic education classrooms in grades K-3. For purposes of documenting a district's staff ratio under this section, funds used by the district to employ additional classified instructional assistants shall be converted to a certificated staff equivalent and added to the district's actual certificated instructional staff ratio. Additional classified instructional assistants, for the purposes of this subsection, shall be determined using the 1989-90 school year as the base year;

(C) Any district maintaining a ratio equal to or greater than 54.3 certificated instructional staff per thousand full-time equivalent students in grades K-3 may use allocations generated under this subsection (2)(a)(iii) in excess of that required to maintain the minimum ratio established under RCW 28A.150.260(2)(b) to employ additional basic education certificated instructional staff or classified instructional assistants in grades 4-6. Funds allocated under this subsection (2)(a)(iii) shall only be expended to reduce class size in grades K-6. No more than 1.3 of the certificated instructional funding ratio amount may be expended for provision of classified instructional assistants; and

(iv) Forty-six certificated instructional staff units per thousand full-time equivalent students in grades 4-12;

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

(i) 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 18.3 full-time equivalent vocational students for the 1997-98 school year and for each 19.5 full-time equivalent vocational students in the 1998-99 school year. Beginning with the 1998-99 school year, districts documenting staffing ratios of less than 1 certificated staff per ((18.3)) 19.5 students shall be allocated the greater of the total ratio in subsections (2)(a)(i) and (iv) of this section or the actual documented ratio;

(ii) Skills center programs approved by the superintendent of public instruction for skills centers approved prior to September 1, 1997, 0.92 certificated instructional staff units and 0.08 certificated administrative units for each 16.67 full-time equivalent vocational students;

(iii) Indirect cost charges, as defined by the superintendent of public instruction, to vocational-secondary programs shall not exceed 10 percent; and

(iv) 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.

(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 1997-98 and 1998-99 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)(d) through (h) of this section, one classified staff unit for each three 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 sixty 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 20.22 percent in the 1997-98 and 1998-99 school years for certificated salary allocations provided under subsection (2) of this section, and a rate of 18.65 percent in the 1997-98 and 1998-99 school years 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 (h) of this section, there shall be provided a maximum of \$7,950 per certificated staff unit in the 1997-98 school year and a maximum of (~~(\$8,165)~~) \$8,053 per certificated staff unit in the 1998-99 school year.

(b) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(i) of this section, there shall be provided a maximum of \$15,147 per certificated staff unit in the 1997-98 school year and a maximum of (~~(\$15,556)~~) \$19,775 per certificated staff unit in the 1998-99 school year.

(c) For nonemployee-related costs associated with each vocational certificated staff unit allocated under subsection (2)(c)(ii) of this section, there shall be provided a maximum of \$15,147 per certificated staff unit in the 1997-98 school year and a maximum of \$15,344 per certificated staff unit in the 1998-99 school year.

(7) Allocations for substitute costs for classroom teachers shall be distributed at a maintenance rate of \$354.64 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 state-wide for the 1996-97 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) The superintendent may distribute a maximum of ~~((\$6,124,000))~~ \$6,114,000 outside the basic education formula during fiscal years 1998 and 1999 as follows:

(a) 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 \$447,000 may be expended in fiscal year 1998 and a maximum of ~~((\$459,000))~~ \$453,000 may be expended in fiscal year 1999;

(b) For summer vocational programs at skills centers, a maximum of \$1,948,000 may be expended each fiscal year;

(c) A maximum of ~~((\$321,000))~~ \$318,000 may be expended for school district emergencies; and

(d) A maximum of \$500,000 per 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.

(10) For the purposes of RCW 84.52.0531, the increase per full-time equivalent student in state basic education appropriations provided under this act, including appropriations for salary and benefits increases, is 2.5 percent from the 1996-97 school year to the 1997-98 school year, and 1.1 percent from the 1997-98 school year to the 1998-99 school year.

(11) If two or more school districts consolidate and each district was receiving additional basic education formula staff units pursuant to subsection (2)(b) through (h) 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.

Sec. 504. 1997 c 454 s 503 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL EMPLOYEE COMPENSATION ADJUSTMENTS

General Fund Appropriation (FY 1998) \$ ~~((79,966,000))~~
79,412,000

General Fund Appropriation (FY 1999)	\$	((+16,310,000))
		<u>115,187,000</u>
TOTAL APPROPRIATION	\$	((+96,276,000))
		<u>194,599,000</u>

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

(1) ~~((+176,525,000))~~ \$174,999,000 is provided for a cost of living adjustment of 3.0 percent effective September 1, 1997, for state formula staff units. The appropriations include associated incremental fringe benefit allocations at rates of 19.58 percent for certificated staff and 15.15 percent for classified staff.

(a) The appropriations in this section include the increased portion of salaries and incremental fringe benefits for all relevant state-funded school programs in part V of this act. Salary adjustments for state employees in the office of superintendent of public instruction and the education reform program are provided in part VII of this act. Increases for general apportionment (basic education) are based on the salary allocation schedules and methodology in section 502 of this act. Increases for special education result from increases in each district's basic education allocation per student. Increases for educational service districts and institutional education programs are determined by the superintendent of public instruction using the methodology for general apportionment salaries and benefits in section 502 of this act.

(b) The appropriations in this section provide salary increase and incremental fringe benefit allocations based on formula adjustments as follows:

(i) For pupil transportation, an increase of \$0.60 per weighted pupil-mile for the 1997-98 school year and maintained for the 1998-99 school year;

(ii) For education of highly capable students, an increase of \$6.81 per formula student for the 1997-98 school year and maintained for the 1998-99 school year; and

(iii) For transitional bilingual education, an increase of \$17.69 per eligible bilingual student for the 1997-98 school year and maintained for the 1998-99 school year; and

(iv) For learning assistance, an increase of \$8.74 per entitlement unit for the 1997-98 school year and maintained for the 1998-99 school year.

(c) The appropriations in this section include ~~((+912,000))~~ \$903,000 for salary increase adjustments for substitute teachers at a rate of \$10.64 per unit in the 1997-98 school year and maintained in the 1998-99 school year.

(2) ~~((+19,751,000))~~ \$19,600,000 is provided for adjustments to insurance benefit allocations. The maintenance rate for insurance benefit allocations is \$314.51 per month for the 1997-98 and 1998-99 school years. The appropriations in this section provide ~~((increases of \$2.83))~~ for a rate increase to \$317.34 per month for the 1997-98 school year and ~~((+18.41))~~ \$335.75 per month for the 1998-99 school year at the following rates:

(a) For pupil transportation, an increase of \$0.03 per weighted pupil-mile for the 1997-98 school year and \$0.19 for the 1998-99 school year;

(b) For education of highly capable students, an increase of \$0.20 per formula student for the 1997-98 school year and \$1.35 for the 1998-99 school year;

(c) For transitional bilingual education, an increase of \$.46 per eligible bilingual student for the 1997-98 school year and \$3.44 for the 1998-99 school year; and

(d) For learning assistance, an increase of \$.36 per funded unit for the 1997-98 school year and \$2.70 for the 1998-99 school year.

(3) The rates specified in this section are subject to revision each year by the legislature.

(4)~~((a))~~ For the 1997-98 school year, the superintendent shall prepare a report showing the allowable derived base salary for certificated instructional staff in accordance with RCW 28A.400.200 and LEAP Document 12D, and the actual derived base salary paid by each school district as shown on the S-275 report and shall make the report available to the fiscal committees of the legislature no later than February 15, 1998.

**Sec. 505. 1997 c 149 s 505 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PUPIL
TRANSPORTATION**

General Fund Appropriation (FY 1998)	\$	((174,344,000))
		<u>175,168,000</u>
General Fund Appropriation (FY 1999)	\$	((179,560,000))
		<u>179,439,000</u>
TOTAL APPROPRIATION	\$	((353,904,000))
		<u>354,607,000</u>

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

(1) The appropriation for fiscal year 1998 includes such funds as are necessary for the remaining months of the 1996-97 school year.

(2) A maximum of ~~((1,451,000))~~ \$1,441,000 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) \$30,000 of the fiscal year 1998 appropriation and \$40,000 of the fiscal year 1999 appropriation are provided solely for the transportation of students enrolled in "choice" programs. Transportation shall be limited to low-income students who are transferring to "choice" programs solely for educational reasons.

(4) Allocations for transportation of students shall be based on reimbursement rates of \$34.47 per weighted mile in the 1997-98 school year and ~~((34.76))~~ \$34.61 per weighted mile in the 1998-99 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 times 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 times the per mile reimbursement rate for the school year times 1.29.

Sec. 506. 1997 c 149 s 506 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SCHOOL FOOD SERVICE PROGRAMS

General Fund—State Appropriation (FY 1998) . . .	\$	3,075,000
General Fund—State Appropriation (FY 1999) . . .	\$	((3,075,000))
		<u>3,100,000</u>
General Fund—Federal Appropriation	\$	194,483,000
TOTAL APPROPRIATION	\$	((200,633,000))
		<u>200,658,000</u>

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

- (1) \$6,000,000 of the general fund—state appropriations are provided for state matching money for federal child nutrition programs.
- (2) ~~((150,000))~~ \$175,000 of the general fund—state appropriations are provided for summer food programs for children in low-income areas.

Sec. 507. 1997 c 149 s 507 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR SPECIAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 1998) . . .	\$	((370,486,000))
		<u>371,687,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((374,327,000))
		<u>378,405,000</u>
General Fund—Federal Appropriation	\$	((135,106,000))
		<u>143,106,000</u>
TOTAL APPROPRIATION	\$	((879,919,000))
		<u>893,198,000</u>

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

- (1) The appropriation for fiscal year 1998 includes such funds as are necessary for the remaining months of the 1996-97 school year.
- (2) The superintendent of public instruction shall distribute state funds to school districts based on two categories, the optional birth through age two program for special education eligible developmentally delayed infants and toddlers, and the mandatory special education program for special education eligible students ages three to twenty-one. A "special education eligible student" means a student receiving specially designed instruction in accordance with a properly formulated individualized education program.

(3) For the 1997-98 and 1998-99 school years, the superintendent shall distribute state funds to each district based on the sum of:

(a) A district's annual average headcount enrollment of developmentally delayed infants and toddlers ages birth through two, times the district's average basic education allocation per full-time equivalent student, times 1.15; and

(b) A district's annual average full-time equivalent basic education enrollment times the funded enrollment percent determined pursuant to subsection (4)(c) of this section, times the district's average basic education allocation per full-time equivalent student times 0.9309.

(4) The definitions in this subsection apply throughout this section.

(a) "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 (i.e., 49/1000 certificated instructional staff in grades K-3, and 46/1000 in grades 4-12) and shall not include enhancements for K-3, secondary vocational education, or small schools.

(b) "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).

(c) "Enrollment percent" means the district's resident special education annual average enrollment including those students counted under the special education demonstration projects, excluding the birth through age two enrollment, as a percent of the district's annual average full-time equivalent basic education enrollment. For the 1997-98 and the 1998-99 school years, each district's funded enrollment percent shall be:

(i) For districts whose enrollment percent for 1994-95 was at or below 12.7 percent, the lesser of the district's actual enrollment percent for the school year for which the allocation is being determined or 12.7 percent.

(ii) For districts whose enrollment percent for 1994-95 was above 12.7 percent, the lesser of:

(A) The district's actual enrollment percent for the school year for which the special education allocation is being determined; or

(B) The district's actual enrollment percent for the school year immediately prior to the school year for which the special education allocation is being determined if greater than 12.7 percent; or

(C) For 1997-98, the 1994-95 enrollment percent reduced by 75 percent of the difference between the district's 1994-95 enrollment percent and 12.7 percent and for 1998-99, 12.7 percent.

(5) 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 12.7, and shall be calculated in the aggregate rather than individual district units. For purposes of this subsection (4) of this section, the average basic education

allocation per full-time equivalent student shall be calculated in the aggregate rather than individual district units.

(6) A maximum of \$12,000,000 of the general fund—state appropriation for fiscal year 1998 and a maximum of \$12,000,000 of the general fund—state appropriation for fiscal year 1999 are provided as safety net funding for districts with demonstrated needs for state special education funding beyond the amounts provided in subsection (3) of this section. Safety net funding shall be awarded by the state safety net oversight committee.

(a) The safety net oversight committee shall first consider the needs of districts adversely affected by the 1995 change in the special education funding formula. Awards shall be based on the amount required to maintain the 1994-95 state special education excess cost allocation to the school district in aggregate or on a dollar per funded student basis.

(b) The committee shall then consider unusual needs of districts due to a special education population which differs significantly from the assumptions of the state funding formula. Awards shall be made to districts that convincingly demonstrate need due to the concentration and/or severity of disabilities in the district. Differences in program costs attributable to district philosophy or service delivery style are not a basis for safety net awards.

(7) Prior to June 1st of each year, the superintendent shall make available to each school district from available data the district's maximum funded enrollment percent for the coming school year.

(8) 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 in place for the 1996-97 school year, the superintendent shall consult with the office of financial management and the fiscal committees of the legislature.

(9) The safety net oversight committee appointed by the superintendent of public instruction shall consist of:

- (a) Staff of the office of superintendent of public instruction;
- (b) Staff of the office of the state auditor;
- (c) Staff from the office of the financial management; and
- (d) One or more representatives from school districts or educational service districts knowledgeable of special education programs and funding.

(10) A maximum of \$4,500,000 of the general fund—federal appropriation shall be expended for safety net funding to meet the extraordinary needs of one or more individual special education students.

(11) 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.

(12) A maximum of \$1,000,000 of the general fund—federal appropriation is provided for projects to provide special education students with appropriate job

and independent living skills, including work experience where possible, to facilitate their successful transition out of the public school system. The funds provided by this subsection shall be from federal discretionary grants.

(13) A school district may carry over up to 10 percent of general fund—state funds allocated under this program; however, carry over funds shall be expended in the special education program.

(14) Beginning in the 1997-98 school year, the superintendent shall increase the percentage of federal flow-through to school districts to at least 84 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.

(15) Up to one percent of the general fund—federal appropriation shall be expended by the superintendent for projects related to use of inclusion strategies by school districts for provision of special education services. The superintendent shall prepare an information database on laws, best practices, examples of programs, and recommended resources. The information may be disseminated in a variety of ways, including workshops and other staff development activities.

(16) Amounts appropriated within this section are sufficient to fund ~~((section 5 of Second Substitute House Bill No. 1709 (mandate on school districts)))~~ the provisions of House Bill No. 2682 (school medicaid incentive payments).

**Sec. 508. 1997 c 149 s 508 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
TRAFFIC SAFETY EDUCATION PROGRAMS**

Public Safety and Education Account

Appropriation	\$	((17,179,000))
		<u>16,883,000</u>

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation includes such funds as are necessary for the remaining months of the 1996-97 school year.

(2) A maximum of \$507,000 shall be expended for regional traffic safety education coordinators.

(3) The maximum basic state allocation per student completing the program shall be \$137.16 in the 1997-98 and 1998-99 school years.

(4) Additional allocations to provide tuition assistance for students from low-income families who complete the program shall be a maximum of \$66.81 per eligible student in the 1997-98 and 1998-99 school years.

**Sec. 509. 1997 c 454 s 504 (uncodified) is each amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
LOCAL EFFORT ASSISTANCE**

General Fund Appropriation (FY 1998)	\$	((84,347,000))
		<u>82,079,000</u>

General Fund Appropriation (FY 1999)	\$	((89,605,000))
		<u>86,272,000</u>
TOTAL APPROPRIATION	\$	((173,952,000))
		<u>168,351,000</u>

Sec. 510. 1997 c 454 s 505 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR INSTITUTIONAL EDUCATION PROGRAMS

General Fund—State Appropriation (FY 1998) . . .	\$	((18,026,000))
		<u>16,897,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((18,983,000))
		<u>18,596,000</u>
General Fund—Federal Appropriation	\$	8,548,000
TOTAL APPROPRIATION	\$	((45,557,000))
		<u>44,041,000</u>

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

(1) The general fund—state appropriation for fiscal year 1998 includes such funds as are necessary for the remaining months of the 1996-97 school year.

(2) State funding provided under this section is based on salaries and other expenditures for a 220-day school year. The superintendent of public instruction shall monitor school district expenditure plans for institutional education programs to ensure that districts plan for a full-time summer program.

(3) State funding for each institutional education program shall be based on the institution's annual average full-time equivalent student enrollment. Staffing ratios for each category of institution shall remain the same as those funded in the 1995-97 biennium.

(4) ~~(((\$341,000 of the general fund—state fiscal year 1998 appropriation and \$407,000 of the general fund—state fiscal year 1999 appropriation are provided solely for the implementation of Engrossed Third Substitute House Bill No. 3900 (revising the juvenile code).))~~ \$1,196,000 of the fiscal year 1999 general fund—state appropriation is provided to implement Engrossed Substitute Senate Bill No. 6600 (correctional facilities education programs). If Engrossed Substitute Senate Bill No. 6600 is enacted, beginning in the 1998-99 school year, the funded staffing ratios for education programs for juveniles age 18 or less in department of corrections facilities shall be the same as those provided for education programs in delinquent institutions under the department of social and health services. If the bill is not enacted by June 30, ((1997)) 1998, the amounts provided in this subsection shall lapse.

Sec. 511. 1997 c 149 s 513 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR PROGRAMS FOR HIGHLY CAPABLE STUDENTS

General Fund Appropriation (FY 1998)	\$	((5,752,000))
		<u>5,701,000</u>

General Fund Appropriation (FY 1999)	\$	((6,176,000))
		<u>6,121,000</u>
TOTAL APPROPRIATION	\$	((11,928,000))
		<u>11,822,000</u>

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

(1) The appropriation for fiscal year 1998 includes such funds as are necessary for the remaining months of the 1996-97 school year.

(2) Allocations for school district programs for highly capable students shall be distributed at a maximum rate of \$311.12 per funded student for the 1997-98 school year and ~~((311.58))~~ \$311.35 per funded student for the 1998-99 school year, exclusive of salary and benefit adjustments pursuant to section 504 of this act. The number of funded students shall be a maximum of two percent of each district's full-time equivalent basic education enrollment.

(3) \$350,000 of the appropriation is for the centrum program at Fort Worden state park.

(4) \$186,000 of the appropriation is for the odyssey of the mind and future problem-solving programs.

Sec. 512. 1997 c 454 s 506 (uncodified) is amended to read as follows:

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

General Fund Appropriation (FY 1998)	\$	((18,905,000))
		<u>18,605,000</u>
General Fund Appropriation (FY 1999)	\$	((21,868,000))
		<u>22,017,000</u>
TOTAL APPROPRIATION	\$	((40,773,000))
		<u>40,622,000</u>

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

(1) ~~((18,103,000))~~ \$17,153,000 is provided for the operation of the commission on student learning and the development and implementation of student assessments. The commission shall cooperate with the superintendent of public instruction in defining measures of student achievement to be included in the student record system developed by the superintendent pursuant to section 501(1)(b) of this act.

(2) \$2,190,000 is provided solely for training of paraprofessional classroom assistants and certificated staff who work with classroom assistants as provided in RCW 28A.415.310.

(3) \$2,970,000 is provided for mentor teacher assistance, including state support activities, under RCW 28A.415.250 and 28A.415.260. Funds for the teacher assistance program shall be allocated to school districts based on the number of beginning teachers.

(4) \$4,050,000 is provided 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.

(5) \$7,200,000 is provided 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.

(6) \$5,000,000 is provided solely for the meals for kids program under RCW 28A.235.145 through 28A.235.155.

(7) \$1,260,000 is provided for technical assistance related to education reform through the office of the superintendent of public instruction, in consultation with the commission on student learning, as specified in RCW 28A.300.130 (center for the improvement of student learning).

(8) \$799,000 of the fiscal year 1999 appropriation is provided solely for the leadership internship program for superintendents, principals, and program administrators. The purpose of the program is to provide funds to school districts to provide partial release time for district employees in an internship with an appropriate mentor. The funds shall be distributed by the superintendent to school districts subject to the following conditions and limitations:

(i) The superintendent with the assistance of an advisory board that includes school administrators and higher education representatives shall select internship participants giving priority to candidates who intend to serve in school districts where finding qualified applicants has been difficult.

(ii) Candidates if accepted in the internship program must agree to seek employment in Washington after receiving certification, participate in education improvement training activities, and participate in evaluations of the effectiveness of the internship program.

(iii) The maximum amount of state funding for each internship shall not exceed the daily rate of providing a substitute teacher for the equivalent of up to forty-five days and the funds shall be used to pay for partial release time while the school district employee is completing the internship.

(iv) The superintendent may withhold a maximum of seven percent of the funds for costs of implementing the program.

Sec. 513, 1997 c 454 s 507 (uncodified) is amended to read as follows:

**FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR
TRANSITIONAL BILINGUAL PROGRAMS**

General Fund Appropriation (FY 1998) \$ (31,146,000)
30,711,000

General Fund Appropriation (FY 1999)	\$	((33,414,000))
		<u>32,185,000</u>
TOTAL APPROPRIATION	\$	((64,560,000))
		<u>62,896,000</u>

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

(1) The appropriation for fiscal year 1998 provides such funds as are necessary for the remaining months of the 1996-97 school year.

(2) The superintendent of public instruction shall study the formula components proposed for the 1998-99 school year and prepare a report to the legislature no later than January 15, 1998.

(3) The superintendent shall distribute a maximum of \$643.78 per eligible bilingual student in the 1997-98 and 1998-99 school years, exclusive of salary and benefit adjustments provided in section 503 of this act.

Sec. 514. 1997 c 149 s 516 (uncodified) is amended to read as follows:

FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—FOR THE LEARNING ASSISTANCE PROGRAM

General Fund Appropriation (FY 1998)	\$	((60,309,000))
		<u>60,224,000</u>
General Fund Appropriation (FY 1999)	\$	((60,862,000))
		<u>61,000,000</u>
TOTAL APPROPRIATION	\$	((121,171,000))
		<u>121,224,000</u>

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

(1) The appropriation for fiscal year 1998 provides such funds as are necessary for the remaining months of the 1996-97 school year.

(2) For making the calculation of the percentage of students scoring in the lowest quartile as compared with national norms, beginning with the 1991-92 school year, the superintendent shall multiply each school district's 4th and 8th grade test results by 0.86.

(3) Funding for school district learning assistance programs shall be allocated at maximum rates of \$378.33 per funded unit for the 1997-98 school year and ((~~\$379.47~~)) \$378.88 per funded unit for the 1998-99 school year exclusive of salary and benefit adjustments provided in section 504 of this act. School districts may carryover up to 10 percent of funds allocated under this program; however, carryover funds shall be expended for the learning assistance program.

(a) A school district's funded units for the 1997-98 and 1998-99 school years shall be the sum of the following:

(i) The district's full-time equivalent enrollment in kindergarten through 6th grade, times the 5-year average 4th grade test result as adjusted pursuant to subsection (2) of this section, times 0.92; and

(ii) The district's full-time equivalent enrollment in grades 7 through 9, times the 5-year average 8th grade test result as adjusted pursuant to subsection (2) of this section, times 0.92; and

(iii) If in the prior school year the district's percentage of October headcount enrollment in grades K-12 eligible for free and reduced price lunch exceeded the state average, subtract the state average percentage of students eligible for free and reduced price lunch from the district's percentage and multiply the result by the district's K-12 annual average full-time equivalent enrollment for the current school year times 22.30 percent.

**Sec. 515. 1997 c 454 s 508 (uncodified) is amended to read as follows:
FOR THE SUPERINTENDENT OF PUBLIC INSTRUCTION—LOCAL
ENHANCEMENT FUNDS**

General Fund Appropriation (FY 1998)	\$	((49,815,000))
		<u>49,493,000</u>
General Fund Appropriation (FY 1999)	\$	((56,962,000))
		<u>55,659,000</u>
TOTAL APPROPRIATION	\$	((106,777,000))
		<u>105,152,000</u>

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

(1) A maximum of ~~((\$50,841,000))~~ \$50,418,000 is provided for learning improvement allocations to school districts to enhance the ability of instructional staff to teach and assess the essential academic learning requirements for reading, writing, communication, and math in accordance with the timelines and requirements established under RCW 28A.630.885. However, special emphasis shall be given to the successful teaching of reading. Allocations under this section shall be subject to the following conditions and limitations:

(a) In accordance with the timetable for the implementation of the assessment system by the commission on student learning, the allocations for the 1997-98 and 1998-99 school years shall be at a maximum annual rate per full-time equivalent student of \$36.69 for students enrolled in grades K-4, \$30.00 for students enrolled in grades 5-7, and \$22.95 for students enrolled in grades 8-12. Allocations shall be made on the monthly apportionment schedule provided in RCW 28A.510.250.

(b) A district receiving learning improvement allocations shall:

(i) Develop and keep on file at each building a student learning improvement plan to achieve the student learning goals and essential academic learning requirements and to implement the assessment system as it is developed. The plan shall delineate how the learning improvement allocations will be used to accomplish the foregoing. The plan shall be made available to the public upon request;

(ii) Maintain a policy regarding the involvement of school staff, parents, and community members in instructional decisions;

(iii) File a report by October 1, 1998, and October 1, 1999, with the office of the superintendent of public instruction, in a format developed by the superintendent that: Enumerates the activities funded by these allocations; the amount expended for each activity; describes how the activity improved understanding, teaching, and assessment of the essential academic learning requirements by instructional staff; and identifies any amounts expended from this allocation for supplemental contracts; and

(iv) Provide parents and the local community with specific information on the use of this allocation by including in the annual performance report required in RCW 28A.320.205, information on how funds allocated under this subsection were spent and the results achieved.

(c) The superintendent of public instruction shall compile and analyze the school district reports and present the results to the office of financial management and the appropriate committees of the legislature no later than November 15, 1998, and November 15, 1999.

(2) (~~(\$55,937,000)~~) \$54,734,000 is provided for local education program enhancements to meet educational needs as identified by the school district, including alternative education programs. This amount includes such amounts as are necessary for the remainder of the 1996-97 school year. Allocations for the 1997-98 (~~and 1998-99~~) school year shall be at a maximum annual rate of \$29.86 per full-time equivalent student and \$28.81 per full-time equivalent student for the 1998-99 school year as determined pursuant to subsection (3) of this section. Allocations shall be made on the monthly apportionment payment schedule provided in RCW 28A.510.250.

(3) Allocations provided under this section shall be based on school district annual average full-time equivalent enrollment in grades kindergarten through twelve: PROVIDED, That for school districts enrolling not more than one hundred average annual full-time equivalent students, and for small school plants within any school district designated as remote and necessary schools, the allocations shall be as follows:

(a) Enrollment of not more than 60 average annual full-time equivalent students in grades kindergarten through six shall generate funding based on sixty full-time equivalent students;

(b) Enrollment of not more than 20 average annual full-time equivalent students in grades seven and eight shall generate funding based on twenty full-time equivalent students; and

(c) Enrollment of not more than 60 average annual full-time equivalent students in grades nine through twelve shall generate funding based on sixty full-time equivalent students.

(4) Funding provided pursuant to this section does not fall within the definition of basic education for purposes of Article IX of the state Constitution and the state's funding duty thereunder.

(5) Receipt by a school district of one-fourth of the district's allocation of funds under this section, shall be conditioned on a finding by the superintendent that:

(a) The district is enrolled as a medicaid service provider and is actively pursuing federal matching funds for medical services provided through special education programs, pursuant to RCW 74.09.5241 through 74.09.5256 (Title XIX funding); and

(b) The district is filing truancy petitions as required under chapter 312, Laws of 1995 and RCW 28A.225.030.

PART VI HIGHER EDUCATION

Sec. 601. 1997 c 454 s 601 (uncodified) is amended to read as follows:

The appropriations in sections 603 through 609 of this act are subject to the following conditions and limitations:

(1) "Institutions" means the institutions of higher education receiving appropriations under sections 603 through 609 of this act.

(2)(a) The salary increases provided or referenced in this subsection shall be the allowable salary increases provided at institutions of higher education, excluding increases associated with normally occurring promotions and increases related to faculty and professional staff retention, and excluding increases associated with employees under the jurisdiction of chapter 41.56 RCW pursuant to the provisions of RCW 28B.16.015.

(b) Each institution of higher education shall provide to each classified staff employee as defined by the office of financial management a salary increase of 3.0 percent on July 1, 1997. Each institution of higher education shall provide to instructional and research faculty, exempt professional staff, academic administrators, academic librarians, counselors, teaching and research assistants as classified by the office of financial management, and all other nonclassified staff, including those employees under RCW 28B.16.015, an average salary increase of 3.0 percent on July 1, 1997. For employees under the jurisdiction of chapter 41.56 RCW pursuant to the provisions of RCW 28B.16.015, distribution of the salary increases will be in accordance with the applicable collective bargaining agreement. However, an increase shall not be provided to any classified employee whose salary is above the approved salary range maximum for the class to which the employee's position is allocated. To collect consistent data for use by the legislature, the office of financial management, and other state agencies for policy and planning purposes, institutions of higher education shall report personnel data to be used in the department of personnel's human resource data warehouse in compliance with uniform reporting procedures established by the department of personnel.

(c) Each institution of higher education receiving appropriations under sections 604 through 609 of this act may provide to instructional and research faculty, exempt professional staff, academic administrators, academic librarians,

counselors, teaching and research assistants, as classified by the office of financial management, and all other nonclassified staff, but not including employees under RCW 28B.16.015, an additional average salary increase of 1.0 percent on July 1, 1997, and an average salary increase of 2.0 percent on July 1, 1998. Any salary increases authorized under this subsection (2)(c) shall not be included in an institution's salary base. It is the intent of the legislature that general fund—state support for an institution shall not increase during the current or any future biennium as a result of any salary increases authorized under this subsection (2)(c).

(d) Specific salary increases authorized in sections 603 through 609 of this act are in addition to any salary increase provided in this subsection.

(3)(a) Each institution receiving appropriations under sections 604 through 609 of this act shall submit plans for achieving measurable and specific improvements in academic years 1997-98 and 1998-99 to the higher education coordinating board. The plans, to be prepared at the direction of the board, shall be submitted by August 15, 1997 (for academic year 1997-98) and June 30, 1998 (for academic year 1998-99). The following measures and goals will be used for the 1997-99 biennium:

	Goal
(i) Undergraduate graduation efficiency index:	
For students beginning as freshmen	95
For transfer students	90
(ii) Undergraduate student retention, defined as the percentage of all undergraduate students who return for the next year at the same institution, measured from fail to fail:	
Research universities	95%
Comprehensive universities and college	90%
(iii) Graduation rates, defined as the percentage of an entering freshmen class at each institution that graduates within five years:	
Research universities	65%
Comprehensive universities and college	55%

(iv) A measure of faculty productivity, with goals and targets in accord with the legislative intent to achieve measurable and specific improvements, to be determined by the higher education coordinating board, in consultation with the institutions receiving appropriations under sections 604 through 609 of this act.

(v) An additional measure and goal to be selected by the higher education coordinating board for each institution, in consultation with each institution.

(b) Academic year 1995-96 shall be the baseline year against which performance in academic year 1997-98 shall be measured. Academic year 1997-98 shall be the baseline year against which performance in academic year 1998-99 shall be measured. The difference between each institution's baseline year and the state-wide performance goals shall be calculated and shall be the performance gap for each institution for each measure for each year. The higher education

coordinating board shall set performance targets for closing the performance gap for each measure for each institution. Performance targets shall be set at levels that reflect meaningful and substantial progress towards the state-wide performance goals. Each institution shall report to the higher education coordinating board on its actual performance achievement for each measure for academic year 1997-98 by ~~((June 30, 1998, except that performance reporting for the student retention measure shall be completed by October 15, 1998))~~ November 1, 1998.

(4) The state board for community and technical colleges shall develop an implementation plan for measurable and specific improvements in productivity, efficiency, and student retention in academic years 1997-98 and 1998-99 consistent with the performance management system developed by the work force training and education coordinating board and for the following long-term performance goals:

	Goal
(a) Hourly wages for vocational graduates	\$12/hour
(b) Academic students transferring to Washington higher education institutions	67%
(c) Core course completion rates	85%
(d) Graduation efficiency index	95

(5) The state's public institutions of higher education increasingly are being called upon to become more efficient in conducting the business operations necessary to support the carrying out of their academic missions. The legislature recognizes that state laws and regulations may have the unintended effect of acting as barriers to efficient operation in some instances, and desires to encourage the institutions of higher education to think beyond the constraints of current law in identifying opportunities for improved efficiency. Accordingly, the legislature requests that the institutions of higher education, working together through the council of presidents' office and the state board for community and technical colleges, identify opportunities for changes in state law that would form the basis for a new efficiency compact with the state, for consideration no later than the 1999 legislative session.

(6) Pursuant to RCW 43.135.055, institutions of higher education receiving appropriations under sections 603 through 609 of this act are authorized to increase summer term tuition in excess of the fiscal growth factor during the 1997-99 fiscal biennium. Tuition levels increased pursuant to this subsection shall not exceed the per credit hour rate calculated from the academic year tuition levels established by the legislature in RCW 28B.15.067.

Sec. 602. 1997 c 454 s 602 (uncodified) is amended to read as follows:

~~((+))~~ The appropriations in sections 603 through 609 of this act provide state general fund support or employment and training trust account support for full-time equivalent student enrollments at each institution of higher education.

Listed below are the annual full-time equivalent student enrollments by institution assumed in this act.

	1997-98 Annual Average	1998-99 Annual Average
University of Washington		
Main campus	31,297	31,527
Bothell branch	775	895
Tacoma branch	847	992
Washington State University		
Main campus	17,403	((17,723))
		<u>17,272</u>
Spokane branch	352	442
Tri-Cities branch	754	((814))
		<u>754</u>
Vancouver branch	851	971
Central Washington University		
Eastern Washington University	7,346	7,446
The Evergreen State College	7,739	7,739
Western Washington University	3,496	3,576
State Board for Community and Technical Colleges	10,188	10,338
Higher Education Coordinating Board	116,426	118,526
	50	50

Sec. 603. 1997 c 454 s 603 (unmodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

General Fund—State Appropriation (FY 1998) . . . \$	((382,891,000))
	<u>380,445,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((420,961,000))
	<u>421,647,000</u>
General Fund—Federal Appropriation \$	11,404,000
Employment and Training Trust Account	.
Appropriation \$	((26,346,000))
	<u>29,114,000</u>
TOTAL APPROPRIATION \$	((841,602,000))
	<u>842,610,000</u>

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

(1) \$2,718,000 of the general fund—state appropriation for fiscal year 1998 and \$4,079,000 of the general fund—state appropriation for fiscal year 1999 shall

be held in reserve by the board. These funds are provided for improvements in productivity, efficiency, and student retention. The board may approve the fiscal year 1998 allocation of funds under this subsection upon completion of an implementation plan. The implementation plan shall be submitted by the board to the appropriate legislative committees and the office of financial management in accordance with section 601(4) of this act by September 1, 1997. The board may approve the fiscal year 1999 allocation of funds under this subsection based on the board's evaluation of:

(a) College performance compared to the goals for productivity, efficiency, and student retention as submitted in the plan required in section 601(4) of this act; and

(b) The quality and effectiveness of the strategies the colleges propose to achieve continued improvement in quality and efficiency during the 1998-99 academic year.

(2) (~~(\$2,553,000 of the general fund—state appropriation for fiscal year 1998, \$28,761,000)~~ \$28,546,000 of the general fund—state appropriation for fiscal year 1999(;) and the entire employment and training trust account appropriation are provided solely as special funds for training and related support services, including financial aid, child care, and transportation, as specified in chapter 226, Laws of 1993 (employment and training for unemployed workers) and Substitute House Bill No. 2214.

(a) Funding is provided to support up to 7,200 full-time equivalent students in each fiscal year.

(b) The state board for community and technical colleges shall submit a plan for the allocation of the full-time equivalent students provided in this subsection to the workforce training and education coordinating board for review and approval.

(3) \$1,441,000 of the general fund—state appropriation for fiscal year 1998 and \$1,441,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for 500 FTE enrollment slots to implement RCW 28B.50.259 (timber-dependent communities).

(4) \$1,862,500 of the general fund—state appropriation for fiscal year 1998 and \$1,862,500 of the general fund—state appropriation for fiscal year 1999 are provided solely for assessment of student outcomes at community and technical colleges.

(5) \$706,000 of the general fund—state appropriation for fiscal year 1998 and \$706,000 of general fund—state appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(6) Up to \$1,035,000 of the general fund—state appropriation for fiscal year 1998 and up to \$2,102,000 of the general fund—state appropriation for fiscal year 1999 may be used in combination with salary and benefit savings from faculty turnover to provide faculty salary increments and associated benefits. To the extent general salary increase funding is used to pay faculty increments, the general salary increase shall be reduced by the same amount.

(7) To address part-time faculty salary disparities and to increase the ratio of full-time to part-time faculty instructors, the board shall provide salary increases to part-time instructors or hire additional full-time instructional staff under the following conditions and limitations: (a) The amount used for such purposes shall not exceed an amount equivalent to an additional salary increase of 1.0 percent on July 1, 1997, and an additional salary increase of 2.0 percent on July 1, 1998, for instructional faculty as classified by the office of financial management; and (b) at least \$2,934,000 shall be spent for the purposes of this subsection.

(8) \$83,000 of the general fund—state appropriation for fiscal year 1998 and ~~(\$1,567,000)~~ \$867,000 of the general fund—state appropriation for fiscal year 1999 are provided for personnel and expenses to develop curricula, library resources, and operations of Cascadia Community College. It is the legislature's intent to use the opportunity provided by the establishment of the new institution to conduct a pilot project of budgeting based on instructional standards and outcomes. The college shall use a portion of the available funds to develop a set of measurable standards and outcomes as the basis for budget development in the 1999-01 biennium.

(9) The technical colleges may increase tuition and fees to conform with the percentage increase in community college operating fees enacted by the 1997 legislature. The community colleges may charge up to the maximum level authorized for services and activities fees in RCW 28B.15.069.

(10) Community and technical colleges with below-average faculty salaries may use funds identified by the state board in the 1997-98 and 1998-99 operating allocations to increase faculty salaries no higher than the system-wide average.

(11) \$1,000,000 of the general fund—state appropriation for fiscal year 1998 and \$1,000,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for tuition support for students enrolled in work-based learning programs.

(12) \$700,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for a technology equipment matching program for community and technical colleges. Each college district shall match its allocation of this appropriation with an equal amount of cash donations from private sources.

(13) \$125,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(14) \$669,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 604. 1997 c 454 s 604 (uncodified) is amended to read as follows:

FOR UNIVERSITY OF WASHINGTON

General Fund Appropriation (FY 1998)	\$	283,923,000
General Fund Appropriation (FY 1999)	\$	((289,807,000))
		<u>293,988,000</u>
Death Investigations Account Appropriation	\$	((1,810,000))
		<u>2,162,000</u>
Industrial Insurance Premium Refund Account		
Appropriation	\$	514,000
Accident Account Appropriation	\$	4,969,000
Medical Aid Account Appropriation	\$	4,989,000
TOTAL APPROPRIATION	\$	((586,012,000))
		<u>590,545,000</u>

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

(1) \$2,019,000 of the general fund appropriation for fiscal year 1998 and \$3,029,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 60I(3) of this act.

(2) \$800,000 of the general fund appropriation for fiscal year 1998 and \$1,896,000 of the general fund appropriation for fiscal year 1999 are provided solely to support additional upper-division and graduate level enrollments at the Tacoma branch campus above the 1996-97 budgeted FTE level.

(3) \$593,000 of the general fund appropriation for fiscal year 1998 and \$1,547,000 of the general fund appropriation for fiscal year 1999 are provided solely to support additional upper-division and graduate level enrollments at the Bothell branch campus above the 1996-97 budgeted FTE level.

(4) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(5) \$324,000 of the general fund appropriation for fiscal year 1998 and \$324,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(6) \$130,000 of the general fund appropriation for fiscal year 1998 and \$130,000 of the general fund appropriation for fiscal year 1999 are provided solely for the implementation of the Puget Sound work plan agency action item UW-01.

(7) \$1,200,000 of the general fund appropriation for fiscal year 1998 and \$1,200,000 of the general fund appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary

adjustments. The university shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(8) \$47,000 of the fiscal year 1998 general fund appropriation and \$47,000 of the fiscal year 1999 general fund appropriation are provided solely to employ a fossil preparator/educator in the Burke Museum. The entire amounts provided in this subsection shall be provided directly to the Burke Museum.

(9) \$75,000 of the general fund appropriation for fiscal year 1998 and \$75,000 of the general fund appropriation for fiscal year 1999 are provided solely for enhancements to research capabilities at the Olympic natural resources center.

(10) \$150,000 of the general fund appropriation for fiscal year 1999 is provided solely for remodeling and equipment necessary to accommodate enrollment growth at the Bothell branch campus.

(11) \$560,000 of the general fund appropriation for fiscal year 1999 is provided solely for the disabilities, opportunities, internetworking, and technology program.

(12) \$3,000,000 of the general fund appropriation for fiscal year 1999 is provided solely to establish a high speed internet-2 hub.

(13) \$150,000 of the general fund appropriation for fiscal year 1999 is provided solely to support the physicians assistant program in Spokane.

(14) \$352,000 of the death investigations account appropriation is provided solely for staff and equipment for the state toxicology laboratory to support implementation of quality control procedures and laboratory certification, and for enhanced screening of sexual assault victims, blood alcohol and volatile intoxicants analysis, and blood tests for marijuana in driving cases.

(15) \$74,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in Burbage et al. v. State of Washington (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(16) \$397,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in Retired State Employees et al. v. State of Washington (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 605. 1997 c 454 s 605 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

General Fund Appropriation (FY 1998)	\$	((+66,644,000))
		<u>169,894,000</u>
General Fund Appropriation (FY 1999)	\$	((+172,819,000))
		<u>171,125,000</u>
Air Pollution Control Account Appropriation	\$	206,000

TOTAL APPROPRIATION \$	((339,669,000))
	<u>341,225,000</u>

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

(1) \$1,204,000 of the general fund appropriation for fiscal year 1998 and \$1,807,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 601(3) of this act.

(2) \$1,059,000 of the general fund appropriation for fiscal year 1999 is provided solely to support additional upper-division and graduate level enrollments at the Vancouver branch campus above the 1996-97 budgeted FTE level.

(3) \$263,000 of the general fund appropriation for fiscal year 1998 and ((~~\$789,000~~)) \$263,000 of the general fund appropriation for fiscal year 1999 are provided solely to support additional upper-division and graduate level enrollments at the Tri-Cities branch campus above the 1996-97 budgeted FTE level.

(4) \$971,000 of the general fund appropriation for fiscal year 1999 is provided solely to support additional upper-division and graduate level enrollments at the Spokane branch campus above the 1996-97 budgeted FTE level.

(5) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(6) \$140,000 of the general fund appropriation for fiscal year 1998 and \$140,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(7) \$157,000 of the general fund appropriation for fiscal year 1998 and \$157,000 of the general fund appropriation for fiscal year 1999 are provided solely for the implementation of the Puget Sound work plan agency action item WSU-01.

(8) \$600,000 of the general fund appropriation for fiscal year 1998 and \$600,000 of the general fund appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary adjustments. The university shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(9) \$50,000 of the general fund appropriation for fiscal year 1998 and \$50,000 of the general fund appropriation for fiscal year 1999 are provided solely for yellow star thistle research.

(10) \$55,000 of the general fund appropriation for fiscal year 1998 and \$55,000 of the general fund appropriation for fiscal year 1999 are provided solely for the Goldendale distance learning center.

(11) \$3,250,000 of the general fund appropriation for fiscal year 1998 is provided solely for legal costs and settlement payments associated with construction claims for the Vancouver branch campus and the veterinary teaching hospital capital projects.

(12) \$590,000 of the general fund appropriation for fiscal year 1999 is provided solely for the management of the Spokane riverpoint campus as provided in Substitute Senate Bill No. 6655.

(13) \$100,000 of the fiscal year 1999 general fund appropriation is provided solely for the aquatic animal health diagnostic center to accommodate an unanticipated caseload increase.

(14) \$43,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbuge et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(15) \$228,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 606. 1997 c 454 s 606 (uncodified) is amended to read as follows:

FOR EASTERN WASHINGTON UNIVERSITY

General Fund Appropriation (FY 1998)	\$	39,211,000
General Fund Appropriation (FY 1999)	\$	((39,489,000))
		<u>39,563,000</u>
TOTAL APPROPRIATION	\$	((78,700,000))
		<u>78,774,000</u>

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

(1) \$285,000 of the general fund appropriation for fiscal year 1998 and \$428,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 601(3) of this act.

(2) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(3) \$93,000 of the general fund appropriation for fiscal year 1998 and \$93,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(4) \$53,000 of the general fund—state appropriation for fiscal year 1998 and \$54,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary adjustments. The university shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(5) \$3,188,000 of the general fund appropriation for fiscal year 1998 and \$3,188,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve pending attainment of budgeted enrollments of 6,942 FTEs. The office of financial management shall approve the allotment of funds under this subsection at the annual rate of \$4,000 for annual student FTEs in excess of 6,942 based on tenth day quarterly enrollment and the office of financial management's quarterly budget driver report. In addition, allotments of reserve funds in this section shall be approved by the office of financial management upon approval by the higher education coordinating board for (a) actions that will result in additional enrollment growth, and (b) contractual obligations in fiscal year 1998 to the extent such funds are required.

(6) Pursuant to section 904 of this act and within current appropriation levels, the waiver limit for Eastern Washington University is increased from 11 percent to 14 percent during the 1997-99 fiscal biennium. Eastern Washington University shall report by December 15, 1998, to the appropriate committees of the legislature, the office of financial management, and the higher education coordinating board on its implementation of the increased waiver limit.

(7) \$12,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(8) \$62,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 607. 1997 c 454 s 607 (uncodified) is amended to read as follows:
FOR CENTRAL WASHINGTON UNIVERSITY

General Fund Appropriation (FY 1998)	\$	((37,214,000))
		<u>37,244,000</u>
General Fund Appropriation (FY 1999)	\$	((38,616,000))
		<u>38,749,000</u>
TOTAL APPROPRIATION	\$	((75,830,000))
		<u>75,993,000</u>

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

(1) \$269,000 of the general fund appropriation for fiscal year 1998 and \$403,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 601(3) of this act.

(2) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(3) \$70,000 of the general fund appropriation for fiscal year 1998 and \$70,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(4) \$51,000 of the general fund appropriation for fiscal year 1998 and \$51,000 of the general fund appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary adjustments. The college shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(5) \$11,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(6) \$62,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 608. 1997 c 454 s 608 (uncodified) is amended to read as follows:

FOR THE EVERGREEN STATE COLLEGE

General Fund Appropriation (FY 1998)	\$	((20,151,000))
		<u>20,401,000</u>

General Fund Appropriation (FY 1999)	\$	((20,518,000))
		<u>20,596,000</u>
TOTAL APPROPRIATION	\$	((40,669,000))
		<u>40,997,000</u>

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

(1) \$144,000 of the general fund appropriation for fiscal year 1998 and \$217,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 601(3) of this act.

(2) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(3) \$47,000 of the general fund appropriation for fiscal year 1998 and \$47,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(4) \$29,000 of the general fund appropriation for fiscal year 1998 and \$29,000 of the general fund appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary adjustments. The college shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(5) \$35,000 of the general fund appropriation for fiscal year 1999 is provided solely for the Washington institute for public policy to conduct a study of college students' employment. The study shall include, but need not be limited to, matching student enrollment information with unemployment insurance information. The office of financial management, higher education coordinating board, state board for community and technical colleges, and the employment security department shall assist the institute in the performance of the study. Results of the study are to be reported to the legislature by January 15, 1999.

(6) \$250,000 of the general fund appropriation for fiscal year 1998 is provided solely for equipment and expenses necessary to accommodate enrollment growth.

(7) \$7,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(8) \$36,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the

settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 609. 1997 c 454 s 609 (uncodified) is amended to read as follows:

FOR WESTERN WASHINGTON UNIVERSITY

General Fund Appropriation (FY 1998)	\$	47,822,000
General Fund Appropriation (FY 1999)	\$	((48,855,000))
		<u>48,951,000</u>
TOTAL APPROPRIATION	\$	((96,677,000))
		<u>96,773,000</u>

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

(1) \$342,000 of the general fund appropriation for fiscal year 1998 and \$514,000 of the general fund appropriation for fiscal year 1999 shall be placed in reserve. The office of financial management shall approve the allotment of amounts under this subsection upon notification by the higher education coordinating board. These amounts are provided for the preparation of plans and for the achievement of measurable and specific improvements towards performance and accountability goals as outlined in section 601(3) of this act.

(2) \$186,000 of the general fund appropriation for fiscal year 1998 and \$186,000 of the general fund appropriation for fiscal year 1999 are provided solely for assessment of student outcomes.

(3) \$93,000 of the general fund appropriation for fiscal year 1998 and \$93,000 of the general fund appropriation for fiscal year 1999 are provided solely to recruit and retain minority students and faculty.

(4) \$66,000 of the general fund appropriation for fiscal year 1998 and \$67,000 of the general fund appropriation for fiscal year 1999 are provided solely for competitively offered faculty recruitment and retention salary adjustments. The university shall provide a report in their 1999-01 biennial operating budget request submittal on the effective expenditure of funds for the purposes of this subsection.

(5) \$15,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(6) \$81,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d)

of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 610. 1997 c 454 s 610 (uncodified) is amended to read as follows:

FOR THE HIGHER EDUCATION COORDINATING BOARD—POLICY COORDINATION AND ADMINISTRATION

General Fund—State Appropriation (FY 1998) . . . \$	((2,734,000))
	<u>2,809,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((2,615,000))
	<u>3,604,000</u>
General Fund—Federal Appropriation \$	((693,000))
	<u>704,000</u>
TOTAL APPROPRIATION \$	((6,042,000))
	<u>7,117,000</u>

The appropriations in this section are provided to carry out the accountability, performance measurement, policy coordination, planning, studies and administrative functions of the board and are subject to the following conditions and limitations:

(1) The board shall set performance targets, review, recommend changes if necessary, and approve plans defined in section 601(3)(a) of this act for achieving measurable and specific improvements in academic years 1997-98 and 1998-99. By October 1, 1997, the board shall notify the office of financial management to allot institutions' fiscal year 1998 performance funds held in reserve, based upon the adequacy of plans prepared by the institutions.

(2) The board shall develop criteria to assess institutions' performance and shall use those criteria in determining the allotment of performance and accountability funds. The board shall evaluate each institution's achievement of performance targets for the 1997-98 academic year and, by ~~((August 1))~~ November 15, 1998, the board shall notify the office of financial management to allot institutions' fiscal year 1999 performance funds held in reserve, based upon each institution's performance ~~((, except for performance funds held for achievement of the student retention measure. For the student retention measure, the board shall notify the office of financial management by November 1, 1998, to allot institutions' fiscal year 1999 performance funds held in reserve, based upon each institution's performance))~~.

(3) By January, 1999, the board shall recommend to the office of financial management and appropriate legislative committees any recommended additions, deletions, or revisions to the performance and accountability measures in sections 601(3) of this act as part of the next master plan for higher education. The recommendations shall be developed in consultation with the institutions of higher education and may include additional performance indicators to measure successful student learning and other student outcomes for possible inclusion in the 1999-01 operating budget. The recommendations shall include measures of performance demonstrating specific and measurable improvements related to

distance education and education provided primarily through technology, to be determined by the board, in consultation with the institutions of higher education.

(4) \$280,000 of the general fund—state appropriation for fiscal year 1998 and \$280,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for enrollment to implement RCW 28B.80.570 through 28B.80.585 (rural natural resources impact areas). The number of students served shall be 50 full-time equivalent students per fiscal year. The board shall ensure that enrollments reported under this subsection meet the criteria outlined in RCW 28B.80.570 through 28B.80.585.

(5) \$70,000 of the general fund—state appropriation for fiscal year 1998 and \$70,000 of the general fund—state appropriation for fiscal year 1999 are provided to develop a competency based admissions system for higher education institutions. The board shall complete the competency based admissions system and issue a report outlining the competency based admissions system by January 1999.

(6) \$500,000 of the general fund—state appropriation for fiscal year 1998 and \$500,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for activities related to higher education facilities planning, project monitoring, and access issues related to capital facilities. Of this amount, \$50,000 is provided for a study of higher education needs of Okanogan county and surrounding communities with consideration given to alternative approaches to educational service delivery, facility expansion, relocation or partnership, and long-term growth and future educational demands of the region.

(7) \$150,000 of the general fund—state appropriation for fiscal year 1998 is provided solely as one-time funding for computer upgrades.

(8) \$75,000 of the general fund—state appropriation for fiscal year 1998 and \$175,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to conduct a higher education and economic assessment of the Spokane area as described in Substitute Senate Bill No. 6655.

(9) \$810,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to complete the cooperative library project for the four-year public higher education institutions. Funds shall be transferred to the University of Washington for one-time equipment acquisition, ongoing support of the system, and acquisition of shared electronic journals for use by all the member institutions.

(10) \$1,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8), as referenced in section 707(1)(c) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

(11) \$3,000 of the general fund—state appropriation for fiscal year 1999 is provided solely to pay the increased employer funding rate resulting from the settlement in *Retired State Employees et al. v. State of Washington* (Thurston

county superior court cause no. 92-2-01294-1), as referenced in section 707(1)(d) of this act. If the stipulated settlement is not approved by the court by August 1, 1998, the amount provided in this subsection shall lapse.

Sec. 611. 1997 c 454 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 1998) . . . \$	((89,369,000))
	<u>89,606,000</u>
General Fund—State Appropriation (FY 1999) . . . \$	((96,209,000))
	<u>97,232,000</u>
General Fund—Federal Appropriation \$	((8,255,000))
	<u>8,278,000</u>
<u>Advanced College Tuition Payment Program Account</u>	
<u>Appropriation</u> \$	<u>1,198,000</u>
TOTAL APPROPRIATION \$	((193,833,000))
	<u>196,314,000</u>

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

(1) \$527,000 of the general fund—state appropriation for fiscal year 1998 and \$526,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the displaced homemakers program.

(2) \$216,000 of the general fund—state appropriation for fiscal year 1998 and \$220,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the western interstate commission for higher education.

(3) \$118,000 of the general fund—state appropriation for fiscal year 1998 and \$118,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the health personnel resources plan.

(4) \$1,000,000 of the general fund—state appropriation for fiscal year 1998 and \$1,000,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the scholarships and loans program under chapter 28B.115 RCW, the health professional conditional scholarship program. This amount shall be deposited to the health professional loan repayment and scholarship trust fund to carry out the purposes of the program.

(5) \$86,783,000 of the general fund—state appropriation for fiscal year 1998 and \$93,728,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for student financial aid, including all administrative costs. The amounts in (a), (b), and (c) of this subsection are sufficient to implement Second Substitute House Bill No. 1851 (higher education financial aid). Of these amounts:

(a) \$67,266,000 of the general fund—state appropriation for fiscal year 1998 and \$73,968,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the state need grant program. (((#))) After April 1 of each

fiscal year, up to one percent of the annual appropriation for the state need grant program may be transferred to the state work study program.

(b) \$15,350,000 of the general fund—state appropriation for fiscal year 1998 and \$15,350,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the state work study program. After April 1 of each fiscal year, up to one percent of the annual appropriation for the state work study program may be transferred to the state need grant program;

(c) \$2,420,000 of the general fund—state appropriation for fiscal year 1998 and \$2,420,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for educational opportunity grants. For the purpose of establishing eligibility for the equal opportunity grant program for placebound students under RCW 28B.101.020, Thurston county lies within the branch campus service area of the Tacoma branch campus of the University of Washington;

(d) A maximum of 2.1 percent of the general fund—state appropriation for fiscal year 1998 and 2.1 percent of the general fund—state appropriation for fiscal year 1999 may be expended for financial aid administration, excluding the four percent state work study program administrative allowance provision;

(e) \$230,000 of the general fund—state appropriation for fiscal year 1998 and \$201,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the educator's excellence awards. Any educator's excellence moneys not awarded by April 1st of each year may be transferred by the board to either the Washington scholars program or, in consultation with the workforce training and education coordinating board, to the Washington award for vocational excellence;

(f) \$1,011,000 of the general fund—state appropriation for fiscal year 1998 and \$1,265,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement the Washington scholars program. Any Washington scholars program moneys not awarded by April 1st of each year may be transferred by the board to either the educator's excellence awards or, in consultation with the workforce training and education coordinating board, to the Washington award for vocational excellence;

(g) \$456,000 of the general fund—state appropriation for fiscal year 1998 and \$474,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement Washington award for vocational excellence program. Any Washington award for vocational program moneys not awarded by April 1st of each year may be transferred by the board to either the educator's excellence awards or the Washington scholars program;

(h) \$51,000 of the general fund—state appropriation for fiscal year 1998 and \$51,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for community scholarship matching grants of \$2,000 each. To be eligible for the matching grant, a nonprofit community organization organized under section 501(c)(3) of the internal revenue code must demonstrate that it has raised \$2,000 in new moneys for college scholarships after the effective date of this act. No organization may receive more than one \$2,000 matching grant; and

(6) (~~(\$175,000 of the general fund—state appropriation for fiscal year 1998 and \$175,000 of the general fund—state appropriation for fiscal year 1999 are provided solely to implement Engrossed Second Substitute House Bill No. 1372 or Second Substitute Senate Bill No. 5106 (Washington advanced college tuition payment program). If neither Engrossed Second Substitute House Bill No. 1372 nor Second Substitute Senate Bill No. 5106 is enacted by June 30, 1997, the amounts provided in this subsection shall lapse.))~~ \$412,000 of the general fund—state appropriation for fiscal year 1998 and \$1,198,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for working capital for the advanced tuition payment program. The funds provided in this subsection may be expended only to the extent that revenue from application fees and interest earnings deposited in the advanced college tuition payment program account are insufficient to support program operation. Prior to the end of fiscal year 1999, expenditures shall be transferred between funds to the extent that program application fees and interest earnings are available to minimize the expenditure from the general fund.

(7) \$187,000 of the general fund—state appropriation for fiscal year 1998 and \$188,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for a demonstration project in the 1997-99 biennium to provide undergraduate fellowships based upon the graduate fellowship program.

(8) Funding is provided in this section for the development of three models for tuition charges for distance learning programs. Institutions involved in distance education or extended learning shall provide information to the board on the usage, cost, and revenue generated by such programs.

Sec. 612. 1997 c 149 s 612 (uncodified) is amended to read as follows:

FOR THE JOINT CENTER FOR HIGHER EDUCATION

General Fund Appropriation (FY 1998)	\$	1,469,000
((General Fund Appropriation (FY 1999)	\$	1,470,000))
TOTAL APPROPRIATION	\$	((2,939,000))
		<u>1,469,000</u>

Sec. 613. 1997 c 149 s 614 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE LIBRARY

General Fund—State Appropriation (FY 1998) . . .	\$	((7,483,000))
		<u>7,533,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((7,281,000))
		<u>7,631,000</u>
General Fund—Federal Appropriation	\$	((4,847,000))
		<u>6,817,000</u>
TOTAL APPROPRIATION	\$	((19,611,000))
		<u>21,981,000</u>

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

(1) At least \$2,524,000 shall be expended for a contract with the Seattle public library for library services for the Washington book and braille library.

(2) \$198,000 of the general fund—state appropriation for fiscal year 1998 ~~((is))~~ and \$200,000 of the general fund—state appropriation for fiscal year 1999 are provided solely for the state library to continue the government information locator service in accordance with chapter 171, Laws of 1996. The state library, in consultation with interested parties, shall prepare an evaluation of the government information locator service by October 1, 1997. The evaluation shall include a cost-benefit analysis, a determination of fiscal impacts to the state, and programmatic information. The evaluation report shall be provided to the appropriate legislative fiscal committees.

(3) \$100,000 of the general fund—state appropriation for fiscal year 1999 is provided solely for enhancement of the state library's collection.

Sec. 614. 1997 c 149 s 616 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE HISTORICAL SOCIETY

General Fund Appropriation (FY 1998)	\$	((2,502,000))
		<u>2,658,000</u>
General Fund Appropriation (FY 1999)	\$	((2,531,000))
		<u>2,745,000</u>
TOTAL APPROPRIATION	\$	((5,033,000))
		<u>5,403,000</u>

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

(1) \$216,200 of the general fund appropriation for fiscal year 1998 and \$216,200 of the general fund appropriation for fiscal year 1999 are provided solely for exhibit and educational programming.

(2) \$156,000 of the general fund appropriation for fiscal year 1998 and \$164,000 of the general fund appropriation for fiscal year 1999 are provided solely for the temporary relocation of research center operations.

(3) \$50,000 of the general fund appropriation for fiscal year 1999 is provided solely for activities related to the Lewis and Clark Bicentennial.

Sec. 615. 1997 c 149 s 618 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE BLIND

General Fund—State Appropriation (FY 1998) . . .	\$	((3,714,000))
		<u>3,723,000</u>
General Fund—State Appropriation (FY 1999) . . .	\$	((3,738,000))
		<u>3,747,000</u>
General Fund—Private/Local Appropriation	\$	((192,000))
		<u>418,000</u>
TOTAL APPROPRIATION	\$	((7,644,000))
		<u>7,888,000</u>

Sec. 616. 1997 c 149 s 619 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE DEAF

General Fund Appropriation (FY 1998)	\$	((6,458,000))
		<u>6,467,000</u>
General Fund Appropriation (FY 1999)	\$	((6,458,000))
		<u>6,468,000</u>
TOTAL APPROPRIATION	\$	((12,917,000))
		<u>12,935,000</u>

**PART VII
SPECIAL APPROPRIATIONS**

Sec. 701. 1997 c 149 s 701 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR GENERAL FUND BOND DEBT**

General Fund Appropriation (FY 1998)	\$	((447,283,000))
		<u>448,355,000</u>
General Fund Appropriation (FY 1999)	\$	((485,077,000))
		<u>484,005,000</u>
General Fund Bonds Subject to the Limit Bond		
Retirement Account Appropriation	\$	932,360,000
TOTAL APPROPRIATION	\$	1,864,720,000

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriation is for deposit into the general fund bonds subject to the limit bond retirement account.

Sec. 702. 1997 c 149 s 703 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR GENERAL OBLIGATION DEBT TO BE REIMBURSED AS
PRESCRIBED BY STATUTE**

General Fund Appropriation (FY 1998)	\$	((23,096,000))
		<u>23,186,000</u>
General Fund Appropriation (FY 1999)	\$	((25,603,000))
		<u>25,642,000</u>
General Fund Bonds Excluded from the Limit		
Bond Retirement Account Appropriation	\$	((48,699,000))
		<u>48,828,000</u>
Reimbursable Bonds Excluded from the Limit Bond		
Retirement Account Appropriation	\$	104,933,000
Reimbursable Bonds Subject to the Limit Bond		
Retirement Account Appropriation	\$	((402,000))
		<u>2,264,000</u>
TOTAL APPROPRIATION	\$	((202,733,000))
		<u>204,853,000</u>

The appropriations in this section are subject to the following conditions and limitations: The general fund appropriation is for deposit into the general fund bonds excluded from the limit bond retirement account.

Sec. 703. 1997 c 149 s 705 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR BOND SALE EXPENSES

General Fund Appropriation (FY 1998)	\$	475,000
General Fund Appropriation (FY 1999)	\$	475,000
Higher Education Construction Account		
Appropriation	\$	((215,000))
		<u>440,000</u>
State Building Construction Account		
Appropriation	\$	((6,374,000))
		<u>7,683,000</u>
Public Safety Reimbursable Bond Account		
Appropriation	\$	((8,000))
		<u>23,000</u>
TOTAL APPROPRIATION	\$	((7,547,000))
		<u>9,096,000</u>

Total Bond Retirement and Interest Appropriations contained in sections 701 through 705 of this act	\$	((2,121,748,000))
		<u>2,125,417,000</u>

Sec. 704. 1997 c 149 s 710 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—YEAR 2000 ALLOCATIONS

((General Fund—State Appropriation (FY 1998)	\$	3,380,000
General Fund—State Appropriation (FY 1999)	\$	1,960,000))
General Fund—Federal Appropriation	\$	2,883,000
Liquor Revolving Account Appropriation	\$	131,000
Health Care Authority Administrative Account		
Appropriation	\$	631,000
Accident Account Appropriation	\$	1,102,000
Medical Aid Account Appropriation	\$	1,102,000
Unemployment Compensation Administration		
Account—Federal Appropriation	\$	1,313,000
((Administrative Contingency Account	\$	948,000))
 Appropriation	\$	948,000))
Employment Services Administrative Account		
Appropriation	\$	((500,000))
		<u>461,000</u>
Forest Development Account Appropriation	\$	156,000

Off Road Vehicle Account Appropriation	\$	7,000
Surveys and Maps Account Appropriation	\$	1,000
Aquatic Lands Enhancement Account Appropriation	\$	8,000
Resource Management Cost Account Appropriation	\$	348,000
TOTAL APPROPRIATION	\$	((14,470,000))
		<u>8,143,000</u>

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

(1) The appropriations will be allocated by the office of financial management to agencies to complete Year 2000 date conversion maintenance on their computer systems. Agencies shall submit their estimated costs of conversion to the office of financial management by July 1, 1997.

(2) Up to \$10,000,000 of the cash balance of the data processing revolving account may be expended on agency Year 2000 date conversion costs. The \$10,000,000 will be taken from the cash balances of the data processing revolving account's two major users, as follows: \$7,000,000 from the department of information services and \$3,000,000 from the office of financial management. The office of financial management in consultation with the department of information services shall allocate these funds as needed to complete the date conversion projects.

(3) Agencies receiving these allocations shall report at a minimum to the information services board and to the governor every six months on the progress of Year 2000 maintenance efforts.

NEW SECTION. **Sec. 705.** A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—YEAR 2000 CONVERSION

General Fund Appropriation (FY 1998)	\$	233,000
General Fund Appropriation (FY 1999)	\$	33,000
Hospital Commission Account Appropriation	\$	115,000
Architects' License Account Appropriation	\$	3,000
Professional Engineers' Account Appropriation	\$	9,000
Real Estate Commission Account Appropriation	\$	24,000
Health Professions Account Appropriation	\$	275,000
Master License Account Appropriation	\$	70,000
Safe Drinking Water Account Appropriation	\$	50,000
Uniform Commercial Code Account Appropriation	\$	11,000
Unemployment Compensation Administration Account—Federal Appropriation	\$	3,245,000
Department of Retirement Systems Expense Account Appropriation	\$	890,000

Health Services Account Appropriation	\$	254,000
TOTAL APPROPRIATION	\$	5,212,000

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

(1) The appropriations will be allocated by the office of financial management to agencies to perform Year 2000 date conversion maintenance on their computer systems and are provided solely for these purposes.

(2) Agencies receiving these allocations shall report at a minimum to the information services board and to the governor every six months on the progress of Year 2000 maintenance efforts.

NEW SECTION. Sec. 706. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—YEAR 2000 CONTINGENCY POOL

General Fund Appropriation (FY 1998)	\$	800,000
General Fund Appropriation (FY 1999)	\$	4,200,000
Year 2000 Contingency Revolving Account		
Appropriation	\$	5,000,000
TOTAL APPROPRIATION	\$	10,000,000

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

(1) The appropriations will be allocated by the office of financial management, in consultation with the department of information systems, to agencies to perform Year 2000 maintenance on their computer systems and are provided solely for these purposes.

(2) To facilitate the transfer of moneys from dedicated funds and accounts, the state treasurer is directed to transfer sufficient moneys from each dedicated fund or account to the Year 2000 contingency revolving account, hereby created in the state treasury, in accordance with schedules provided by the office of financial management for additional Year 2000 maintenance on their computer systems.

(3) All agencies that receive these allocations will report upon request throughout the biennium to the information services board and to the governor on the progress of Year 2000 maintenance efforts.

Sec. 707. 1997 c 149 s 712 (uncodified) is amended to read as follows:

FOR THE GOVERNOR—COMPENSATION—INSURANCE BENEFITS

General Fund—State Appropriation (FY 1998)	\$	823,000
General Fund—State Appropriation (FY 1999)	\$	((6,257,000))
		<u>8,355,000</u>
General Fund—Federal Appropriation	\$	((2,431,000))
		<u>3,152,000</u>
General Fund—Private/Local Appropriation	\$	((146,000))
		<u>190,000</u>

Salary and Insurance Increase Revolving Account

Appropriation	\$	((5,465,000))
		7,081,000
TOTAL APPROPRIATION	\$	((+5,122,000))
		19,601,000

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

(1)(a) The monthly (~~contribution~~) employer funding rate for insurance benefit premiums shall not exceed \$312.35 per eligible employee for fiscal year 1998, and \$331.31 for fiscal year 1999.

(b) The monthly (~~contribution~~) employer funding rate for the operating costs of the health care authority shall not exceed \$4.99 per eligible employee for fiscal year 1998, and (~~\$4.44~~) \$4.67 for fiscal year 1999.

(c) An additional \$1.12 per eligible employee shall be included in the employer funding rate for fiscal year 1999 to increase life insurance coverage in accordance with the stipulated settlement in *Burbage et al. v. State of Washington* (Thurston county superior court cause no. 94-2-02560-8). \$330,000 of the fiscal year 1999 general fund—state appropriation, \$113,000 of the general fund—federal appropriation, \$7,000 of the general fund—private/local appropriation, and \$254,000 of the salary and insurance increase revolving account appropriation are provided solely for the additional \$1.12 employer funding rate. If the stipulated settlement is not approved by August 1, 1998, these amounts shall lapse.

(d) An additional \$5.77 per eligible employee shall be included in the employer funding rate for fiscal year 1999 to begin repaying the public employees' and retirees' insurance account for any claims paid as a result of a court-approved stipulated settlement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1). \$1,768,000 of the fiscal year 1999 general fund—state appropriation, \$608,000 of the general fund—federal appropriation, \$37,000 of the general fund—private/local appropriation, and \$1,362,000 of the salary and insurance increase revolving account appropriation are provided solely for the additional \$5.77 employer funding rate. If the stipulated settlement is not approved by August 1, 1998, these amounts shall lapse.

(e) Surplus moneys accruing to the public employees' and retirees' insurance account due to lower-than-projected insurance costs may not be reallocated by the health care authority to increase the actuarial value of public employee insurance plans. Such funds shall be held in reserve in the public employees' and retirees' insurance account and may not be expended without prior legislative authorization.

(~~(d)~~) (f) In order to achieve the level of funding provided for health benefits, the public employees' benefits board may require employee premium co-payments, increase point-of-service cost sharing, and/or implement managed competition.

(2) To facilitate the transfer of moneys from dedicated funds and accounts, the state treasurer is directed to transfer sufficient moneys from each dedicated fund or account to the special fund salary and insurance contribution increase revolving fund in accordance with schedules provided by the office of financial management.

(3) The health care authority, subject to the approval of the public employees' benefits board, shall provide subsidies for health benefit premiums to eligible retired or disabled public employees and school district employees who are eligible for parts A and B of medicare, pursuant to RCW 41.05.085. From January 1, 1998, through December 31, 1998, the subsidy shall be \$41.26 per month. Starting January 1, 1999, the subsidy shall be \$43.16 per month.

(4) Technical colleges, school districts, and educational service districts shall remit to the health care authority for deposit in the public employees' and retirees' insurance account established in RCW 41.05.120:

(a) For each full-time employee, \$14.80 per month beginning September 1, 1997;

(b) For each part-time employee who, at the time of the remittance, is employed in an eligible position as defined in RCW 41.32.010 or 41.40.010 and is eligible for employer fringe benefit contributions for basic benefits, \$14.80 each month beginning September 1, 1997, prorated by the proportion of employer fringe benefit contributions for a full-time employee that the part-time employee receives.

The remittance requirements specified in this subsection shall not apply to employees of a technical college, school district, or educational service district who purchase insurance benefits through contracts with the health care authority.

(5) The salary and insurance increase revolving account appropriation includes amounts sufficient to fund health benefits for ferry workers at the premium levels specified in subsection (1) of this section, consistent with the 1997-99 transportation appropriations act.

NEW SECTION. Sec. 708. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE STATE TREASURER—FOR THE PUBLIC EMPLOYEES' AND RETIREES' INSURANCE ACCOUNT

Pension Funding Account Appropriation (FY 1998) \$ 25,000,000

The appropriation in this section shall be deposited in the public employees' and retirees' insurance account and is provided solely to pay claims resulting from a court-approved stipulated agreement in *Retired State Employees et al. v. State of Washington* (Thurston county superior court cause no. 92-2-01294-1).

NEW SECTION. Sec. 709. A new section is added to 1997 c 149 (uncodified) to read as follows:

COMMUNITY AND TECHNICAL COLLEGES CAPITAL PROJECTS ACCOUNT

General Fund Appropriation (FY 1999) \$ 5,200,000

The appropriation in this section is provided solely for deposit in the community and technical colleges capital projects account.

Sec. 710. 1997 c 454 s 704 (uncodified) is amended to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT—COMPENSATION ACTIONS OF PERSONNEL RESOURCES BOARD

General Fund—State Appropriation (FY 1998)	\$	5,289,000
General Fund—State Appropriation (FY 1999)	\$	10,642,000
<u>General Fund—Federal Appropriation</u>	<u>\$</u>	<u>2,777,000</u>
Salary and Insurance Increase Revolving		
Account Appropriation	\$	((8,862,000))
		<u>6,085,000</u>
TOTAL APPROPRIATION	\$	24,793,000

The appropriations in this section shall be expended solely for the purposes designated in this section and are subject to the conditions and limitations in this section.

(1) Funding is provided to fully implement the recommendations of the Washington personnel resources board consistent with the provisions of chapter 319, Laws of 1996.

(2) Implementation of the salary adjustments for the various clerical classes, physicians, dental classifications, pharmacists, maintenance custodians, medical records technicians, fish/wildlife biologists, fish/wildlife enforcement, habitat technicians, and fiscal technician classifications will be effective July 1, 1997. Implementation of the salary adjustments for safety classifications, park rangers, park aides, correctional officers/sergeants, community corrections specialists, tax information specialists, industrial relations specialists, electrical classifications at the department of labor and industries, fingerprint technicians, some labor relations classifications, health benefits specialists, foresters/land managers, and liquor enforcement officers will be effective July 1, 1998.

NEW SECTION. Sec. 711. **LEOFF RETIREMENT STUDY.** The joint committee on pension policy shall study (1) providing additional benefits to members of the law enforcement officers' and fire fighters' plan II retirement system and funding those benefit increases through the member contribution rate rather than the state and employer contribution rates, and (2) creating a new law enforcement officers' and fire fighters' retirement plan that includes a defined benefit portion and a defined contribution portion. The joint committee on pension policy shall report its findings to the legislature by January 15, 1999.

NEW SECTION. Sec. 712. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR SUNDRY CLAIMS. The following sums, or so much thereof as may be necessary, are appropriated from the general fund, unless otherwise indicated, for relief of various individuals, firms, and corporations for sundry claims. These

appropriations are to be disbursed on vouchers approved by the director of general administration, except as otherwise provided, as follows:

(1) Reimbursement of criminal defendants acquitted on the basis of self-defense, pursuant to RCW 9A.16.110:

(a) Steven M. Lauritz, claim number SCJ 97-11	\$	2,534
(b) George Greenland, claim number SCJ 97-13	\$	16,235
(c) Edwin H. Evans, claim number SCJ 97-14	\$	3,997
(d) Bryan E. Vance, claim number SCJ 97-16	\$	14,866
(e) Jesse L. Smith, claim number SCJ 97-17	\$	23,027
(f) Thomas N. Klein, claim number SCJ 97-18	\$	14,338
(g) John F. Richards, claim number SCJ 97-19	\$	7,335
(h) Anthony C. Otto, claim number SCJ 97-09	\$	16,962
(i) Eric C. Swanson, claim number SCJ 97-21	\$	86,152
(j) Mark J. Campbell, claim number SCJ 98-01	\$	7,218

(2) Payment from the state wildlife account for damage to crops by wildlife, pursuant to RCW 77.36.040:

(a) D.F. Spurgeon, claim number SCG 97-03	\$	980
(b) Kenneth Kunes, claim number SCG 97-06	\$	2,288

NEW SECTION. See. 713. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE STATE TREASURER—FOR THE COUNTY CRIMINAL JUSTICE ASSISTANCE ACCOUNT

Impaired Driving Safety Account Appropriation \$ 720,000

The appropriation in this section is subject to the following conditions and limitations: The amount appropriated in this section shall be distributed in accordance with RCW 82.14.310. \$360,000 of the appropriation shall be distributed in January 1999 and the remaining \$360,000 of the appropriation shall be distributed in April 1999. This funding is provided to counties for the costs of implementing criminal justice legislation including, but not limited to, Substitute House Bill No. 2885 (drunk driving penalties), Second Substitute House Bill No. 3070 (DUI penalties), Second Substitute House Bill No. 3089 (deferred prosecution), Engrossed Senate Bill No. 6142 (DUI/license suspension), Engrossed Substitute Senate Bill No. 6165 (ignition interlock violations), Engrossed Substitute Senate Bill No. 6166 (DUI penalties), Engrossed Substitute Senate Bill No. 6187 (DUI penalties), Engrossed Senate Bill No. 6257 (intoxication levels lowered), and Engrossed Second Substitute Senate Bill No. 6293 (DUI penalties).

NEW SECTION. Sec. 714. A new section is added to 1997 c 149 (uncodified) to read as follows:

FOR THE STATE TREASURER—FOR THE MUNICIPAL CRIMINAL JUSTICE ASSISTANCE ACCOUNT

Impaired Driving Safety Account Appropriation \$ 480,000

The appropriation in this section is subject to the following conditions and limitations: The amount appropriated in this section shall be distributed in accordance with RCW 82.14.320. \$240,000 of the appropriation shall be distributed in January 1999 and the remaining \$240,000 of the appropriation shall be distributed in April 1999. This funding is provided to cities for the costs of implementing criminal justice legislation including, but not limited to, Substitute House Bill No. 2885 (drunk driving penalties), Second Substitute House Bill No. 3070 (DUI penalties), Second Substitute House Bill No. 3089 (deferred prosecution), Engrossed Senate Bill No. 6142 (DUI/license suspension), Engrossed Substitute Senate Bill No. 6165 (ignition interlock violations), Engrossed Substitute Senate Bill No. 6166 (DUI penalties), Engrossed Substitute Senate Bill No. 6187 (DUI penalties), Engrossed Senate Bill No. 6257 (intoxication levels lowered), and Engrossed Second Substitute Senate Bill No. 6293 (DUI penalties).

NEW SECTION. Sec. 715. A new section is added to 1997 c 149 (uncodified) to read as follows:

TRANSPORTATION FUND. (1) The sum of three million dollars is appropriated from the general fund to the transportation fund for fiscal year 1998.

(2) The sum of nine million six hundred fifty thousand dollars is appropriated from the general fund to the transportation fund for fiscal year 1999.

Sec. 716. 1997 c 149 s 717 (uncodified) is amended to read as follows:

INCENTIVE SAVINGS—FY 1998. The sum of seventy-five million dollars or so much thereof as may be available on June 30, 1998, from the total amount of unspent fiscal year 1998 state general fund appropriations is appropriated for the purposes of House Bill No. 2240 or Substitute Senate Bill No. 6045 in the manner provided in this section.

(1) Of the total appropriated amount, one-half of that portion that is attributable to incentive savings, not to exceed twenty-five million dollars, is appropriated to the savings incentive account for the purpose of improving the quality, efficiency, and effectiveness of agency services, and credited to the agency that generated the savings.

(2) The remainder of the total amount, not to exceed seventy million dollars, is appropriated to the education savings account (~~for the purpose of common school construction projects and education technology~~).

(3) For purposes of this section, the total amount of unspent state general fund appropriations does not include the appropriations made in this section or any amounts included in across-the-board allotment reductions under RCW 43.88.110.

Sec. 717. 1997 c 149 s 718 (uncodified) is amended to read as follows:

INCENTIVE SAVINGS—FY 1999. The sum of seventy-five million dollars or so much thereof as may be available on June 30, 1999, from the total amount of unspent fiscal year 1999 state general fund appropriations is appropriated for

the purposes of House Bill No. 2240 or Substitute Senate Bill No. 6045 in the manner provided in this section.

(1) Of the total appropriated amount, one-half of that portion that is attributable to incentive savings, not to exceed twenty-five million dollars, is appropriated to the savings incentive account for the purpose of improving the quality, efficiency, and effectiveness of agency services, and credited to the agency that generated the savings.

(2) The remainder of the total amount, not to exceed seventy million dollars, is appropriated to the education savings account ~~((for the purpose of common school construction projects and education technology)).~~

(3) For purposes of this section, the total amount of unspent state general fund appropriations does not include the appropriations made in this section or any amounts included in across-the-board allotment reductions under RCW 43.88.110.

**PART VIII
OTHER TRANSFERS AND APPROPRIATIONS**

Sec. 801. 1997 c 454 s 801 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION

General Fund Appropriation for fire insurance premiums distribution	\$ 6,617,250
General Fund Appropriation for public utility district excise tax distribution	\$ 35,183,803
General Fund Appropriation for prosecuting attorneys salaries	\$ 2,960,000
General Fund Appropriation for motor vehicle excise tax distribution	\$ 84,721,573
General Fund Appropriation for local mass transit assistance	\$ 383,208,166
General Fund Appropriation for camper and travel trailer excise tax distribution	\$ 3,904,937
General Fund Appropriation for boating safety/education and law enforcement distribution	\$ 3,616,000
Aquatic Lands Enhancement Account Appropriation for harbor improvement revenue distribution	\$ 142,000
Liquor Excise Tax Account Appropriation for liquor excise tax distribution	\$ 22,287,746
Liquor Revolving Fund Appropriation for liquor profits distribution	\$ 36,989,000
Timber Tax Distribution Account Appropriation for distribution to "Timber" counties	\$ 107,146,000

Municipal Sales and Use Tax Equalization Account		
Appropriation	\$	66,860,014
County Sales and Use Tax Equalization Account		
Appropriation	\$	11,843,224
Death Investigations Account Appropriation for distribution to counties for publicly funded autopsies	\$	1,266,000
County Criminal Justice Account Appropriation	\$	((80,634,471))
		<u>81,354,471</u>
Municipal Criminal Justice Account Appropriation	\$	((32,042,450))
		<u>32,522,450</u>
County Public Health Account Appropriation	\$	((43,773,588))
		<u>44,279,086</u>
TOTAL APPROPRIATION	\$	((923,196,222))
		<u>924,901,720</u>

The total expenditures from the state treasury under the appropriations in this section shall not exceed the funds available under statutory distributions for the stated purposes.

NEW SECTION. **Sec. 802. WILDLIFE ACCOUNT LOAN.** On June 30, 1998, the state treasurer shall lend three million five hundred thousand dollars from the state general fund to the wildlife account. Expenditure of funds is dependent upon the following conditions:

(1) By April 17, 1998, the department of fish and wildlife shall submit an expenditure reduction plan for the 1997-99 biennium for the state wildlife account to the office of financial management, the senate ways and means committee, and the house of representatives appropriations committee. The plan shall specify positions to be eliminated by program. The reductions shall be limited to activities currently funded by the wildlife account.

(2) By April 17, 1998, the department of fish and wildlife shall submit a list of properties proposed for sale, with a site description of each property, to the office of financial management, the senate ways and means committee, and the house of representatives appropriations committee.

(3) Beginning with the fourth quarter of fiscal year 1998, the department of fish and wildlife shall submit quarterly revenue and expenditure reports for the wildlife account to the office of financial management, the senate ways and means committee, and the house of representatives appropriations committee.

(4) The department of fish and wildlife shall develop, with the office of financial management and the department of revenue, a model for forecasting revenues to the state wildlife account. This forecast shall be incorporated into the quarterly revenue and expenditure reports.

(5) By November 1, 1998, the department of fish and wildlife shall submit a six-year financial plan for the state wildlife account for fiscal years 1999-05 to the office of financial management, the senate ways and means committee, and

the house of representatives appropriations committee. The plan shall include repayment of this loan by June 30, 2001.

Failure to comply with the terms and conditions of this section shall cause the loan to be immediately payable.

Sec. 803. 1997 c 454 s 802 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

General Fund: For transfer to the Water Quality

Account	\$	((26,607,000))
		<u>28,595,900</u>

General Fund: For transfer to the Flood Control

Assistance Account	\$	4,000,000
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State Convention and Trade Center Account: For transfer to the State Convention and Trade

Center Operations Account	\$	3,877,000
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Water Quality Account: For transfer to the Water Pollution Control Account. Transfers shall be made at intervals coinciding with deposits of federal capitalization grant money into the account. The amounts transferred shall not exceed the match required for each federal deposit

\$	21,688,000
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State Treasurer's Service Account: For transfer to the general fund on or before June 30, 1999 an amount up to \$3,600,000 in excess of the cash requirements of the State Treasurer's Service Account

\$	3,600,000
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Public Works Assistance Account: For transfer to the Drinking Water Assistance Account

\$	9,949,000
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County Sales and Use Tax Equalization Account: For transfer to the County Public Health

Account	\$	((1,686,000))
		<u>2,191,498</u>

Sec. 804. 1997 c 235 s 676 (uncodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

Clover Park Technical College—Aviation trades complex: Design (96-2-998)

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

(1) The reappropriation in this section is subject to the review and allotment procedures under section 712 of this act.

(2) The new appropriation in this section is provided for permits and site work, installation of metal buildings and the completion of aviation hangars.

As used in this section, "CTC Cap Proj Acct" means Community and Technical Colleges Capital Projects Account.

Reappropriation:

St Bldg Constr Acct—State \$ 573,307

Appropriation:

CTC Cap Proj Acct—State \$ 5,200,000

Prior Biennia (Expenditures) \$ 1,947,693

Future Biennia (Projected Costs) \$ ((8,866,700))

3,866,700

TOTAL \$ 11,387,700

Sec. 805. 1997 c 235 s 108 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Housing assistance, weatherization, and affordable housing program (88-5-015)

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

(1) \$3,000,000 of the new appropriation from the state building construction account is provided solely to promote development of safe and affordable housing units for persons eligible for services from the division of developmental disabilities within the department of social and health services.

(2) \$2,000,000 of the reappropriation from the state building construction account is provided solely to promote development of safe and affordable housing units for persons eligible for services from the division of developmental disabilities within the department of social and health services.

(3) \$1,000,000 of the new appropriation from the state building construction account is provided solely for the development of housing for low-income temporary or migrant farm workers through grants awarded after the effective date of this act. The legislature finds that providing farm worker housing for low-income temporary or migrant workers is a public purpose. The department shall prioritize grants and shall award grants on a competitive basis to local governments, nonprofit corporations, or other nonprofit entities. Grant moneys awarded by the department under this subsection may be matched by nonstate sources on a dollar-for-dollar basis, in cash or in-kind. The amount in this subsection is contingent upon enactment of sections 1 through 8 of Second Substitute Senate Bill No. 6168. If any of these sections of the bill are not enacted by June 30, 1998, this subsection is null and void.

Reappropriation:

St Bldg Constr Acct—State \$ 25,000,000

Washington Housing Trust Acct—

State \$ 400,000

Subtotal Reappropriation \$ 25,400,000

Appropriation:

St Bldg Constr Acct—State	\$	50,000,000
Prior Biennia (Expenditures)	\$	125,116,142
Future Biennia (Projected Costs)	\$	<u>200,000,000</u>
TOTAL	\$	400,516,142

**PART IX
MISCELLANEOUS**

Sec. 901. RCW 50.24.014 and 1994 c 187 s 3 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. 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) For the first calendar quarter of 1994 only, the basic two one-hundredths of one percent contribution payable under (a) of this subsection shall be increased by one-hundredth of one percent to a total rate of three one-hundredths of one percent. The proceeds of this incremental one-hundredth of one percent shall be used solely for the purposes described in section 22, chapter 483, Laws of 1993, and for the purposes described in RCW 50.40.060. During the 1997-1999 fiscal biennium, any surplus from contributions payable under this subsection (b) ((with)) may be deposited in the unemployment compensation trust fund, used to support tax and wage automated systems projects that simplify and streamline employer reporting, or both.

(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. 902. 1997 c 149 s 902 (uncodified) is amended to read as follows:

INFORMATION SYSTEMS PROJECTS. Agencies shall comply with the following requirements regarding information systems projects when specifically directed to do so by this act.

~~((1) The agency shall produce a feasibility study for each information systems project in accordance with published department of information services instructions. In addition to department of information services requirements, the study shall examine and evaluate the costs and benefits of maintaining the status quo and the costs and benefits of the proposed project. The study shall identify when and in what amount any fiscal savings will accrue, and what programs or fund sources will be affected.~~

~~— (2) The agency shall produce a project management plan for each project. The plan or plans shall address all factors critical to successful completion of each project. The plan shall include, but is not limited to, the following elements: A description of the problem or opportunity that the information systems project is intended to address; a statement of project objectives and assumptions; definition of phases, tasks, and activities to be accomplished and the estimated cost of each phase; a description of how the agency will facilitate responsibilities of oversight agencies; a description of key decision points in the project life cycle; a description of variance control measures; a definitive schedule that shows the elapsed time estimated to complete the project and when each task is to be started and completed; and a description of resource requirements to accomplish the activities within specified time, cost, and functionality constraints.~~

~~— (3) A copy of each feasibility study and project management plan shall be provided to the department of information services, the office of financial management, and legislative fiscal committees. Authority to expend any funds for individual information systems projects is conditioned on approval of the relevant feasibility study and project management plan by the department of information services and the office of financial management.~~

~~— (4) A project status report shall be submitted to the department of information services, the office of financial management, and legislative fiscal committees for each project prior to reaching key decision points identified in the project management plan. Project status reports shall examine and evaluate project management, accomplishments, budget, action to address variances, risk management, costs and benefits analysis, and other aspects critical to completion of a project.~~

~~— Work shall not commence on any task in a subsequent phase of a project until the status report for the preceding key decision point has been approved by the department of information services and the office of financial management.~~

~~— (5) If a project review is requested in accordance with department of information services policies, the reviews shall examine and evaluate: System requirements specifications; scope; system architecture; change controls; documentation; user involvement; training; availability and capability of resources; programming languages and techniques; system inputs and outputs; plans for testing, conversion, implementation, and postimplementation; and other~~

aspects critical to successful construction, integration, and implementation of automated systems. Copies of project review written reports shall be forwarded to the office of financial management and appropriate legislative committees by the agency:

— (6) A written postimplementation review report shall be prepared by the agency for each information systems project in accordance with published department of information services instructions. In addition to the information requested pursuant to the department of information services instructions, the postimplementation report shall evaluate the degree to which a project accomplished its major objectives including, but not limited to, a comparison of original cost and benefit estimates to actual costs and benefits achieved. Copies of the postimplementation review report shall be provided to the department of information services, the office of financial management, and appropriate legislative committees:))

(1) Agency planning and decisions concerning information technology shall be made in the context of its information technology portfolio. "Information technology portfolio" means a strategic management approach in which the relationships between agency missions and information technology investments can be seen and understood, such that: Technology efforts are linked to agency objectives and business plans; the impact of new investments on existing infrastructure and business functions are assessed and understood before implementation; and agency activities are consistent with the development of an integrated, nonduplicative state-wide infrastructure.

(2) Agencies shall use their information technology portfolios in making decisions on matters related to the following:

(a) System refurbishment, acquisitions, and development efforts;

(b) Setting goals and objectives for using information technology in meeting legislatively-mandated missions and business needs;

(c) Assessment of overall information processing performance, resources, and capabilities;

(d) Ensuring appropriate transfer of technological expertise for the operation of any new systems developed using external resources; and

(e) Progress toward enabling electronic access to public information.

(3) The agency shall produce a feasibility study for information technology projects at the direction of the information services board and in accordance with published department of information services policies and guidelines. At a minimum, such studies shall include a statement of: (a) The purpose or impetus for change; (b) the business value to the agency, including an examination and evaluation of benefits, advantages, and cost; (c) a comprehensive risk assessment based on the proposed project's impact on both citizens and state operations, its visibility, and the consequences of doing nothing; (d) the impact on agency and state-wide information infrastructure; and (e) the impact of the proposed enhancements to an agency's information technology capabilities on meeting service delivery demands.

(4) The agency shall produce a comprehensive management plan for each project. The plan or plans shall address all factors critical to successful completion of each project. The plan(s) shall include, but is not limited to, the following elements: A description of the problem or opportunity that the information technology project is intended to address; a statement of project objectives and assumptions; a definition and schedule of phases, tasks, and activities to be accomplished; and the estimated cost of each phase. The planning for the phased approach shall be such that the business case justification for a project needs to demonstrate how the project recovers cost or adds measurable value or positive cost benefit to the agency's business functions within each development cycle.

(5) The agency shall produce quality assurance plans for information technology projects. Consistent with the direction of the information services board and the published policies and guidelines of the department of information services, the quality assurance plan shall address all factors critical to successful completion of the project and successful integration with the agency and state information technology infrastructure. At a minimum, quality assurance plans shall provide time and budget benchmarks against which project progress can be measured, a specification of quality assurance responsibilities, and a statement of reporting requirements. The quality assurance plans shall set out the functionality requirements for each phase of a project.

(6) A copy of each feasibility study, project management plan, and quality assurance plan shall be provided to the department of information services, the office of financial management, and legislative fiscal committees. The plans and studies shall demonstrate a sound business case that justifies the investment of taxpayer funds on any new project, an assessment of the impact of the proposed system on the existing information technology infrastructure, the disciplined use of preventative measures to mitigate risk, and the leveraging of private-sector expertise as needed. Authority to expend any funds for individual information systems projects is conditioned on the approval of the relevant feasibility study, project management plan, and quality assurance plan by the department of information services and the office of financial management.

(7) Quality assurance status reports shall be submitted to the department of information services, the office of financial management, and legislative fiscal committees at intervals specified in the project's quality assurance plan.

Sec. 903. 1997 c 149 s 905 (uncodified) is amended to read as follows:

STATUTORY APPROPRIATIONS. In addition to the amounts appropriated in this act for revenues for distribution, state contributions to the law enforcement officers' and fire fighters' retirement system, and bond retirement and interest including ongoing bond registration and transfer charges, transfers, interest on registered warrants, and certificates of indebtedness, there is also appropriated such further amounts as may be required or available for these purposes under any statutory formula or under chapters 39.94 and 39.96 RCW or any proper bond covenant made under law.

Sec. 904. RCW 28B.15.910 and 1997 c 433 s 5 are each amended to read as follows:

(1) Except for revenue waived under programs listed in subsection (3) of this section, and unless otherwise expressly provided in the omnibus state appropriations act, the total amount of operating fees revenue waived, exempted, or reduced by a state university, a regional university, The Evergreen State College, or the community colleges as a whole, shall not exceed the percentage of total gross authorized operating fees revenue set forth below. As used in this section, "gross authorized operating fees revenue" means the estimated gross operating fees revenue as estimated under RCW 82.33.020 or as revised by the office of financial management, before granting any waivers. This limitation applies to all tuition waiver programs established before or after July 1, 1992.

- (a) University of Washington 21 percent
- (b) Washington State University 20 percent
- (c) Eastern Washington University 11 percent
- (d) Central Washington University 8 percent
- (e) Western Washington University 10 percent
- (f) The Evergreen State College 6 percent
- (g) Community colleges as a whole 35 percent

(2) The limitations in subsection (1) of this section apply to waivers, exemptions, or reductions in operating fees contained in the following:

- (a) RCW 28B.10.265;
- (b) RCW 28B.15.014;
- (c) RCW 28B.15.100;
- (d) RCW 28B.15.225;
- (e) RCW 28B.15.380;
- (f) ~~((Ungraded courses under RCW 28B.15.502(4);~~

- ~~—(g))~~ RCW 28B.15.520;
- ~~((h))~~ ~~(g)~~ RCW 28B.15.526;
- ~~((i))~~ ~~(h)~~ RCW 28B.15.527;
- ~~((j))~~ ~~(i)~~ RCW 28B.15.543;
- ~~((k))~~ ~~(j)~~ RCW 28B.15.545;
- ~~((l))~~ ~~(k)~~ RCW 28B.15.555;
- ~~((m))~~ ~~(l)~~ RCW 28B.15.556;
- ~~((n))~~ ~~(m)~~ RCW 28B.15.615;
- ~~((o))~~ ~~(n)~~ RCW 28B.15.620;
- ~~((p))~~ ~~(o)~~ RCW 28B.15.628;
- ~~((q))~~ ~~(p)~~ RCW 28B.15.730;
- ~~((r))~~ ~~(q)~~ RCW 28B.15.740;
- ~~((s))~~ ~~(r)~~ RCW 28B.15.750;
- ~~((t))~~ ~~(s)~~ RCW 28B.15.756;
- ~~((u))~~ ~~(t)~~ RCW 28B.50.259;
- ~~((v))~~ ~~(u)~~ RCW 28B.70.050; ~~((and~~
- ~~—(w))~~ ~~(v)~~ RCW 28B.80.580; ~~and~~

(w) During the 1997-99 fiscal biennium, the western interstate commission for higher education undergraduate exchange program for students attending Eastern Washington University.

(3) The limitations in subsection (1) of this section do not apply to waivers, exemptions, or reductions in services and activities fees contained in the following:

- (a) RCW 28B.15.522;
- (b) ~~((RCW 28B.15.535;~~
- ~~—(e)))~~ RCW 28B.15.540; and
- ~~((d)))~~ ~~(c)~~ RCW 28B.15.558.

Sec. 905. RCW 70.105D.070 and 1997 c 406 s 5 are each amended to read as follows:

(1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more

expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; and (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters 70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1997-1999 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance.

***NEW SECTION.** *Sec. 906. During the 1997-99 fiscal biennium, the lottery commission shall conduct at least two, but not more than four, scratch games with agricultural fair themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(6).*

**Sec. 906 was vetoed. See message at end of chapter.*

****Sec. 907. RCW 67.70.240 and 1997 c 220 s 206 are each amended to read as follows:***

The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the state's general fund;

(4) For distribution to a county for the purpose of paying the interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For distribution to the fair fund, created in chapter 15.76 RCW. Five hundred sixty-five thousand dollars shall be distributed under this subsection during the remainder of fiscal year 1998. Two million dollars shall be distributed under this subsection during fiscal year 1999.

(7) For the purchase and promotion of lottery games and game-related services; and

~~((7))~~ (8) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments.

**Sec. 907 was vetoed. See message at end of chapter.*

****NEW SECTION. Sec. 908. If Engrossed Second Substitute Senate Bill No. 6562 is not enacted by June 30, 1998, sections 906 and 907 of this act are null and void.***

****Sec. 908 was vetoed. See message at end of chapter.***

Sec. 909. RCW 69.50.520 and 1997 c 451 s 2 and 1997 c 338 s 69 are each reenacted and amended to read as follows:

The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505(h)(1), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 1997-1999 biennium, funds from the account may also be used for costs associated with conducting a feasibility study of the department of corrections' offender-based tracking system, providing grants to local governments in accordance with chapter 338, Laws of 1997, and for multijurisdictional narcotics task forces. After July 1, 1999, at least seven and one-half percent of expenditures from the account shall be used for providing grants to community networks under chapter 70.190 RCW by the family policy council.

Sec. 910. RCW 43.88.030 and 1997 c 168 s 5 and 1997 c 96 s 4 are each reenacted and amended to read as follows:

(1) The director of financial management shall provide all agencies with a complete set of instructions for submitting biennial budget requests to the director at least three months before agency budget documents are due into the office of financial management. The director shall provide agencies that are required under RCW 44.40.070 to develop comprehensive six-year program and financial plans with a complete set of instructions for submitting these program and financial plans at the same time that instructions for submitting other budget requests are provided. The budget document or documents shall consist of the governor's budget message which shall be explanatory of the budget and shall contain an outline of the proposed financial policies of the state for the ensuing fiscal period, as well as an outline of the proposed six-year financial policies where applicable, and shall describe in connection therewith the important features of the budget. The message shall set forth the reasons for salient changes from the previous fiscal period in expenditure and revenue items and shall explain any major changes in financial policy. Attached to the budget message shall be such supporting schedules, exhibits and other explanatory material in respect to both current operations and capital improvements as the governor shall deem to be useful to the legislature. The budget document or documents shall set forth a proposal for expenditures in the ensuing fiscal period, or six-year period where

applicable, based upon the estimated revenues and caseloads as approved by the economic and revenue forecast council and caseload forecast council or upon the estimated revenues and caseloads of the office of financial management for those funds, accounts, sources, and programs for which the forecast councils do not prepare an official forecast, including those revenues anticipated to support the six-year programs and financial plans under RCW 44.40.070. In estimating revenues to support financial plans under RCW 44.40.070, the office of financial management shall rely on information and advice from the interagency revenue task force. Revenues shall be estimated for such fiscal period from the source and at the rates existing by law at the time of submission of the budget document, including the supplemental budgets submitted in the even-numbered years of a biennium. However, the estimated revenues and caseloads for use in the governor's budget document may be adjusted to reflect budgetary revenue transfers and revenue and caseload estimates dependent upon budgetary assumptions of enrollments, workloads, and caseloads. All adjustments to the approved estimated revenues and caseloads must be set forth in the budget document. The governor may additionally submit, as an appendix to each supplemental, biennial, or six-year agency budget or to the budget document or documents, a proposal for expenditures in the ensuing fiscal period from revenue sources derived from proposed changes in existing statutes.

Supplemental and biennial documents shall reflect a six-year expenditure plan consistent with estimated revenues from existing sources and at existing rates for those agencies required to submit six-year program and financial plans under RCW 44.40.070. Any additional revenue resulting from proposed changes to existing statutes shall be separately identified within the document as well as related expenditures for the six-year period.

The budget document or documents shall also contain:

(a) Revenues classified by fund and source for the immediately past fiscal period, those received or anticipated for the current fiscal period, those anticipated for the ensuing biennium, and those anticipated for the ensuing six-year period to support the six-year programs and financial plans required under RCW 44.40.070;

(b) The undesignated fund balance or deficit, by fund;

(c) Such additional information dealing with expenditures, revenues, workload, performance, and personnel as the legislature may direct by law or concurrent resolution;

(d) Such additional information dealing with revenues and expenditures as the governor shall deem pertinent and useful to the legislature;

(e) Tabulations showing expenditures classified by fund, function, activity, and ~~((object))~~ agency;

(f) A delineation of each agency's activities, including those activities funded from nonbudgeted, nonappropriated sources, including funds maintained outside the state treasury;

(g) Identification of all proposed direct expenditures to implement the Puget Sound water quality plan under chapter 90.71 RCW, shown by agency and in total; and

(h) Tabulations showing each postretirement adjustment by retirement system established after fiscal year 1991, to include, but not be limited to, estimated total payments made to the end of the previous biennial period, estimated payments for the present biennium, and estimated payments for the ensuing biennium.

(2) The budget document or documents shall include detailed estimates of all anticipated revenues applicable to proposed operating or capital expenditures and shall also include all proposed operating or capital expenditures. The total of beginning undesignated fund balance and estimated revenues less working capital and other reserves shall equal or exceed the total of proposed applicable expenditures. The budget document or documents shall further include:

(a) Interest, amortization and redemption charges on the state debt;

(b) Payments of all reliefs, judgments and claims;

(c) Other statutory expenditures;

(d) Expenditures incident to the operation for each agency;

(e) Revenues derived from agency operations;

(f) Expenditures and revenues shall be given in comparative form showing those incurred or received for the immediately past fiscal period and those anticipated for the current biennium and next ensuing biennium, as well as those required to support the six-year programs and financial plans required under RCW 44.40.070;

(g) A showing and explanation of amounts of general fund and other funds obligations for debt service and any transfers of moneys that otherwise would have been available for appropriation;

(h) Common school expenditures on a fiscal-year basis;

(i) A showing, by agency, of the value and purpose of financing contracts for the lease/purchase or acquisition of personal or real property for the current and ensuing fiscal periods; and

(j) A showing and explanation of anticipated amounts of general fund and other funds required to amortize the unfunded actuarial accrued liability of the retirement system specified under chapter 41.45 RCW, and the contributions to meet such amortization, stated in total dollars and as a level percentage of total compensation.

(3) A separate capital budget document or schedule shall be submitted that will contain the following:

(a) A statement setting forth a long-range facilities plan for the state that identifies and includes the highest priority needs within affordable spending levels;

(b) A capital program consisting of proposed capital projects for the next biennium and the two biennia succeeding the next biennium consistent with the long-range facilities plan. Inasmuch as is practical, and recognizing emergent needs, the capital program shall reflect the priorities, projects, and spending levels

proposed in previously submitted capital budget documents in order to provide a reliable long-range planning tool for the legislature and state agencies;

(c) A capital plan consisting of proposed capital spending for at least four biennia succeeding the next biennium;

(d) A strategic plan for reducing backlogs of maintenance and repair projects. The plan shall include a prioritized list of specific facility deficiencies and capital projects to address the deficiencies for each agency, cost estimates for each project, a schedule for completing projects over a reasonable period of time, and identification of normal maintenance activities to reduce future backlogs;

(e) A statement of the reason or purpose for a project;

(f) Verification that a project is consistent with the provisions set forth in chapter 36.70A RCW;

(g) A statement about the proposed site, size, and estimated life of the project, if applicable;

(h) Estimated total project cost;

(i) For major projects valued over five million dollars, estimated costs for the following project components: Acquisition, consultant services, construction, equipment, project management, and other costs included as part of the project. Project component costs shall be displayed in a standard format defined by the office of financial management to allow comparisons between projects;

(j) Estimated total project cost for each phase of the project as defined by the office of financial management;

(k) Estimated ensuing biennium costs;

(l) Estimated costs beyond the ensuing biennium;

(m) Estimated construction start and completion dates;

(n) Source and type of funds proposed;

(o) Estimated ongoing operating budget costs or savings resulting from the project, including staffing and maintenance costs;

(p) For any capital appropriation requested for a state agency for the acquisition of land or the capital improvement of land in which the primary purpose of the acquisition or improvement is recreation or wildlife habitat conservation, the capital budget document, or an omnibus list of recreation and habitat acquisitions provided with the governor's budget document, shall identify the projected costs of operation and maintenance for at least the two biennia succeeding the next biennium. Omnibus lists of habitat and recreation land acquisitions shall include individual project cost estimates for operation and maintenance as well as a total for all state projects included in the list. The document shall identify the source of funds from which the operation and maintenance costs are proposed to be funded;

(q) Such other information bearing upon capital projects as the governor deems to be useful;

(r) Standard terms, including a standard and uniform definition of normal maintenance, for all capital projects;

(s) Such other information as the legislature may direct by law or concurrent resolution.

For purposes of this subsection (3), the term "capital project" shall be defined subsequent to the analysis, findings, and recommendations of a joint committee comprised of representatives from the house capital appropriations committee, senate ways and means committee, legislative transportation committee, legislative evaluation and accountability program committee, and office of financial management.

(4) No change affecting the comparability of agency or program information relating to expenditures, revenues, workload, performance and personnel shall be made in the format of any budget document or report presented to the legislature under this section or RCW 43.88.160(1) relative to the format of the budget document or report which was presented to the previous regular session of the legislature during an odd-numbered year without prior legislative concurrence. Prior legislative concurrence shall consist of (a) a favorable majority vote on the proposal by the standing committees on ways and means of both houses if the legislature is in session or (b) a favorable majority vote on the proposal by members of the legislative evaluation and accountability program committee if the legislature is not in session.

NEW SECTION. Sec. 911. Sections 27, 50, and 57, chapter . . . (Second Substitute Senate Bill No. 6214), Laws of 1998 are each repealed.

NEW SECTION. Sec. 912. This act shall not be construed as affecting any right or cause of action asserted in *Washington State Legislature v. State of Washington* (Thurston county superior court cause no. 98-2-00105-1).

NEW SECTION. Sec. 913. A new section is added to 1997 c 149 (uncodified) to read as follows:

Amounts provided in this act are sufficient to implement Engrossed Senate Bill No. 6325 (ferry vessels authorized). If the bill is not enacted by June 30, 1998, this section is null and void.

Sec. 914. 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.

Sec. 915. 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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ALCOHOL AND SUBSTANCE ABUSE PROGRAM 2004

CHILD SUPPORT PROGRAM 2009

CHILDREN AND FAMILY SERVICES PROGRAM 1984

DEVELOPMENTAL DISABILITIES PROGRAM 1995

ECONOMIC SERVICES PROGRAM 2003

JUVENILE REHABILITATION PROGRAM 1988

MEDICAL ASSISTANCE PROGRAM 2005

MENTAL HEALTH PROGRAM 1991

PAYMENTS TO OTHER AGENCIES PROGRAM 2009

VOCATIONAL REHABILITATION PROGRAM 2007

DEPARTMENT OF VETERANS AFFAIRS 2016

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EMPLOYMENT SECURITY DEPARTMENT 2025

GOVERNOR
 COMPENSATION--INSURANCE BENEFITS 2096

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- FINANCIAL AID AND GRANT PROGRAMS 2089
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LEOFF RETIREMENT STUDY 2099

LIQUOR CONTROL BOARD 1980

MILITARY DEPARTMENT 1982

OFFICE OF FINANCIAL MANAGEMENT 1973

COMPENSATION ACTIONS OF PERSONNEL RESOURCES BOARD 2099

- YEAR 2000 ALLOCATIONS 2094
- YEAR 2000 CONVERSION 2095

OFFICE OF PUBLIC DEFENSE 1961

OFFICE OF THE GOVERNOR 1962

PUBLIC DISCLOSURE COMMISSION 1963

SECRETARY OF STATE 1963

SENATE 1957

SENTENCING GUIDELINES COMMISSION 2024

STATE AUDITOR 1965

STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES 2076

STATE CONVENTION AND TRADE CENTER 1983

STATE HEALTH CARE AUTHORITY 2010

STATE PARKS AND RECREATION COMMISSION 2034

STATE PATROL 2047

STATE SCHOOL FOR THE BLIND 2092

STATE SCHOOL FOR THE DEAF 2092

STATE TREASURER 1965

- BOND RETIREMENT AND INTEREST 2093, 2094
- COUNTY CRIMINAL JUSTICE ASSISTANCE ACCOUNT 2100
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PUBLIC EMPLOYEES' AND RETIREES' INSURANCE ACCOUNT
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 WASHINGTON STATE HISTORICAL SOCIETY 2092
 WASHINGTON STATE LIBRARY 2091
 WASHINGTON STATE LOTTERY 1975
 WASHINGTON STATE UNIVERSITY 2080
 WESTERN WASHINGTON UNIVERSITY 2086
 WILDLIFE ACCOUNT 2103

Passed the Senate March 11, 1998.

Passed the House March 11, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 115(5); 117(18); 120; 122(6); 124(3); 124(4); 125; 204(3)(b); 205(1)(f); 205(1)(k); 207(9); 211(5); 215(2); 217(11); 219(28); 222(3); 222(8); 222(9); 302(18); 302(19); 302(20); 303(4); 303(5); 307(34); 308, page 112, lines 4-5; 308(10); 308(11); 309(6); 309(7); 906; 907; 908; Engrossed Substitute Senate Bill No. 6108 entitled:

"AN ACT Relating to fiscal matters;"

Section 125, Page 32 (For the Horse Racing Commission)

The proviso in section 125 directs the Horse Racing Commission to conduct a study with the Gambling Commission on the impact to the race tracks and the horse racing and breeding industry of allowing gambling at race tracks. This proviso does not provide the direction or the funds that are needed to ensure that all affected interests, including the tribes, will come together to perform a thorough study of a very complex issue.

Section 204(3)(b), Pages 50-51 (For the Department of Social and Health Services, Mental Health Program—Special Commitment Center)

Section 204(3)(b) requires the Department to develop a staffing model for the Special Commitment Center by October 1, 1998. I am vetoing this proviso because the October 1998 deadline does not provide adequate time to develop a proper staffing model after the scheduled relocation of the Special Commitment Center from Monroe to McNeil Island in April 1998. I am, however, directing the Department to submit an interim report on staffing by October 1, 1998, to be followed up with a comprehensive staffing model that will be completed in time for budget development for the 1999-01 Biennium.

Section 205(1)(f), Page 54 (For the Department of Social and Health Services, Developmental Disabilities Program—Number of Developmentally Disabled Clients Served)

Section 205(1)(f) directs that the Department shall not reduce the number of persons served in community residential, employment and day programs, or family support below levels identified in the 1997 Legislative Budget Notes in order to undertake activities proposed by the Department but not funded in the supplemental appropriations act. Because the Legislature did not fully fund the costs of maintaining current service levels in community programs, this proviso could have required reductions in current services to families and disabled individuals. This proviso unduly restricts the ability of the secretary to manage the division's programs. In addition, I do not support attempts to enact Legislative Budget Notes into law through reference in a proviso. For these reasons I am vetoing this section. I am, however, directing that the Department shall make all efforts not to reduce the number of persons being served in these three programs below their current levels.

Section 205(1)(k), Page 55 (For the Department of Social and Health Services, Developmental Disabilities Program—Autism Pilot Program)

Section 205(1)(k) requires the Department to contract for a pilot program to test an alternative delivery model for services to persons with autism. I am vetoing this section for the reason that no funding was provided in the supplemental appropriations act for this requirement.

Section 207(9), Page 63 (For the Department of Social and Health Services, Economic Services Program—TANF Funding For Local Nonprofit Agencies)

This subsection earmarks \$5 million in federal Temporary Assistance to Needy Families (TANF) block funding to provide grants to community action agencies and other local nonprofit organizations. As welfare caseloads decline, it will be necessary to reinvest a portion of our budgetary savings into community-based programs — similar in purpose to those described in this subsection — for WorkFirst participants who need intensive assistance in order to get and keep a job. It is, however, too early in the implementation of WorkFirst to earmark a set amount of funding for the specific purposes identified in this subsection. For this reason, I am vetoing this subsection.

Section 222(3), Page 90 (For the Employment Security Department—Job Placement Levels)

Section 222(3) requires the Department to maintain the current level of job placement services at all 32 community and technical college location sites through the remainder of the 1997-99 Biennium. Because the Legislature did not provide resources to maintain this activity, it would be impossible for the Department to continue the current level of service. Therefore, I am vetoing section 222(3); however, I am directing the Employment Security Department to coordinate with the State Board for Community and Technical Colleges to ensure the greatest level of service possible is provided.

Section 222(8), Page 91 (For the Employment Security Department—Additional Tax Information)

Section 222(8) requires the Department to disclose additional tax information on the 1999 employer tax rate notice. While I support the disclosure of tax related information, this section requires information that could mislead employers about the relationship between the taxes they had paid and the benefits their former employees had received. In addition, tax rates are calculated on a fiscal year basis, while this subsection requires information be provided for a calendar year. It is impossible for the Department to correlate the fiscal year tax rate calculation with the calendar year information. For these reasons, I am vetoing this subsection and directing the Employment Security Department to conduct a study, in consultation with all interested parties, on how to improve the disclosure of information on the employer rate notice.

Section 222(9), Pages 91-92 (For the Employment Security Department—Federal Waiver For Welfare-To-Work Grant Program)

As a condition for receiving \$20,157,000 in federal funding, Section 222(9) requires the Governor to successfully obtain an approved federal waiver for use of an alternative agency or agents to administer the welfare-to-work grants. I am vetoing this subsection because I do not want the success of an important program to depend on the success of obtaining a federal waiver; however, I have directed the Employment Security Department to pursue a federal waiver as required by the Legislature.

Section 302(18), Page 98 (For the Department of Ecology—Coastal Erosion Project Grants)

I am deeply concerned for people whose homes and businesses are threatened by erosion along our state's coastline. As a result, I am signing provisions which provide \$275,000 in the operating budget and \$150,000 in the capital budget for coastal erosion projects in Ocean Shores. However, the Legislature has redirected \$250,000 of funds previously committed to the Department of Ecology for a long-term coastal erosion study to the Department of Community, Trade, and Economic Development (CTED) for new coastal erosion project grants. The Coastal Erosion Study begun by the Department of Ecology and the U.S. Geological Survey in 1996 is already providing sound information for decision making and will continue to provide important information over the next three years. This redirection of funds would seriously compromise this effort. The study is critical to the state, as well as local communities, to make decisions based upon sound science and good information. Therefore I am vetoing this subsection.

Although I am vetoing this subsection, I am directing CTED to immediately begin designing a collaborative process, involving all appropriate interests, to develop short- and long-term policy recommendations on coastal erosion. These recommendations will be based on sound economic and environmental principles, as well as solid scientific research and information. Because I believe the people who will be most directly affected by the outcome should have a say in the process, CTED is to include representatives from communities experiencing coastal erosion, state agencies with mandates to protect coastal resources, and other affected stakeholders.

Section 302(19), Pages 98-99 (For the Department of Ecology—Rural Economic Development Project Assistance To Businesses)

This subsection requires the Department of Ecology (DOE) to expedite its assistance to businesses seeking permitting and technical help, and to give top priority to projects in rural counties which have initiated coordinated permit processing through DOE's Permit Assistance Center. To date, only one project has met these conditions. Although I strongly support efforts to promote business development in rural areas, it is unfair to give one potential project preference over all others in rural communities throughout the state.

Section 302(20), Page 99 (For the Department of Ecology—Lake Steilacoom Scientific Review Contract)

This subsection requires the Department of Ecology to contract with a panel selected by the Society of Environmental Toxicology and Chemistry for a scientific review of various permits and studies related to efforts to control aquatic weeds in Lake Steilacoom. The Legislature failed to provide any funding for this study, which is estimated to cost \$150,000 to \$200,000. In addition, a review of DOE permits related to Lake Steilacoom

would have very little benefit because such a review would not have any legal standing and would be after the allowable time limit for appeals has expired.

Section 308, Page 112, Lines 4-5 and Section 308(10) Page 113 (For the Department of Natural Resources—Mobile Radio Replacement)

To comply with Federal Communication Commission requirements, the Department of Natural Resources needs to replace the mobile radio system it now uses for communications while fighting wildfires, an activity funded by the state General Fund. The appropriation in this section, however, is from the Natural Resources Equipment Account, a revolving fund at the Department for ongoing maintenance and replacement of equipment primarily used in the management of public lands held in trust for a variety of beneficiaries, including public schools. Revenues from trust lands, other than those necessary to manage the lands, must be distributed to the trust beneficiaries in accordance with constitutional requirements. Since there is only a nominal fund balance in the Natural Resources Equipment Account attributable to the fire program, the effect of this appropriation would be to inappropriately use revenues generated from trust lands to subsidize fire fighting activities. Therefore, I have vetoed this appropriation and proviso. I will work with the Department to explore alternative options for both the short- and long-term replacement of mobile radio equipment.

Sections 906, 907, and 908, Pages 204-206 (Agricultural Fair Theme Games and Lottery Distribution to the Fair Fund)

Section 906, 907 and 908 seek to replace pari-mutuel tax revenues that support the State Fair Fund and the State Trade Fair Fund with lottery proceeds. Section 906 requires the Washington State Lottery to conduct two to four games with agricultural themes per year in the 1997-99 Biennium. The Washington State Lottery will be unable to meet this obligation for Fiscal Year 1998 due to the length of time required to develop the agricultural theme scratch games. Section 907 distributes lottery proceeds to the State Fair Fund. Lottery proceeds support the General Fund and this proposal could potentially lower the expenditure limit under Initiative 601 if the new games did not increase total lottery revenues. For these reasons, I am vetoing Sections 906, 907, and 908 of the appropriations act to eliminate the possibility of lowering the Initiative 601 expenditure limit and to eliminate confusion regarding conducting agricultural fair theme scratch games by the Washington State Lottery.

I am vetoing the following sections in the operating appropriations bill because the language in each relates to bills that did not pass the Legislature.

Section 115(5), Page 16 (For the Attorney General—Regulating Travel Sales)

This subsection stipulates that if Engrossed Substitute House Bill 2027 is not enacted, the subsection is null and void. Engrossed Substitute House Bill 2027 was not passed by the Legislature, therefore, I have vetoed Section 115(5) of the appropriations act to eliminate confusion regarding the conditions and limitations for the Attorney General.

Section 120, Page 27 (For the Washington State Lottery Commission—Implementation of EHB 3120)

Subsection 3 stipulates that if Engrossed House Bill 3120 is not enacted, subsections 1 and 2 are null and void. Engrossed House Bill 3120 was not passed by the Legislature; therefore, I have vetoed Section 120 of the appropriations act to eliminate confusion regarding the conditions and limitations for the Washington State Lottery.

The following sections are vetoed in the appropriations bill because of provisions or vetoes in other bills:

Section 124(4), Page 32 (For the Insurance Commissioner—ESHB 2439, Bicycle Safety)

This subsection allocates \$100,000 from the Insurance Commissioners Regulatory Account to the Traffic Safety Commission to implement the Cooper Jones Act (Engrossed Substitute House Bill 2439). The bill that passed the Legislature, which I signed, has the authority to expend \$100,000 from the Bicycle and Pedestrian Safety Account. Therefore this appropriation from the Insurance Commissioners Regulatory Account is not needed. For these reasons I am vetoing this subsection.

Section 303(4), Page 101 (For the Department of Ecology—ESSB 5703, Water Right Beneficial Use)

ESSB 5703 allows the interim use of water without authorization (a water right) until either the court grants a water right or DOE grants a water right based on completion of a watershed plan where a planning effort is underway. Allowing the use of this water is unfair to those who have forgone the use of water by following the normal process for obtaining a water right. Because I have vetoed this bill, I have also vetoed this section to avoid confusion.

Section 117(18), Page 22 (For the Department of Community, Trade, and Economic Development); Section 122(6), Page 30 (For the Department of Revenue); Section 124(3), Page 32 (For the Insurance Commissioner); Section 211(5), Pages 68 and 69 (For Department of Social and Health Services, Administration and Supporting Services Program); Section 215(2), Page 73 (For the Human Rights Commission); Section 217(11), Page 78 (For the Department of Labor and Industries); Section 219(28), Pages 84 and 85 (For the Department of Health); Section 303(5), Page 101 (For the Department of Ecology); Section 307(34), Page 111 (For the Department of Fish and Wildlife); Section 308(11), Page 113 (For the Department of Natural Resources); Section 309(6), Page 115 (For the Department of Agriculture)—E2SHB 2345, Regulatory Reform

These subsections stipulate that the funding provided to implement Engrossed Second Substitute House Bill 2345, Regulatory Reform, will lapse if sections 1, 3, 4, 10, 11, and 12 are not enacted. I have vetoed these sections of Engrossed Second Substitute House Bill 2345 because I do not believe that these provisions are in the best interest of the state. Therefore, I have also vetoed these sections of the appropriations act to eliminate confusion regarding the expenditure authority for these agencies.

Section 309(7) Page 115 (For the Department of Agriculture—ESSB 6204 Livestock Identification)

This subsection stipulates that the funding provided to implement sections 2 and 98 of Engrossed Substitute Senate Bill 6204 shall lapse if these sections of the bill are not enacted. I have vetoed these sections of Engrossed Substitute Senate Bill 6204, and most other sections of the bill, because they do not address programmatic and financial issues pertaining to the livestock identification program in an effective and fiscally responsible manner. Therefore, I have also vetoed Section 309(7) of the appropriations act to eliminate confusion regarding the appropriation authority of the Department of Agriculture.

Other Comments

Section 301(2) for the Columbia River Gorge Commission requires Clark County to direct \$30,000 each year from its grants for implementing the Scenic Area Management Plan to Skamania County to cover the county's cost of implementing this same plan. Although I am not vetoing this section, I continue to be troubled by the Legislature's decision not to provide adequate funding for both the Gorge Commission and the counties within the National Scenic Area. The current budget is still \$85,000 a year below what the county has identified as its costs to implement the Scenic Area Act. The Legislature also failed to provide adequate funding for the Gorge Commission itself. As we develop the budgets for next biennium, it is important to understand that the Scenic Area Act cannot be successful without stable and adequate funding.

Section 304(7) for the State Parks and Recreation Commission requires that the Snowmobile Account and the Winter Recreation Program Account provide funds to support the Northwest Avalanche Center (NWAC). The NWAC provides important weather and avalanche forecasts that benefit back country users, search and rescue personnel, counties, ski patrols, the state Department of Transportation (WSDOT), and the Washington State Patrol, as well as snowmobilers and winter recreationalists. Although I have not vetoed this section, I do not support the decision by the Legislature to appropriate \$40,000 from these accounts for the operation of the NWAC. These programs have already voluntarily contributed \$11,000 to the NWAC. This higher level of funding is disproportionate to the benefit derived by the winter recreationalists whose user fees would be diverted from direct program services to the NWAC. Furthermore, these user fees are collected statewide, while the NWAC only provides services in the Cascades and Olympics. As a result, I anticipate seeking future General Fund-State support to reimburse these dedicated funds. I also urge

the NWAC, user groups, State Parks, and WSDOT, to continue to work with the Office of Financial Management and the Legislature to find alternative long term funding sources for the NWAC.

With the exception of sections 115(5); 117(18); 120; 122(6); 124(3); 124(4); 125; 204(3)(b); 205(1)(f); 205(1)(k); 207(9); 211(5); 215(2); 217(11); 219(28); 222(3); 222(8); 222(9); 302(18); 302(19); 302(20); 303(4); 303(5); 307(34); 308, page 112, lines 4-5; 308(10); 308(11); 309(6); 309(7); 906; 907; 908; Engrossed Substitute Senate Bill No. 6108 is approved."

CHAPTER 347

[Substitute Senate Bill 6455]

CAPITAL BUDGET—SUPPLEMENTAL, 1997-1999

AN ACT Relating to the capital budget; amending RCW 76.12.110; amending 1997 c 235 ss 152, 219, 241, 245, 247, 249, 301, 302, 305, 329, 344, 352, 393, 506, 510, 523, 525, 526, 527, 542, 566, 567, 579, 594, 606, 611, 612, 659, 661, 681, and 702 (uncodified); adding new sections to 1997 c 235; making appropriations and authorizing expenditures for capital improvements; 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 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Infrastructure needs assessment

The appropriation in this section is subject to the following conditions and limitations:

(1) The public works board ("board"), in consultation with the department of community, trade, and economic development ("department"), shall contract for a local government infrastructure needs assessment. The board shall issue a progress report to the governor, house of representatives capital budget committee, the senate ways and means committee, the joint legislative transportation committee, the house of representatives government administration committee, and the senate government operations committee by January 31, 1999. The final report shall be delivered by June 30, 1999.

(2) The infrastructure needs assessment shall utilize local capital improvement plans, to the extent available, to identify local government infrastructure needs for the planning, acquisition, construction, repair, replacement, rehabilitation, or improvements necessary for the next six years. The definitions and principles to be utilized in determining infrastructure needs shall be those set forth in chapter 36.70A RCW, including economic development. The infrastructure assessment shall also include a listing, description and evaluation of utilization of all private and public financing options, and policy alternatives that would assist in meeting local government infrastructure needs. For the purposes of this infrastructure needs assessment:

(a) Local government shall include each city, county, town, and each water, sewer, storm water, and public utility district providing water or sewer services in the state of Washington.

(b) Infrastructure shall be limited to bridges, roadways, domestic water, sanitary sewer, and storm water systems.

(3) The board shall contract for the collection and review of local capital expenditure data, the evaluation of local government infrastructure needs, the projection of future infrastructure needs, including needs to meet requirements under chapter 36.70A RCW. The board shall also contract for the development of criteria for a data base which can be maintained and updated, and such other matters as the board may deem necessary to provide an adequate representation of local capital needs and the ability of local governments to finance such needs.

(4) The legislative evaluation and accountability program shall cooperate with the department in the completion of the infrastructure needs assessment and may enter into interagency agreements. The legislative evaluation and accountability program shall develop the structure of the local government infrastructure data base and provide recommendations on the maintenance of the data base. The data base shall: Use the data compiled by and be compatible with that developed by the board's contractor; and have a structure to maintain its future use and updates.

The department shall provide a compilation of all capital improvement plans prepared by local governments. The department shall identify: Federal, state, and local infrastructure financing sources currently in use; all revenue sources available, but not fully utilized by each local government, and obstacles to full utilization; and the compilation of local government expenditures for infrastructure investments by source of funds and by jurisdiction for the period beginning January 1, 1993, and ending December 31, 1997, for local governments with a population greater than 50,000; and January 1, 1995, and ending December 31, 1997, for local governments with fewer than 50,000 population.

(6) The board shall convene an advisory committee of stakeholders to include representatives from the department of community, trade, and economic development, the office of financial management, the legislative evaluation and accountability program, the Washington state association of counties, the association of Washington cities, the Washington association of realtors, the national association of industrial office properties, the building industry association of Washington, the associated general contractors, the association of Washington business, Washington state building and construction trades council, and 1000 friends of Washington. The board may, as it deems necessary, utilize technical advisory groups or state agencies in addition to the advisory committee to assist itself in implementing this proviso.

The advisory committee shall serve as the advisory committee to the board to assist in guiding the infrastructure assessment and developing interpretations of this proviso as necessary. The committee shall establish criteria and categorize infrastructure projects as necessary to meet the requirements set forth in chapter

36.70A RCW, or as reflective of other community priorities, and review elements and standards of infrastructure needs identified in the study.

Appropriation:

Public Works Assistance

Account—State	\$	750,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	750,000

NEW SECTION. Sec. 2. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Emergency flood and erosion repairs

The appropriation in this section is provided solely for shoreline repairs at Ocean Shores to prevent further erosion and flood control.

Appropriation:

St Bldg Constr Acct—State	\$	150,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	150,000

NEW SECTION. Sec. 3. A new section is added to 1997 c 235 to read as follows:

FOR THE OFFICE OF FINANCIAL MANAGEMENT

Year 2000 building, facility, and equipment date conversion (99-1-001)

The office of financial management shall allocate appropriations to be used by state agencies and universities in performing Year 2000 assessments of facility management systems, control systems, and other computer systems related to capital facilities and equipment. Funds available in this appropriation may also be allocated for corrective measures on a priority basis to address critical system repairs. As used in this section, "CTC Cap Proj Acct" means Community and Technical Colleges Capital Projects Account.

Appropriation:

CEP & RI Acct—State	\$	500,000
Tburston County Cap Fac		
Acct—State	\$	60,000
TESC Cap Proj Acct—State	\$	50,000
UW Bldg Acct—State	\$	100,000
CWU Cap Proj Acct—State	\$	50,000
WSU Bldg Acct—State	\$	100,000
EWU Cap Proj Acct—State	\$	50,000

WWU Cap Proj Acct—State	\$	180,000
CTC Cap Proj Acct—State	\$	100,000
St Bldg Constr Acct—State	\$	<u>1,866,000</u>
Subtotal Appropriation	\$	3,056,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	3,056,000

Sec. 4. 1997 c 235 s 152 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

The control and management of the Wellington Hills property which was purchased by the state of Washington as a potential site for the University of Washington Bothell branch campus is transferred to the department of general administration. The site shall be disposed of at fair market value and the proceeds from the sale shall be deposited in the state building construction account. The department may retain from the proceeds of the sale an amount sufficient to provide reimbursement for expenses as approved by the office of financial management.

Prior to sale the department of general administration shall conduct a highest and best use study regarding the alternatives for future use of this site. Alternatives shall include, at a minimum, immediate sale, trade, transfer, lease, and retention for future state use. The study shall identify and consider the development characteristics and opportunities of the site, land use limitations and potential, and the desires and expectations of the surrounding communities. The study shall identify the benefits and risks of each alternative identified. The study shall be completed by June 30, 1998, and shall be transmitted for evaluation and determination of the best use of the property. Copies of the study shall be provided to the legislative fiscal committees, the office of financial management, and the higher education coordinating board.

The University of Washington shall continue to pay all necessary fees and assessments appurtenant to the property until the property is sold.

NEW SECTION. Sec. 5. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

Fire safety sprinkler systems (99-1-001)

The appropriation in this section is subject to the following conditions and limitations:

Funds are provided solely for fire sprinklers in the Douglas building at the Northern State Multi-Service Center.

Appropriation:

St Bldg Constr Acct—State	\$	600,000
Prior Biennia (Expenditures)	\$	0

Future Biennia (Projected Costs) \$	0
TOTAL \$	600,000

NEW SECTION. Sec. 6. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF GENERAL ADMINISTRATION

Alaska Street Building: Cooling tower and chiller (99-1-002)

Appropriation:

St Bldg Constr Acct—State \$	155,000
Prior Biennia (Expenditures) \$	0
Future Biennia (Projected Costs) \$	0
TOTAL \$	155,000

Sec. 7. 1997 c 235 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Green Hill redevelopment(~~(-416-bed institution)~~) (96-2-230)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is subject to the review and allotment procedures under section 712 of this act.

(2) ~~((If Engrossed Third Substitute House Bill No. 3900 is not enacted by June 30, 1997, \$3,800,000 of the new appropriation in this section shall lapse.))~~
The general fund—federal appropriation shall be transferred to the department of social and health services as a subaward of the violent offender incarceration and truth-in-sentencing grant awarded to the department of corrections.

Reappropriation:

St Bldg Constr Acct—State \$	37,234,448
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Appropriation:

St Bldg Constr Acct—State \$	6,600,000
<u>General Fund—Federal \$</u>	<u>3,466,558</u>
<u>Subtotal Appropriation \$</u>	<u>10,066,558</u>
Prior Biennia (Expenditures) \$	4,669,321
Future Biennia (Projected Costs) \$	11,200,000
TOTAL \$	((59,703,769))
	<u>63,170,327</u>

NEW SECTION. Sec. 8. A new section is added to 1997 c 235 (uncodified) to read as follows:

FOR THE DEPARTMENT OF SOCIAL AND HEALTH SERVICES

Security improvements at Western State Hospital

The appropriation in this section is provided solely for facility improvements that are required as a result of the passage of Senate Bill No. 6214. If Senate Bill

No. 6214 is not enacted by June 30, 1998, the appropriation in this section shall be used for the same purpose as section 3 of this act.

Appropriation:

St Bldg Constr Acct—State	\$	654,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	654,000

Sec. 9. 1997 c 235 s 241 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Ortling: Main kitchen upgrade (95-1-001)

Reappropriation:

CEP & RI Acct—State	\$	((1,147,147))
		<u>1,097,147</u>
Prior Biennia (Expenditures)	\$	94,853
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((1,242,000))
		<u>1,192,000</u>

Sec. 10. 1997 c 235 s 245 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Retsii: Mlnor works projects (97-1-006)

Reappropriation:

CEP & RI Acct—State	\$	410,549
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Appropriation:

CEP & RI Acct—State	\$	((755,000))
		<u>652,000</u>
Prior Biennia (Expenditures)	\$	249,451
Future Biennia (Projected Costs)	\$	<u>7,050,000</u>
TOTAL	\$	((8,465,000))
		<u>8,362,000</u>

Sec. 11. 1997 c 235 s 247 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Emergency fund (97-1-012)

Appropriation:

CEP & RI Acct—State	\$	((700,000))
		<u>750,000</u>
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	2,800,000

TOTAL	\$ ((3,500,000))
	3,550,000

Sec. 12. 1997 c 235 s 249 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF VETERANS AFFAIRS

Retsil: Bulding feasibility study (97-2-015)

~~This appropriation is provided to conduct a study of the ((potential for consolidation of program functions and replacement of poor condition housing units into a new multi-use facility. The study will be submitted to the office of financial management and will be the basis of future capital investments at Retsil; based on clear programmatic need or economic benefits and improved efficiency))~~ physical condition of the Retsil and Orting campuses, determine the opportunities and constraints for use of the facilities on those campuses to serve current and future veterans program needs, and identify other options for the provision of services to veterans in the future. The studies will be submitted to the office of financial management and will be the basis upon which future capital plans for the department are developed.

Appropriation:

CEP & RI Acct—State	\$ ((112,000))
	215,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ ((112,000))
	215,000

NEW SECTION. Sec. 13. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

Local government criminal justice facilities (99-2-003)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation in this section is provided solely for the purpose of constructing, developing, expanding, modifying, or improving local jails and other correctional facilities in accordance with the violent offender incarceration and truth-in-sentencing grant requirements.

(2) The department of corrections, in consultation with the Washington association of sheriffs and police chiefs, shall develop criteria for allocating moneys appropriated in this section to local governments.

Appropriation:

General Fund—Federal	\$ 639,196
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0

TOTAL \$ 639,196

NEW SECTION. Sec. 14. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

Washington Corrections Center: Replace razor ribbon wire (99-1-001)

Appropriation:

St Bldg Constr Acct—State	\$ 1,200,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 1,200,000

NEW SECTION. Sec. 15. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

McNeil Island Corrections Center: Still Harbor dock (99-2-001)

Appropriation:

St Bldg Constr Acct—State	\$ 2,700,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 2,700,000

NEW SECTION. Sec. 16. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

Washington State Reformatory Farm: Dalry animal waste lagoon improvements (99-2-002)

The appropriation in this section is subject to the following conditions and limitations:

The department shall contract with the joint legislative audit and review committee to conduct a cost/benefit review of the operations of the Washington state reformatory farm. The review shall make recommendations regarding the disposition of the farm and provide a report to the office of financial management and the appropriate legislative committees September 30, 1998.

Appropriation:

St Bldg Constr Acct—State	\$ 1,242,000
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ 0
TOTAL	\$ 1,242,000

NEW SECTION. Sec. 17. A new section is added to 1997 c 235 (uncodified) to read as follows:

FOR THE DEPARTMENT OF CORRECTIONS

Grant administration and minor improvements

The appropriation in this section is provided solely for costs associated with administration of the violent offender incarceration and truth-in-sentencing grant program to local governments and other agencies receiving a subaward from the grant and minor improvements for correctional facilities.

Appropriation:

General Fund—Federal	\$	155,550
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	155,550

Sec. 18. 1997 c 235 s 301 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

Referendum 26 waste disposal facilities (74-2-004)

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

(1) The reappropriation in this section is provided solely for projects under contract on or before June 30, 1997. Reappropriated funds not associated with contracted projects shall lapse on June 30, 1997. The office of financial management may grant waivers from this lapse requirement for specific projects upon findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee. The department shall submit a report to the office of financial management and the house of representatives capital budget committee and senate ways and means committee by December 1, 1997, listing all projects funded from the reappropriation in this section.

(2) \$378,500 of the appropriation is provided for the waste water treatment plant at the city of Connell.

Reappropriation:

LIRA—State	\$	4,028,749
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Appropriation:

LIRA—State	\$	((210,969))
		1,039,969
Prior Biennia (Expenditures)	\$	4,840,771
Future Biennia (Projected Costs)	\$	800,000
TOTAL	\$	((9,880,489))
		10,709,489

Sec. 19. 1997 c 235 s 302 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

Referendum 38 water supply facilities (74-2-006)

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

(1) \$2,500,000 of the state and local improvements revolving account reappropriation is provided solely for funding the state's cost share in the water conservation demonstration project—Yakima river reregulation reservoir.

(2) The reappropriation in this section is provided solely for projects under contract on or before June 30, 1997. Reappropriated funds not associated with contracted projects shall lapse on June 30, 1997. The office of financial management may grant waivers from this lapse requirement for specific projects upon findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee. The department shall submit a report to the office of financial management and the house of representatives capital budget committee and senate ways and means committee by December 1, 1997, listing all projects funded from the reappropriation in this section.

(3) \$1,500,000 of the state and local improvements revolving account appropriation is provided solely for funding the state's cost share of the Methow Valley irrigation district agreement.

Reappropriation:

LIRA, Water Sup Fac—State \$ 6,763,571

Appropriation:

LIRA, Water Sup Fac—State \$ ((485,495))
1,985,495

Prior Biennia (Expenditures) \$ 10,141,668

Future Biennia (Projected Costs) \$ 1,600,000

TOTAL \$ ((18,990,734))
20,490,734

Sec. 20. 1997 c 235 s 305 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF ECOLOGY

Centennial clean water fund (86-2-007)

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

(1) \$25,000,000 of the appropriation is provided solely for the extended grant payment to Metro/King county.

(2) \$10,000,000 of the appropriation is provided solely for an extended grant payment to Spokane for the Spokane-Rathdrum Prairie aquifer.

(3) \$1,850,000 of the appropriation is provided solely for allocation for on-site sewage system projects or programs identified in local watershed plans. Of this amount, \$25,000 is provided solely for the Puyallup Washington state university research and extension center for on-site septic systems, and \$25,000 is provided solely for the department of health to support the work group making

recommendations on the development of an on-site septic system certification program pursuant to chapter 447, Laws of 1997.

(4) \$10,000,000 of the appropriation is provided for the department to establish and administer a reclaimed water demonstration program to provide grants to five demonstration projects consistent with this section, and, if enacted, chapter 355, Laws of 1997. Of this amount:

(a) \$100,000 is provided solely for an interagency agreement with the department of health for monitoring the activities and progress of the demonstration projects and to refine reclaimed water standards from the results of the projects;

(b) \$75,000 is provided for the department of ecology's administrative costs in funding and monitoring the activities and progress of the demonstration projects;

(c) \$1,970,000 is provided solely for a grant to the city of Ephrata for a reclaimed water demonstration project;

(d) \$985,000 is provided solely for a grant to the city of Royal City for a reclaimed water demonstration project;

(e) \$3,398,500 is provided solely for a grant to the city of Sequim for a reclaimed water demonstration project;

(f) \$3,398,500 is provided solely for a grant to the city of Yelm for a reclaimed water demonstration project; and

(g) \$98,500 is provided solely for a grant to Lincoln county for a study of a reclaimed water demonstration project.

(5) A minimum of 80 percent of the remaining appropriation after allocation of subsections (1), (2), (3), and (4) of this section shall be allocated by the department for water quality implementation activities.

(6) A maximum of 20 percent of the remaining appropriation after allocation of subsections (1), (2), (3), and (4) of this section shall be allocated by the department for water quality planning activities.

(7) In awarding state-wide water quality implementation and planning grants and loans, the department shall give priority consideration to:

(a) Proposals submitted by communities with populations less than 2,500 or proposals that will be submitted by communities with populations less than 2,500 who have demonstrated an economic hardship which will prevent the completion or implementation of water quality projects; and

(b) ~~((Projects located in basins with critical or depressed salmonid stocks))~~
Allocate no less than twenty-five percent of the amount which has not been obligated as of July 1, 1998, for projects otherwise eligible under the water quality account and which have a component benefiting the recovery of priority salmonid stocks.

(8) The reappropriation in this section is provided solely for projects under contract on or before June 30, 1997. Reappropriated funds not associated with contracted projects shall lapse on June 30, 1997. The office of financial management may grant waivers from this subsection (8) for specific projects upon

findings of exceptional circumstances after notification of the chairs of the house of representatives capital budget committee and senate ways and means committee. The department shall submit a report to the office of financial management and the house of representatives capital budget committee and senate ways and means committee by December 1, 1997, listing all projects funded from the reappropriation in this section.

Reappropriation:

Water Quality Account—State \$ 38,653,000

Appropriation:

Water Quality Account—State \$ 70,000,000

Prior Biennia (Expenditures) \$ 291,063,221

Future Biennia (Projected Costs) \$ 311,000,000

TOTAL \$ 710,716,221

NEW SECTION. Sec. 21. A new section is added to 1997 c 235 to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

Storm disaster recovery (99-1-001)

Appropriation:

St Bldg Constr Acct—State \$ 530,000

Prior Biennia (Expenditures) \$ 0

Future Biennia (Projected Costs) \$ 0

TOTAL \$ 530,000

NEW SECTION. Sec. 22. A new section is added to 1997 c 235 to read as follows:

FOR THE STATE PARKS AND RECREATION COMMISSION

Cama Beach State Park development (99-2-001)

Appropriation:

Parks Renewal and Stewardshlp

Account—State \$ 1,000,000

Prior Biennia (Expenditures) \$ 0

Future Biennia (Projected Costs) \$ 0

TOTAL \$ 1,000,000

Sec. 23. 1997 c 235 s 329 (uncodified) is amended to read as follows:

FOR THE INTERAGENCY COMMITTEE FOR OUTDOOR RECREATION

Washington Wildlife and Recreation Program (98-2-003)

The appropriations in this section for the Washington wildlife and recreation program under chapter 43.98A RCW are subject to the following conditions and limitations:

(1) \$22,500,000 of the state building construction account appropriation shall be deposited in the habitat conservation account and is hereby appropriated from the habitat conservation account to the interagency committee for outdoor recreation for the fiscal biennium ending June 30, 1999, for the Washington wildlife and recreation program under chapter 43.98A RCW.

(2) \$20,000,000 of the state building account appropriation and \$2,500,000 from the aquatic lands enhancement account appropriation shall be deposited in the outdoor recreation account, and \$22,500,000 is hereby appropriated from the outdoor recreation account to the interagency committee for outdoor recreation for the fiscal biennium ending June 30, 1999, for the Washington wildlife and recreation program under chapter 43.98A RCW. Funds from the aquatic lands enhancement account appropriation shall be distributed to eligible water access projects under RCW 43.98A.050.

(3) The new appropriations in this section are provided for the approved list of projects included in LEAP CAPITAL DOCUMENT NO. 98-6 as developed on April 15, 1997, at 10:00 a.m., LEAP CAPITAL DOCUMENT NO. 99-1 as adopted on February 23, 1998, at 10:00 a.m., the pilot watershed plan implementation program under subsection (6) of this section, and for other projects approved by the legislature under RCW 43.98A.080 referencing this section.

(4) No moneys from the appropriations in this section may be spent on the Rocky Reach trailway project until an agreement with affected property owners has been reached.

(5) The legislature finds that, since the inception of the Washington wildlife and recreation program, over eighty-five percent of the moneys provided for the state parks category has been used for acquisition of property, and that demands for recreational facilities in state parks require that increased funding be devoted to development projects. The committee and the state parks and recreation commission shall ensure that at least forty percent of new funding provided for the state parks category during the 1997-99 biennium be allocated to development projects.

(6) \$4,000,000 of the habitat conservation account appropriation from the unallocated portion of the fund distribution under RCW 43.98A.040(1)(d) is provided solely for matching grants for riparian zone habitat protection projects that implement watershed plans pursuant to this subsection. The interagency committee for outdoor recreation shall develop a pilot watershed plan implementation program within the Washington wildlife and recreation program. The program shall provide matching grants to eligible agencies for implementation of riparian zone habitat protection projects within watershed restoration plans under RCW 89.08.460(1), watershed action plans developed pursuant to rules adopted by the Puget Sound water quality action team, or plans developed pursuant to chapter 442, Laws of 1997. Projects shall have a useful life of at least thirty years. Eligible agencies include conservation districts, counties, cities, and private nonprofit land trust or nature conservancy organizations. Projects eligible

for funding under this section include acquisition of land using less-than-fee-simple instruments such as conservation easements and purchase of development rights; and habitat restoration and enhancement projects on such lands including fencing and revegetation of native trees and shrubs that enhance the long-term habitat values of protected lands. The committee shall develop an application process and project eligibility and evaluation criteria in consultation with the state conservation commission. The committee shall report to the appropriate committees of the legislature on the implementation of the pilot matching grant program. A preliminary status report shall be submitted by January 1, 1998, and a final report by January 1, 1999.

(7) Up to \$400,000 of the reappropriations in this section is provided to develop an inventory of all lands in the state owned by federal agencies, state agencies, local governments, and Indian tribes. The committee shall develop the inventory in a computer database format that will facilitate the sharing and reporting of inventory data and provide options for future updates. The inventory shall include, at a minimum, the following information: Owner, location, acreage, and principal use. The inventory shall also include resource-based information for state and federally-owned recreation and habitat lands. The committee shall submit a status report on the inventory to the appropriate committees of the legislature by January 1, 1999, and a final report by January 1, 2000.

(8) All land acquired by a state agency with moneys from these appropriations shall comply with class A, B, and C weed control provisions of chapter 17.10 RCW.

Reappropriation:

St Bldg Constr Acct—State	\$ 14,264,419
Aquatic Lands Acct—State	\$ 33,335
ORA—State	\$ 21,985,067
Wildlife Account—State	\$ 1,398,996
Habitat Conservation Account—State ..	\$ 18,700,633
Subtotal Reappropriation	\$ 56,382,450

Appropriation:

St Bldg Constr Acct—State	\$ 42,500,000
Aquatic Lands Acct—State	\$ 2,500,000
Subtotal Appropriation	\$ 45,000,000
Prior Biennia (Expenditures)	\$ 101,449,844
Future Biennia (Projected Costs)	\$ 200,000,000
TOTAL	\$ 402,832,294

NEW SECTION. Sec. 24. A new section is added to 1997 c 235 to read as follows:

FOR THE STATE CONSERVATION COMMISSION

Conservation Reserve Enhancement Program

The appropriation in this section shall be expended solely for the conservation reserve enhancement program to provide grants to conservation districts to assist land owners to protect and restore riparian zones in areas with salmon stocks and a minimum of \$420,000 shall be allocated to an evolutionarily significant unit east of the Cascade mountain range and a minimum of \$420,000 to the tri-county water resource agency for projects and activities recommended by the Yakima river watershed council.

Appropriation:

St Bldg Constr Acct—State	\$	4,500,000
Salmon Recovery		
Account—State	\$	<u>500,000</u>
Subtotal Appropriation	\$	5,000,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	5,000,000

Sec. 25. 1997 c 235 s 344 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

Water access and development (96-2-027)

Reappropriation:

ORA—State	\$	997,000
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Appropriation:

ORA—State	\$	<u>135,000</u>
Prior Biennia (Expenditures)	\$	1,057,600
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((2,054,600))
		2,189,600

Sec. 26. 1997 c 235 s 352 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

Coast and Puget Sound wild salmonid habitat restoration (98-1-009)

No less than twenty-five percent of that portion of the appropriation under this section that has not been obligated as of March 1, 1998, shall be expended on projects for the recovery of priority salmonid stocks.

Reappropriation:

St Bldg Constr Acct—State	\$	1,428,770
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Appropriation:

General Fund—Federal	\$	800,000
General Fund—Private/Local	\$	800,000
St Bldg Constr Acct—State	\$	<u>3,500,000</u>
Subtotal Appropriation	\$	5,100,000

Prior Biennia (Expenditures)	\$	8,986,230
Future Biennia (Projected Costs)	\$	<u>22,400,000</u>
TOTAL	\$	37,915,000

NEW SECTION. Sec. 27. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF FISH AND WILDLIFE

Salmon restoration

The appropriation in this section shall be expended as follows:

- (1) \$842,000 for the lower Columbia river evolutionarily significant unit.
- (2) Not more than \$1,039,000 for fish passage barrier projects on land owned or managed by the department of fish and wildlife.
- (3) At least \$2,079,000 for the department to establish a program of competitive grants to local governments and regional fisheries enhancement groups for fish passage barrier projects.
- (4) At least \$1,039,000 for fish passage barrier projects that the department has determined to be priority projects. The distribution of money for priority projects may be in the form of grants to local governments, regional fisheries enhancement groups, and other state agencies.
- (5) The projects selected for funding in subsections (2) through (4) of this section shall be based on a priority index developed by the department that yields the highest return of ecological benefit.

Appropriation:

Salmon Recovery Account—State	\$	5,000,000
St Bldg Constr Acct—State	\$	<u>750,000</u>
Subtotal Appropriation	\$	5,750,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	5,750,000

NEW SECTION. Sec. 28. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

Natural Resources real property replacement (99-2-001)

Appropriation:

Nat Res Prop Repl Acct—State	\$	9,400,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	9,400,000

NEW SECTION. Sec. 29. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

Land bank program to enhance trust land holdings (99-2-002)

Appropriation:

Resource Management Cost

Account—State	\$	1,800,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	1,800,000

NEW SECTION. **Sec. 30.** A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

Arlington Survey Boundary Dispute. To purchase land as part of the settlement agreement to resolve claims and litigation over a survey boundary dispute near the town of Arlington in Snohomish county.

Appropriation:

For Dev Acct—State	\$	2,600,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	2,600,000

Sec. 31. 1997 c 235 s 393 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

Jobs for the Environment (98-2-009)

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

(1) The appropriations shall be used solely for the jobs for the environment program to achieve the following goals:

(a) Restore and protect watersheds to benefit anadromous fish stocks, consistent with the limitations of subsection (8) of this section, including critical or depressed stocks as determined by the department of fish and wildlife;

(b) Conduct watershed restoration and protection projects primarily on state lands in coordination with federal, local, tribal, and private sector efforts; and

(c) Create market wage jobs with benefits in environmental restoration for displaced workers in rural natural resource impact areas, as defined under RCW 43.31.601(2).

(2) Except as provided in subsection (5) of this section and consistent with the limitations of this section, the appropriations are solely for projects selected by the department of natural resources, in consultation with an interagency task force consisting of the department of fish and wildlife, other appropriate state agencies, tribal governments, local governments, the federal government, labor

and other interested stakeholders. In recommending projects for funding the task force shall use the following criteria:

- (a) The extent to which the project, using best available science, addresses habitat factors limiting fish and wildlife populations;
- (b) The number, duration and quality of jobs to be created or retained by the project for displaced workers in natural resource impact areas;
- (c) The extent to which the project will help avoid the listing of threatened or endangered species or provides for the recovery of species already listed;
- (d) The extent to which the project will augment existing federal, state, tribal or local watershed planning efforts or completed watershed restoration and conservation plans;
- (e) The cost effectiveness of the project;
- (f) The availability of matching funds; and
- (g) The demonstrated ability of the project sponsors to administer the project.

(3) Funds expended shall be used for specific projects and not for ongoing operational costs. Eligible projects include, but are not limited to, closure or improvement of forest roads, repair of culverts, cleanup of stream beds, removal of fish barriers, installation of fish screens, fencing of streams, and construction and planting of fish cover. Funds may also be expended for planning, design, engineering, and monitoring of eligible projects.

(4) The department of natural resources and the department of fish and wildlife, in consultation with the office of financial management and other appropriate agencies, shall report to the appropriate committees of the legislature by January 1, 1998, and January 1, 1999, on the results of expenditures from the appropriations.

(5) \$800,000 of the appropriations in this section is provided solely for watershed restoration programs to be completed by the department of ecology's Washington conservation corps crews.

(6) All projects funded under this section shall be consistent with any development regulations or comprehensive plans adopted under the growth management act for the project areas. No funds may be expended to acquire land through condemnation.

(7) Projects under contract as of June 1, 1997, shall be given first priority for funding under the appropriations in this section.

(8) No less than twenty-five percent of the remainder of the appropriations under this section that have not been obligated as of July 1, 1998, shall be expended on projects for the recovery of priority salmonid stocks.

Appropriation:

For Dev Acct—State	\$	500,000
Resource Management Cost		
Account—State	\$	1,500,000
Water Quality Account—State	\$	<u>7,133,000</u>
Subtotal Appropriation	\$	9,133,000

Prior Biennia (Expenditures)	\$ 23,067,000
Future Biennia (Projected Costs)	\$ <u>40,000,000</u>
TOTAL	\$ 72,200,000

NEW SECTION. Sec. 32. A new section is added to 1997 c 235 to read as follows:

FOR THE DEPARTMENT OF NATURAL RESOURCES

Distribution of excess funds from the forest development account: For distribution of state forest land revenues to taxing authorities receiving such revenue during the calendar year 1993 through calendar year 1997

(1) Within fifteen days of the effective date of this act the department shall transmit funds in the amounts specified in subsection (3) of this section to the county treasurers of the counties receiving the funds.

(2) The county treasurer of the counties listed in this section shall distribute funds received from this appropriation to taxing authorities in proportion to the state forest transfer land funds distributed to the taxing authorities based on information available for the calendar years 1993 through 1997. Funds to be credited to the state of Washington and funds credited to school district general levies shall be remitted to the state of Washington within thirty days after the effective date of this act for deposit into the salmon recovery account.

(3) Funds shall be distributed in the following amounts:

Clallam	\$ 1,847,473
Clark	\$ 508,782
Cowlitz	\$ 433,013
Grays Harbor	\$ 454,016
Jefferson	\$ 222,289
King	\$ 352,016
Kitsap	\$ 174,374
Klickitat	\$ 62,613
Lewis	\$ 1,558,708
Mason	\$ 258,289
Pacific	\$ 385,900
Pierce	\$ 135,405
Skagit	\$ 1,606,164
Skamania	\$ 258,247
Snohomish	\$ 1,590,489
Stevens	\$ 4,992
Thurston	\$ 893,263
Wahkiakum	\$ 411,273
Whatcom	\$ <u>842,685</u>
TOTAL	\$ 12,000,000

Appropriation:

For Dev Acct—State	\$	12,000,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	12,000,000

Sec. 33. 1997 c 235 s 506 (uncodified) is amended to read as follows:

FOR THE STATE SCHOOL FOR THE DEAF

New cottages: Design and construction (98-2-001)

Appropriation:

St Bldg Constr Acct—State	\$	((4,606,600))
		<u>4,786,600</u>
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((4,606,600))
		<u>4,786,600</u>

Sec. 34. 1997 c 235 s 510 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Old Physics Hall (Mary Gates Hall): Design and construction (92-2-008)

The reappropriation in this section is subject to the review and allotment procedures under section 712 of this act.

Reappropriation:

St Bldg Constr Acct—State	\$	((30,028,248))
		<u>31,328,248</u>
UW Bldg Acct—State	\$	<u>305,891</u>
Subtotal Reappropriation	\$	((30,334,139))
		<u>31,634,139</u>
Prior Biennia (Expenditures)	\$	4,772,861
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((35,107,000))
		<u>36,407,000</u>

Sec. 35. 1997 c 235 s 523 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Health Sciences Center BB Tower Elevators—Design and construction:

To design and construct the addition of one elevator and upgrading of the existing elevators in the health sciences center BB-wing and tower (96-1-007)

The reappropriation in this section is subject to the review and allotment procedures under section 712 of this act.

Reappropriation:

St Bldg Constr Acct—State \$	((4,961,992))
	<u>561,992</u>
UW Bldg Acct—State \$	208,546
Subtotal Reappropriation \$	((5,170,538))
	<u>770,538</u>
Prior Biennia (Expenditures) \$	22,061
Future Biennia (Projected Costs) \$	<u>0</u>
TOTAL \$	((5,192,599))
	<u>792,599</u>

Sec. 36. 1997 c 235 s 525 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Hogness/Health Sciences Center lobby: Americans with Disabilities Act improvements (96-1-022)

Reappropriation:

St Bldg Constr Acct—State \$	((1,253,070))
	<u>1,353,070</u>
Prior Biennia (Expenditures) \$	46,930
Future Biennia (Projected Costs) \$	<u>0</u>
TOTAL \$	((1,300,000))
	<u>1,400,000</u>

Sec. 37. 1997 c 235 s 526 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Fisheries Science-Oceanography Science Building: Construction (96-2-006)

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

(1) The appropriation in this section is subject to the review and allotment procedures under section 712 of this act.

(2) The department of general administration is directed, in keeping with section 152 of this act, to sell the Wellington Hills property as a means of partially offsetting the cost of this project with the proceeds of such sale being deposited into the state building and construction account.

Reappropriation:

St Bldg Constr Acct—State \$	3,449,850
UW Bldg Acct—State \$	<u>1,548,150</u>
Subtotal Reappropriation \$	4,998,000

Appropriation:

St Bldg Constr Acct—State	\$	((33,590,000))
		<u>36,090,000</u>
H Ed Constr Acct—State	\$	32,507,000
UW Bldg Acct—State	\$	<u>2,834,154</u>
Subtotal Appropriation	\$	((68,931,154))
		<u>71,431,154</u>
Prior Biennia (Expenditures)	\$	3,865,597
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((77,794,751))
		<u>80,294,751</u>

Sec. 38. 1997 c 235 s 527 (uncodified) is amended to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Social Work third floor addition—Design and construction: To design and construct a 12,000 gross square foot partial third floor addition to the Social Work and Speech and Hearing Sciences Building (96-2-010)

Reappropriation:

St Bldg Constr Acct—State	\$	((2,708,800))
		<u>3,208,800</u>
UW Bldg Acct—State	\$	<u>126,400</u>
Subtotal Reappropriation	\$	((2,835,200))
		<u>3,335,200</u>
Prior Biennia (Expenditures)	\$	80,400
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	((2,915,600))
		<u>3,415,600</u>

NEW SECTION. Sec. 39. A new section is added to 1997 c 235 to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Kincaid Fire Damage (99-1-001)

Appropriation:

St Bldg Constr Acct—State	\$	1,424,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>0</u>
TOTAL	\$	1,424,000

NEW SECTION. Sec. 40. A new section is added to 1997 c 235 to read as follows:

FOR THE UNIVERSITY OF WASHINGTON

Nuclear reactor: Decommissioning (99-2-009)

Appropriation:

St Bldg Constr Acct—State	\$	1,200,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	<u>1,200,000</u>

Sec. 41. 1997 c 235 s 542 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

Veterinary Teaching Hospital—Construction: To construct, equip, and furnish a new teaching hospital for the department of veterinary medicine and surgery (92-2-013)

The reappropriation in this section is subject to the review and allotment procedures under section 712 of this act.

Reappropriation:

St Bldg Constr Acct—State	\$	77,884
H ED Constr Acct—State	\$	<u>239,098</u>
Subtotal Reappropriation	\$	316,982

Appropriation:

<u>St Bldg Constr Acct—State</u>	<u>\$</u>	<u>3,000,000</u>
<u>WSU Bldg Acct—State</u>	<u>\$</u>	<u>500,000</u>
<u>Subtotal Appropriation</u>	<u>\$</u>	<u>3,500,000</u>

Prior Biennia (Expenditures)	\$	33,628,518
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	<u>((33,945,500))</u>
		<u>37,445,500</u>

Sec. 42. 1997 c 235 s 566 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

Intercollegiate Center for Nursing Education: Telecommunications (96-2-915)

Reappropriation:

((St Bldg Constr Acct—State))		
<u>WSU Bldg Acct—State</u>	<u>\$</u>	<u>524,386</u>
Prior Biennia (Expenditures)	\$	975,614
Future Biennia (Projected Costs)	\$	0
TOTAL	\$	<u>1,500,000</u>

Sec. 43. 1997 c 235 s 567 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

Minor works: Preservation (98-1-004)

The appropriation in this section is subject to the following conditions and limitations:

The appropriation shall support the detailed list of projects maintained by the office of financial management.

Appropriation:

WSU Bldg Acct—State	\$	((5,553,000))
		<u>5,053,000</u>
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>24,000,000</u>
TOTAL	\$	((29,553,000))
		<u>29,053,000</u>

Sec. 44. 1997 c 235 s 579 (uncodified) is amended to read as follows:

FOR WASHINGTON STATE UNIVERSITY

Washington State University Vancouver: Phase II (98-2-911)

The appropriation in this section is subject to the following conditions and limitations:

(1) No money from this appropriation may be expended that would be inconsistent with the recommendations of the higher education coordinating board.

(2) The appropriation in this section is subject to the review and allotment procedures under section 712 of this act.

(3) The engineering and multimedia buildings to be designed under this appropriation shall serve at least 950 additional student full-time equivalents. Funding is also provided to construct campus infrastructure and physical plant shops.

(4) \$1,000,000 of the appropriation in this section is provided solely to reserve or acquire transportation capacity and traffic impact fee credits associated with the development of the Vancouver branch campus.

Appropriation:

St Bldg Constr Acct—State	\$	13,500,000
Prior Biennia (Expenditures)	\$	0
Future Biennia (Projected Costs)	\$	<u>123,000,000</u>
TOTAL	\$	136,500,000

Sec. 45. 1997 c 235 s 594 (uncodified) is amended to read as follows:

FOR EASTERN WASHINGTON UNIVERSITY

Minor works: Program (98-2-001)

The appropriation in this section is subject to the following conditions and limitations:

(1) The appropriation shall support the detailed list of projects maintained by the office of financial management.

(2) Up to \$30,000 may be used for design of a residence for the president of the university.

Appropriation:

St Bldg Constr Acct—State \$	((500,000))
	<u>530,000</u>
EWU Cap Proj Acct—State \$	1,200,000
Subtotal Appropriation \$	((1,700,000))
	<u>1,730,000</u>
Prior Biennia (Expenditures) \$	0
Future Biennia (Projected Costs) \$	<u>10,018,000</u>
TOTAL \$	((11,718,000))
	<u>11,748,000</u>

Sec. 46. 1997 c 235 s 606 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

~~((Boiler Plant—Expansion))~~ Heating system improvements (98-1-030)

Appropriation:

St Bldg Constr Acct—State \$	1,450,000
Prior Biennia (Expenditures) \$	0
Future Biennia (Projected Costs) \$	<u>0</u>
TOTAL \$	1,450,000

Sec. 47. 1997 c 235 s 611 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

SeaTac Center Building: ~~((Renovation))~~ Facility improvements (98-2-010)

Appropriation:

St Bldg Constr Acct—State \$	662,500
Prior Biennia (Expenditures) \$	0
Future Biennia (Projected Costs) \$	<u>0</u>
TOTAL \$	662,500

Sec. 48. 1997 c 235 s 612 (uncodified) is amended to read as follows:

FOR CENTRAL WASHINGTON UNIVERSITY

Lynnwood Extended Degree Center: Facility design (98-2-080)

Appropriation:

((St Bldg Constr Acct—State))	
<u>CWU Cap Proj Acct—State</u> \$	1,000,000
Prior Biennia (Expenditures) \$	0
Future Biennia (Projected Costs) \$	<u>0</u>
TOTAL \$	1,000,000

Sec. 49. 1997 c 235 s 659 (uncodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

Asbestos abatement (96-1-002)

Reappropriation:

St Bldg Constr Acct—State \$ 484,317

Appropriation:

St Bldg Constr Acct—State \$ 700,000

Prior Biennia (Expenditures) \$ 1,142,040

Future Biennia (Projected Costs) \$ 0

TOTAL \$ ((1,626,357))
2,326,357

NEW SECTION. Sec. 50. A new section is added to 1997 c 235 to read as follows:

FOR THE STATE BOARD OF COMMUNITY AND TECHNICAL COLLEGES

Lower Columbia College: Library heating system (99-1-003)

Appropriation:

St Bldg Constr Acct—State \$ 512,000

Prior Biennia (Expenditures) \$ 0

Future Biennia (Projected Costs) \$ 0

TOTAL \$ 512,000

Sec. 51. 1997 c 235 s 661 (uncodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

For roof repairs at various colleges in the system and for stabilization of Corbet Hall at Centralia Community College and development of alternatives for the replacement of Corbet Hall (96-1-010)

Reappropriation:

St Bldg Constr Acct—State \$ 1,824,529

Prior Biennia (Expenditures) \$ 3,581,471

Future Biennia (Projected Costs) \$ 0

TOTAL \$ 5,406,000

Sec. 52. 1997 c 235 s 681 (uncodified) is amended to read as follows:

FOR THE STATE BOARD FOR COMMUNITY AND TECHNICAL COLLEGES

For roof repairs at various colleges in the system and for stabilization of Corbet Hall at Centralia Community College and development of alternatives for the replacement of Corbet Hall (98-1-010)

Appropriation:

St Bldg Constr Acct—State	\$ 11,580,400
Prior Biennia (Expenditures)	\$ 0
Future Biennia (Projected Costs)	\$ <u>41,000,000</u>
TOTAL	\$ 52,580,400

Sec. 53. 1997 c 235 s 702 (uncodified) is amended to read as follows:

ACQUISITION OF PROPERTIES AND FACILITIES THROUGH FINANCIAL CONTRACTS. The following agencies may enter into financial contracts, paid for from operating revenues, for the purposes indicated and in not more than the principal amounts indicated, plus financing expenses and required reserves pursuant to chapter 39.94 RCW. When securing properties under this section, agencies shall use the most economical financial contract option available, including long-term leases, lease-purchase agreements, lease-development with option to purchase agreements or financial contracts using certificates of participation. The director of general administration shall ensure that the clustering of state facilities and the collocation and consolidation of state agencies take place where such configurations are economical and consistent with agency space needs. Agencies shall assist the department of general administration with facility collocation and consolidation efforts.

State agencies may enter into agreements with the department of general administration and the state treasurer's office to develop requests to the legislature for acquisition of properties and facilities through financial contracts. The agreements may include charges for services rendered.

(1) Department of general administration:

(a) Enter into a financing contract in the amount of \$8,804,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to purchase an existing office building and associated land in Yakima for use by the department of social and health services.

~~(b) ((Enter into a financing contract on behalf of the joint center for higher education for \$8,500,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to purchase and make modifications to the Riverpoint One Building adjacent to the Riverpoint Campus. A financial plan identifying all costs related to this project, and the sources and amounts of all payments to cover these costs and a copy of the appraisal and engineering assessment shall be submitted for approval to both the office of financial management and the higher education coordinating board for approval before execution of any contract.~~

~~— Copies of the financial plan shall also be submitted to the senate ways and means committee and the house of representatives capital budget committee.))~~
Enter into a financing contract in the amount of \$2,874,100 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to purchase and renovate the old federal building and associated land in Olympia for use by the secretary of state.

(c) Enter into a financing contract in the amount of \$6,990,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to buy out the lease and make improvements to the old Thurston county courthouse for use by the office of attorney general. The department of general administration shall advise and assist the office of attorney general on space and functional planning to improve the efficient use of the facility.

(2) Liquor control board:

Enter into a long-term lease for a headquarters office in Thurston County for approximately 46,000 square feet.

(3) Department of corrections:

(a) Enter into a long-term ground lease for 17 acres in the Tacoma tide flats property from the Puyallup Nation for development of the 400-bed Tacoma prerelease facility for approximately \$360,000 per annum. Prior to entering into the lease, the department shall obtain written confirmation from the city of Tacoma and Pierce county that the prerelease facility planned for the site meets all land use, environmental protection, and community notification requirements that would apply to the facility if the land was not owned by the Puyallup nation.

(b) Enter into a financing contract on behalf of the department of corrections in the amount of \$14,736,900 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to construct a 400-bed Tacoma prerelease facility. The department of corrections shall comply with all land use, environmental protection, and community notification statutes, regulations, and ordinances in the construction and operation of this facility.

(c) Lease-develop with the option to purchase or lease-purchase approximately 100 work release beds in facilities throughout the state for \$5,000,000.

(d) Enter into a financing contract on behalf of the department of corrections in the amount of \$396,369 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to construct a dairy barn at the Monroe farm.

(e) Enter into a financing contract on behalf of the department of corrections in the amount of \$2,100,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase or construct a correctional industries transportation services warehouse.

(4) Community and technical colleges:

(a) Enter into a financing contract on behalf of Whatcom Community College in the amount of \$800,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to develop a childcare center costing \$2,410,000. The balance of project cost will be a combination of local capital funds and nonstate funds provided through private gifts or contributions.

(b) Enter into a financing contract on behalf of Pierce College in the amount of \$750,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to develop a new classroom building on the Lakewood campus costing \$1,816,665. The balance of project cost will be provided through a combination of local capital funds and existing minor works appropriation to replace relocatable classrooms that are at the end of their useful lives.

(c) Enter into a financing contract in behalf of Bellingham Technical College in the amount of \$350,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW for construction of a new classroom addition to the diesel/heavy equipment instructional shop costing \$411,309.

(d) Enter into a financing contract on behalf of Green River Community College in the amount of \$1,526,150 plus financing expenses and reserves pursuant to chapter 39.94 RCW for remodel of the Lindbloom student center building.

(e) Enter into a financing contract on behalf of Edmonds Community College in the amount of \$2,787,950 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to ~~((purchase and make improvements to several buildings and property contiguous to the college campus))~~ develop a 10,000 square foot music building on the college campus.

(f) Enter into a financing contract on behalf of Highline Community College in the amount of \$2,070,613 plus financing and required reserves pursuant to chapter 39.94 RCW for the purchase of the Federal Way Center, currently being leased by the college.

(g) Enter into a financial contract on behalf of Green River Community College in the amount of \$100,000 plus financing and required reserves pursuant to chapter 39.94 RCW to purchase approximately 1.5 acres of land adjacent to the westside parking lot.

(h) Enter into a financial contract on behalf of South Puget Sound Community College in the amount of \$619,210 plus financing and required reserves pursuant to chapter 39.94 RCW to expand and redevelop the main campus parking lot A.

(i) Enter into a financial contract on behalf of South Puget Sound Community College in the amount of \$5,500,000 plus financing and required reserves pursuant to chapter 39.94 RCW to develop a \$6,500,000 student union facility.

(j) Enter into a financial contract on behalf of Wenatchee Valley College in the amount of \$500,000 plus financing and required reserves pursuant to chapter 39.94 RCW to purchase two buildings and property contiguous to the college campus.

(5) State parks and recreation:

Enter into a financing contract on behalf of state parks and recreation in the amount of \$2,012,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW, to construct cabin and lodge facilities at Cama Beach, develop new campsite electrical hookups, develop new recreational facilities, and expand campsites at Ocean Beach/Grayland. It is the intent of the legislature that debt service on all projects financed under this authority be paid from operating revenues.

(6) ~~((Central Washington University:~~

~~— Enter into a financing contract for \$3,000,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase and improve the Sno-King Building for the Lynnwood Extended Degree Center. A financial plan~~

~~identifying all costs related to this project, and the sources and amounts of all payments to cover these costs and a copy of the building appraisal and engineering assessment shall be submitted for approval to the office of financial management before execution of any contract. Copies of the financial plan shall also be submitted to the senate ways and means committee and the house of representatives capital budget committee.~~

—(7)) Washington state patrol:

Enter into a financing contract for \$600,000 plus financing expenses and required reserves pursuant to chapter 39.94 RCW to purchase the Washington state patrol Port Angeles detachment office.

NEW SECTION. Sec. 54. A new section is added to 1997 c 235 to read as follows:

The office of financial management will convene a working group of state agencies, higher education institutions, the office of the attorney general, and representatives of the design profession and construction industry to develop a strategy to manage the risks and reduce the potential for claims and litigation associated with state construction projects. This strategy shall include the enumeration of best practices for the management of project risk and conflicts, in order to minimize future expenses related to construction claims. A report on the findings and recommendations of this working group will be presented to the house of representatives capital budget committee and senate ways and means committee by October 31, 1998.

Sec. 55. RCW 76.12.110 and 1988 c 128 s 31 are each amended to read as follows:

There is created a forest development account in the state treasury. The state treasurer shall keep an account of all sums deposited therein and expended or withdrawn therefrom. Any sums placed in the account shall be pledged for the purpose of paying interest and principal on the bonds issued by the department, and for the purchase of land for growing timber. Any bonds issued shall constitute a first and prior claim and lien against the account for the payment of principal and interest. No sums for the above purposes shall be withdrawn or paid out of the account except upon approval of the department.

Appropriations may be made by the legislature from the forest development account to the department for the purpose of carrying on the activities of the department on state forest lands, lands managed on a sustained yield basis as provided for in RCW 79.68.040, and for reimbursement of expenditures that have been made or may be made from the resource management cost account in the management of state forest lands. For the 1997-99 fiscal biennium, moneys from the account shall be distributed as directed in the omnibus appropriations act to the beneficiaries of the revenues derived from state forest lands. Funds that accrue to the state from such a distribution shall be deposited into the salmon recovery account, hereby created in the state treasury. Funds appropriated from

the salmon recovery account shall be used for efforts to restore endangered anadromous fish stocks.

NEW SECTION. Sec. 56. 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 the Senate March 12, 1998.
- Passed the House March 11, 1998.
- Approved by the Governor April 3, 1998.
- Filed in Office of Secretary of State April 3, 1998.

CHAPTER 348

[Engrossed Substitute Senate Bill 6456]

TRANSPORTATION BUDGET—SUPPLEMENTAL, 1997-1999

AN ACT Relating to transportation funding and appropriations; amending 1997 c 457 ss 101, 108, 107, 201, 205, 208, 209, 210, 211, 212, 213, 214, 216, 217, 218, 219, 220, 221, 222, 224, 225, 226, 227, 228, 301, 302, 401, 402, 407, 408, and 511 (uncodified); adding new sections to 1997 c 457 (uncodified); creating new sections; repealing 1997 c 457 s 515; making appropriations; and declaring an emergency.

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

LEGISLATIVE INTENT FOR 1998 TRANSPORTATION BUDGET

NEW SECTION. Sec. 1. PURPOSE OF ENHANCED STATE AND LOCAL TRANSPORTATION FUNDING PROGRAM. (1) The legislature finds and declares that it is essential for the economic, social and environmental well-being of the state and the maintenance of a high quality of life that the people of the state have an efficient and effective transportation system.

(2) This act provides funding, beyond that already provided in the 1997-99 biennium, from currently available revenue that is needed to prepare for and advance the timely construction of essential transportation projects and improve transportation services in preparation for meeting the following objectives:

(a) Investment strategies that deal equitably with the transportation needs of both eastern and western Washington and local governments, critical to maintaining and expanding essential multimodal, motorized and nonmotorized, urban, suburban and rural transportation programs and systems;

(b) Cost-effective funding strategies that address the most critical state-wide transportation needs for: Highway congestion relief, economic development and freight mobility, highway safety and bridge improvements, flood mitigation and fish passages, local government funding, ferry system capital improvements, and passenger and freight rail capital improvements; and

(c) Greater reliance on funding partnerships between the public and private sectors to leverage the state's investment and assign transportation project costs to the entities to which benefits accrue.

(3) State and federal fiscal constraints have resulted in sprinkling limited resources over a wide variety of costly, critical transportation needs. This

fragmented approach has hindered the development of a multimodal, state-wide system; failed to address regional transportation improvements essential to addressing congestion, expanding local economies, and maintaining environmental quality; and created competition for transportation dollars among various public beneficiaries. A legislative solution that addresses long-term funding for critical transportation priorities is highly dependent on public and private stakeholders coalescing to: Identify and prioritize those critical elements that must be addressed if the state is to continue to provide a transportation system that offers the level of safe, unfettered travel and economic and environmental well-being Washington's citizens expect and deserve; develop a funding strategy for the future that provides adequacy and reliability; and develop policy and program changes that will ensure the timely, cost-effective delivery of transportation programs, projects, and services.

**PART I
GENERAL GOVERNMENT AGENCIES—OPERATING**

Sec. 101. 1997 c 457 s 101 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF AGRICULTURE

Motor Vehicle Fund—State Appropriation \$	((304,000)) <u>314,000</u>
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The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The department of agriculture shall report to the legislative transportation committee by January 15, 1998, and January 15, 1999, on the number of fuel samples tested and the findings of the tests for the motor fuel quality program.

(2) \$10,000 of this appropriation is provided solely for laboratory analysis of diesel fuel samples taken from retailers selling diesel fuel. The purpose of this testing is to detect the possible presence of illegally-blended diesel fuel.

Sec. 102. 1997 c 457 s 108 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF COMMUNITY, TRADE, AND ECONOMIC DEVELOPMENT

Motor Vehicle Fund—State Appropriation \$	((252,000)) <u>126,000</u>
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The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity: The entire appropriation is for the contracted staff at the Gateway Visitor Information Centers, and may not be used for any other purpose.

Sec. 103. 1997 c 457 s 107 (uncodified) is amended to read as follows:
FOR THE OFFICE OF FINANCIAL MANAGEMENT

Motor Vehicle Fund—State Appropriation \$	((116,000)) <u>58,000</u>
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The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity: The entire

amount is provided as funding to the office of financial management for a policy and budget analyst for the transportation agencies.

**PART II
TRANSPORTATION AGENCIES**

Sec. 201. 1997 c 457 s 201 (uncodified) is amended to read as follows:

FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION

Highway Safety Fund—State Appropriation	\$	((491,000))
		<u>741,000</u>
Highway Safety Fund—Federal Appropriation	\$	5,216,000
Transportation Fund—State Appropriation	\$	950,000
TOTAL APPROPRIATION	\$	((6,657,000))
		<u>6,907,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The transportation fund—state appropriation includes \$900,000 to fund community DUI task forces. Funding from the transportation fund for any community DUI task force may not exceed twenty-five percent of total expenditures in support of that task force.

(2) \$50,000 of the transportation fund—state appropriation is provided to support local law enforcement implementing the drug recognition expert (DRE) and drugged driving programs. Any funds not required for the DRE program may be used for programs related to heavy trucks that improve safety and enforcement of Washington state laws.

(3) \$250,000 of the highway safety fund—state appropriation is provided solely to advertise the changes to the DUI statutes enacted by the 1998 legislature. This appropriation shall lapse if changes to the DUI statutes are not enacted by June 30, 1998.

*Sec. 202. 1997 c 457 s 205 (uncodified) is amended to read as follows:

FOR THE LEGISLATIVE TRANSPORTATION COMMITTEE

Motor Vehicle Fund—State Appropriation	\$	((2,822,000))
		<u>3,822,000</u>
Transportation Fund—State Appropriation	\$	((200,000))
		<u>250,000</u>
<u>Central Puget Sound Public Transportation</u>		
<u>Account—State Appropriation</u>	<u>\$</u>	<u>100,000</u>
TOTAL APPROPRIATION	\$	((3,022,000))
		<u>4,172,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) In order to meet the growing demand for services the legislative transportation committee shall seek accountability and efficiencies within

transportation agency programs through in-depth program evaluations. These program evaluations shall consider:

(a) Whether or not strategic planning and performance-based budgeting is a preferable planning and budgeting tool to the current incremental budgeting process for agency administrative programs and capital program budgeting;

(b) How the programs are performing currently and how service would be affected at different funding levels using performance measures; and

(c) What decision-making tools aid with the budgeting and oversight of these programs, such as tools developed during the maintenance accountability program (MAP) conducted by the legislative transportation committee during the 1995-97 biennium.

(2) In consultation with other legislative committees, the legislative transportation committee shall study ways to enhance budget development tools and presentation documents that will better illustrate agencies' full appropriation authority and the intended outcomes of the appropriation.

(3) The legislative transportation committee shall conduct an evaluation of services provided by the county road administration board, the transportation improvement board and the TransAid division within the department of transportation. The evaluation shall assess whether consolidation of any of these activities will result in efficiencies and improved service delivery. The evaluation shall also assess the funding structure of these organizations to determine whether there are any benefits gained from a more simplified structure. The evaluation shall also assess other funding authorities to see if there is potential for further expansion of these revenues. The committee shall report its findings and recommendations to the 1998 legislature and, if needed, prepare legislation to implement those recommendations. \$150,000 of the motor vehicle fund—state appropriation is provided for this evaluation.

(4) The legislative transportation committee, in cooperation with the house appropriations committee, the senate ways and means committee, and the office of financial management, shall study and report to the legislature its findings regarding the process and procedures for calculation, determination, and collection of the amounts of motor vehicle excise tax (MVET) collected on the sale or lease of motor vehicles in this state. The report shall include findings as to the base amount for calculation of MVET, the amortization schedule for calculation of MVET, and adequacy and efficiency of current systems to provide accurate and timely information to those responsible for determining and collecting the MVET due, including recommendations for determining the MVET due for current and future multiple MVET tax structures. The report must also include a status report as to the progress and feasibility of using third party information providers or using private vendors to collect the MVET. \$200,000 of the transportation fund—state appropriation is provided for this evaluation including the use of a consultant. This \$200,000 amount is null and void if an appropriation for this activity is enacted in any other appropriations bill by June 30, 1997.

(5) During the 1998 interim, the legislative transportation committee shall conduct a study relating to interagency reimbursements, cost allocations, debt service authorizations, and other budget accountability issues.

(6) The legislative transportation committee shall study and report to the legislature its findings regarding the design-build method of contracting. The report shall include findings as to opportunities where it might be appropriate to use design-build, the type of process to be used, and the budget savings potential to the state from the design-build method of contracting.

(7) The legislative transportation committee shall study the economic and transportation impact of a draw-down of the Columbia/Snake river. At a minimum, the study should address the following issues: (a) Impacts on alternate transportation modes: State and local road deterioration, congestion, safety, rail, and truck capacity; (b) impacts to producers, growers, and shippers, such as access to markets and transportation costs; (c) impacts to river, such as transportation, jobs, and businesses; and (d) impacts on the state's export sales.

(8) \$1,000,000 of the motor vehicle fund—state appropriation is provided solely for the following purpose: By June 1, 1998, the legislature and the governor shall convene a panel of transportation beneficiaries to conduct a comprehensive analysis of state-wide transportation needs and priorities; existing and potential transportation funding mechanisms, and the policies and practices of governmental entities, private businesses, and labor that affect the delivery of transportation programs and projects. By May 1, 1998, the speaker of the house of representatives and the majority leader of the senate shall appoint two members from each caucus of the house of representatives and senate and the governor shall appoint individuals representing, at a minimum, the following entities: The governor; state agencies whose policies, practices, and procedures have a direct impact on the delivery of transportation programs, projects, and services; cities; counties; regional transportation planning organizations; ports; passenger rail; light density freight rail; transit agencies; the trucking industry; the steamship industry; major employers; the retail industry; agricultural business; labor; contractors; and the general public.

The panel shall evaluate and make recommendations on the following elements:

(a) The critical state and local transportation projects, programs, and services needed to achieve an efficient, effective, state-wide, multimodal transportation system that supports the state's social, economic, and environmental well being;

(b) A realistic, achievable plan for funding transportation programs, projects, and services over the next twenty years;

(c) The relationship between state and local government agencies in delivering transportation programs, projects, and services and changes in the ways such agencies interact that are necessary to achieve a more efficient and effective delivery of transportation programs, projects, and services;

(d) The role of the transportation commission and regional transportation planning organizations in determining state and local transportation needs and priorities;

(e) Federal and state labor laws that impact the cost and efficient delivery of transportation programs, projects, and services;

(f) The process and procedures needed to implement managed competition in contracting out transportation projects and services;

(g) Business operational practices that impact the cost and timely delivery of freight and goods;

(h) A public involvement and outreach process to assess public attitudes about transportation priorities, funding, and project, program, and service delivery; and

(i) Other elements and issues as directed by the panel.

The panel shall provide quarterly progress reports to the governor, the legislative transportation committee, and the house of representatives and senate fiscal committees and shall report its final findings and recommendations by December 1, 2000.

(9) Up to \$100,000 of the central Puget Sound public transportation account—state appropriation and up to \$50,000 of the transportation fund—state appropriation are provided solely for a contracted performance and management audit of selected public transportation systems to ascertain the relative effectiveness and efficiency of those systems and, where appropriate, provide recommendations that would improve efficiency and effectiveness. The audit shall also determine the accuracy of the information contained in the annual public transportation systems report published by the department of transportation.

*Sec. 202 was partially vetoed. See message at end of chapter.

*Sec. 203, 1997 c 457 s 208 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—FIELD OPERATIONS BUREAU

Motor Vehicle Fund—State Patrol Highway		
Account—State Appropriation	\$	((159,108,000))
		<u>163,789,000</u>
Motor Vehicle Fund—State Patrol Highway		
Account—Federal Appropriation	\$	4,374,000
Motor Vehicle Fund—State Patrol Highway		
Account—Local Appropriation	\$	170,000
Transportation Fund—State Appropriation	\$	((8,961,000))
		<u>4,522,000</u>
TOTAL APPROPRIATION	\$	((172,613,000))
		<u>172,855,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The Washington state patrol is authorized to use the federal community oriented policing program (COPS) for 54 troopers with 18 COPS troopers to begin in July 1998 and 36 COPS troopers to begin in January 1999.

(2) ~~\$(8,200,000))~~ 4,463,000 of the transportation fund—state appropriation ~~((is))~~ and \$3,737,000 of the motor vehicle fund—state patrol highway account—state appropriation are provided for an equalization salary adjustment of three percent on July 1, 1997, and six percent on July 1, 1998, for commissioned officers (entry level trooper through captain), commercial vehicle enforcement officers, and communication officers of the Washington state patrol. The salary adjustments are intended to bring the existing salary levels into the fiftieth percentile of other Washington state law enforcement compensation plans. This is in addition to the salary increase contained in the omnibus appropriation bill or bills. The total of the two increases, in the transportation budget and omnibus appropriation bill or bills, may not exceed twelve percent.

(3) The Washington state patrol will develop a vehicle replacement plan for the next six years. The plan will include an analysis of the current 100,000 miles replacement policy and agency assignment policy. Projected future budget requirements will include forecasts of vehicle replacement costs, vehicle equipment costs, and estimated surplus vehicle values when sold at auction.

(4) The Washington state patrol vessel and terminal security (VATS) program will be funded by the state patrol highway fund beginning July 1, 1997, and into future biennia.

(5) A personnel data base will be maintained of the 801 commissioned traffic law enforcement officers, with a reconciliation at all times to the patrol allocation model and a vehicle assignment and replacement plan.

(6) \$150,000 of the state patrol highway account appropriation is to fund the Washington state patrol's portion of the drug recognition expert training program previously funded by the traffic safety commission.

(7) The Washington state patrol with legislative transportation committee staff will perform an interim study of the Washington state patrol's commercial vehicle enforcement program with a report to be presented to the legislature and office of financial management in January 1998 with a developed business plan and program recommendations which includes, but is not limited to, weigh in motion technologies.

(8)(a) The Washington state patrol, in consultation with the Washington traffic safety commission, shall conduct an analysis of the most effective safety devices for preventing accidents while delivery trucks are operating in reverse gear. The analysis shall focus on trucks equipped with cube-style, walk-in cargo boxes, up to eighteen feet long, that are most commonly used in the commercial delivery of goods and services.

(b) The state patrol shall incorporate research and analysis currently being conducted by the national highway traffic safety administration.

(c) Upon completion of the analysis, the state patrol shall forward its recommendations to the legislative transportation committee and office of financial management.

(9) (~~(\$761,000)~~) \$381,000 of the transportation fund—state appropriation is provided for the following traditional general fund purposes: The governor's air travel, the license fraud program, and the special services unit. This transportation fund—state appropriation is not a permanent funding source for these purposes.

(10) \$461,000 of the state patrol highway account appropriation is provided solely for monitoring and stopping fuel tax evasion. The Washington state patrol will report on December 1, 1998, to the legislative transportation committee on the activities and revenue collected associated with fuel tax evasion.

(11) \$289,000 of the state patrol highway account appropriation is provided solely for vehicle license fraud investigation. A report will be presented each session to the legislature on the activities and revenue collected by the vehicle license fraud unit.

(12) \$268,000 of the motor vehicle fund—state patrol highway account is provided solely to cover the employer's share of medicare premiums for commissioned officers hired prior to 1986. If a referendum of these officers does not receive majority support this appropriation shall not be expended by the state patrol.

(13) The chief of the Washington state patrol is prohibited from using any of the funding provided in chapter 457, Laws of 1997 and this act to increase salaries for positions above the rank of captain.

*Sec. 203 was partially vetoed. See message at end of chapter.

Sec. 204. 1997 c 457 s 209 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—INVESTIGATIVE SERVICES BUREAU

Transportation Fund—State Appropriation \$	((6,317,000))
	<u>3,133,000</u>

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity: The appropriation in this section is for the following traditional general fund purposes: Crime laboratories, used primarily for local law enforcement purposes; ACCESS, the computer system linking all law enforcement and criminal justice agencies in the state to one another; and, the identification section, which is responsible for performing criminal background checks. This appropriation is not a permanent funding source for these purposes.

Sec. 205. 1997 c 457 s 210 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—SUPPORT SERVICES BUREAU

Motor Vehicle Fund—State Patrol Highway		
Account—State Appropriation	\$	((55,961,000))
		<u>52,926,000</u>
Motor Vehicle Fund—State Patrol Highway		
Account—Federal Appropriation	\$	104,000
Transportation Fund—State Appropriation	\$	((4,965,000))
		<u>2,513,000</u>
TOTAL APPROPRIATION	\$	((61,030,000))
		<u>55,543,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) \$1,017,000 for the state patrol highway account—state appropriation is provided solely for year 2000 conversions of transportation automated systems. For purposes of this subsection, transportation automated systems does not include WASIS and WACIS.

(2) \$50,000 of the state patrol highway account—state appropriation is provided solely for a feasibility study to assess the effect of mobile computers on trooper productivity by type of service and measurement of the productivity gains achieved through reduction in administrative time and paperwork processing. The agency shall submit a copy of the proposed study workplan to the office of financial management, the department of information services, and the legislative transportation committee no later than October 1, 1997. A final report shall be submitted to the legislative transportation committee, the office of financial management, and the department of information services no later than January 31, 1998. This project is subject to the provisions of section 502 of this act.

(3) \$50,000 of the state patrol highway account—state appropriation is provided solely for a review of the feasibility of improving the patrol's computer-aided dispatch system to permit tracking of trooper availability and response time to calls for service. The agency shall submit a copy of the proposed study workplan to the office of financial management, the department of information services, and the legislative transportation committee no later than October 1, 1997. A final report shall be submitted to the legislative transportation committee, the office of financial management, and the department of information services no later than January 31, 1998. This project is subject to the provisions of section 502 of this act.

(4) These appropriations maintain current level funding for the Washington state patrol service center and have no budget savings included for a consolidation of service centers based on the study conducted by the technology management group. During the 1997 interim, the costs for current level will be reviewed by the office of financial management and department of information services with a formal data center recommendation, that has been approved by the information services board, to the legislature in January 1998. Current level funding will be split between fiseal year 1998 and fiscal year 1999 with consideration of funding

adjustments based on the review and the formal policy and budget recommendations.

(5) (~~(\$4,965,000)~~) \$2,513,000 of the transportation fund—state appropriation is for the following traditional general fund purposes: The executive protection unit, revolving fund charges, budget and fiscal services, computer services, personnel, human resources, administrative services, and property management. This appropriation is not a permanent funding source for these purposes.

(6) \$22,000 of the motor vehicle fund—state patrol highway account appropriation is provided solely to cover the employer's share of medicare premiums for commissioned officers hired prior to 1986. If a referendum of these officers does not receive majority support this appropriation shall not be expended by the state patrol.

(7) The 1998 Washington state patrol interim working group shall review the data center, electronic services division, communications division, and strategic planning and shall provide recommendations on increasing the effectiveness and efficiencies of the programs under review and audit.

(8) \$1,580,000 of the state patrol highway account—state appropriation is provided solely for the transition of the Washington state patrol mainframe data processing functions to the Washington state department of information services data center in Olympia, Washington. The Washington state patrol and the department of information services shall work cooperatively to ensure the transition to the department of information services is completed successfully.

Sec. 206, 1997 c 457 s 211 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—MANAGEMENT AND SUPPORT SERVICES

Highway Safety Fund—Motorcycle Safety Education

Account—State Appropriation	\$	((77,000))
		<u>120,000</u>
State Wildlife Account—State Appropriation	\$	((57,000))
		<u>52,000</u>
Highway Safety Fund—State Appropriation	\$	((5,538,000))
		<u>6,047,000</u>
Motor Vehicle Fund—State Appropriation	\$	((4,501,000))
		<u>4,624,000</u>
Transportation Fund—State Appropriation	\$	((900,000))
		<u>605,000</u>
TOTAL APPROPRIATION	\$	((11,073,000))
		<u>11,448,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity: The agency is directed to develop a proposal for implementing alternative approaches to delivering agency services to the public. The alternative approaches may include the use of credit card payment for telephone or use of the internet for

renewals of vehicle registrations. The proposal shall also include collocated services for greater convenience to the public. The agency shall submit a copy of the proposal to the legislative transportation committee and to the office of financial management no later than December 1, 1997.

*Sec. 207. 1997 c 457 s 212 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—INFORMATION SYSTEMS

Highway Safety Fund—Motorcycle Safety Education

Account—State Appropriation	\$	((2,000))	<u>94,000</u>
General Fund—Wildlife Account—State			
Appropriation	\$	((123,000))	<u>42,000</u>
Highway Safety Fund—State Appropriation	\$	((4,396,000))	<u>10,732,000</u>
Motor Vehicle Fund—State Appropriation	\$	((5,858,000))	<u>5,610,000</u>
Transportation Fund—State Appropriation	\$	((1,190,000))	<u>441,000</u>
TOTAL APPROPRIATION	\$	((11,569,000))	<u>16,919,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) \$2,498,000 of the highway safety fund—state appropriation and \$793,000 of the motor vehicle fund—state appropriation are provided for the following activities: (1) Identify business objectives and needs relating to technology improvements and integration of the drivers' licensing and vehicle title and registrations systems; (2) converting the drivers' licensing software applications to achieve Year 2000 compliance; (3) convert the drivers' field network from a uniscope to a frame-relay network; (4) develop an interface between the unisys system and the CRASH system; and (5) operate and maintain the highways-licensing building network and the drivers' field network.

(2) \$1,769,000 of the highway safety fund—state appropriation and \$875,000 of the motor vehicle fund—state appropriation are provided to implement the following business and technology assessment project recommendations contained in the feasibility study delivered to the legislature in January 1998: (a) Search and Query, option 2 and; (b) licensing service office improvements, option 2. If the driver's license fee increase contained in sections 6 and 7 of Engrossed Substitute House Bill No. 2730 is not enacted by June 30, 1998, the amounts provided in this subsection shall lapse.

*Sec. 207 was partially vetoed. See message at end of chapter.

Sec. 208. 1997 c 457 s 213 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—VEHICLE SERVICES

General Fund—Marine Fuel Tax Refund Account—

State Appropriation	\$	26,000
General Fund—Wildlife Account—State		
Appropriation	\$	549,000
Motor Vehicle Fund—State Appropriation	\$	((50,003,000))
		<u>49,630,000</u>
Department of Licensing Services Account—		
State Appropriation	\$	2,944,000
TOTAL APPROPRIATION	\$	((53,522,000))
		<u>53,149,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) \$600,000 of the licensing service account—state appropriation is provided for replacement of printers for county auditors and subagents.

(2) The department of licensing, in cooperation with the fuel tax advisory committee, shall prepare and submit a report to the legislative transportation committee containing recommendations for special fuel and motor vehicle fuel recordkeeping and reporting requirements, including but not limited to recommendations regarding the form and manner in which records and tax reports must be maintained and made available to the department; which persons engaged in the business of selling, purchasing, distributing, storing, transporting, or delivering fuel should be required to submit periodic reports regarding the disposition of such fuel; and the feasibility of implementing an automated fuel tracking system. The report is due no later than October 31, 1997.

(3) The department of licensing, in cooperation with representatives of local governments and the department of revenue shall analyze the collection of the local option fuel tax under RCW 82.80.010. Based on that analysis the department of licensing shall offer recommendations regarding the appropriate government entity to collect the local option fuel tax and the best method to accomplish that collection. The department of licensing shall report its findings and recommendations to the legislative transportation committee and the office of financial management by December 1, 1998.

(4) The department of licensing, in conjunction with the interagency commission on outdoor recreation, the department of transportation, and other affected entities, shall conduct a study and make recommendations regarding:

(a) Whether the study required by RCW 43.99.030 to determine what portion of the motor vehicle fuel tax collected is tax on marine fuel is an effective and efficient mechanism for determining what portion of fuel tax revenues should be refunded to the marine fuel tax refund account;

(b) Other possible methodologies for determining the appropriate amount of tax revenue to refund from the motor vehicle fund to the marine tax refund account; and

(c) Whether the tax on fuel used by illegally nonregistered boats should be refunded to the marine tax refund account.

The department of licensing shall make a report of its findings and recommendations to the legislative transportation committee and the office of financial management by December 1, 1998.

(5) \$382,000 of the motor vehicle fund—state appropriation is provided solely to implement Substitute House Bill No. 2659. If Substitute House Bill No. 2659 is not enacted by June 30, 1998, this amount shall lapse.

*Sec. 209, 1997 c 457 s 214 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF LICENSING—DRIVER SERVICES

Highway Safety Fund—Motorcycle Safety Education

Account—State Appropriation	\$	((1,160,000))
		<u>1,411,000</u>

<i>Highway Safety Fund—State Appropriation</i>	\$	<i>((61,087,000))</i>
		<u>57,716,000</u>

Transportation Fund—State Appropriation	\$	4,985,000
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TOTAL APPROPRIATION	\$	((67,232,000))
		<u>64,112,000</u>

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

(1) \$225,000 of the highway safety account—state appropriation is provided solely to implement Substitute House Bill No. 2442 or Senate Bill No. 6190. If neither bill is enacted by June 30, 1998, this amount shall lapse.

(2) \$480,000 of the highway safety account—state appropriation is provided solely to implement Senate Bill No. 6165. If Senate Bill No. 6165 is not enacted by June 30, 1998, this amount shall lapse.

(3) \$117,000 of the highway safety account—state appropriation is provided solely to implement House Bill No. 3054. If House Bill No. 3054 is not enacted by June 30, 1998, this amount shall lapse.

(4) \$80,000 of the highway safety account—state appropriation is provided solely to implement House Bill No. 2730. If House Bill No. 2730 is not enacted by June 30, 1998, this amount shall lapse.

(5) \$124,000 of the highway safety account—state appropriation is provided solely to implement Senate Bill No. 6591. If Senate Bill No. 6591 is not enacted by June 30, 1998, this amount shall lapse.

(6) \$1,000,000 of the highway safety account—state appropriation is provided solely to implement 1998 legislation that changes statutes relating to driving under the influence. If legislation changing the DUI statutes is not enacted by June 30, 1998, this amount shall lapse.

*Sec. 209 was partially vetoed. See message at end of chapter.

Sec. 210, 1997 c 457 s 216 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F

Transportation Fund—Aeronautics Account—State

Appropriation	\$	((3,301,000))
		<u>3,801,000</u>
Transportation Fund—Aeronautics Account—Federal		
Appropriation	\$	1,000
Aircraft Search and Rescue, Safety, and Education		
Account—State Appropriation	\$	((170,000))
		<u>190,000</u>
Transportation Account—State Appropriation	\$	250,000
TOTAL APPROPRIATION	\$	((3,722,000))
		<u>4,242,000</u>

***Sec. 211. 1997 c 457 s 217 (uncodified) is amended to read as follows:
FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—
PROGRAM I**

Motor Vehicle Fund—Economic Development Account—		
State Appropriation	\$	2,434,000
Motor Vehicle Fund—State Appropriation	\$	((13,341,000))
		<u>163,275,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	((130,485,000))
		<u>155,485,000</u>
Motor Vehicle Fund—Private/Local		
Appropriation	\$	40,000,000
Special Category C Account—State Appropriation	\$	((78,600,000))
		<u>73,271,000</u>
Transportation Fund—State Appropriation	\$	((278,546,000))
		<u>230,546,000</u>
Puyallup Tribal Settlement Account—State		
Appropriation	\$	5,000,000
Puyallup Tribal Settlement Account—Private/Local		
Appropriation	\$	200,000
High Capacity Transportation Account—State		
Appropriation	\$	((1,288,000))
		<u>1,401,000</u>
TOTAL APPROPRIATION	\$	((649,894,000))
		<u>671,612,000</u>

The appropriations in this section are provided for the location, design, right of way acquisition, ~~((and))~~ or construction of state highway projects designated as improvements under RCW 47.05.030. The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

~~((b) State funds conditioned in (a) of this subsection may also be used as match for federally funded projects of similar nature.~~

~~((2))~~ (1) The special category C account—state appropriation of ~~((78,600,000))~~ \$73,271,000 includes \$26,000,000 in proceeds from the sale of

bonds authorized by RCW 47.10.812 through 47.10.817 and includes ~~(\$19,000,000)~~ \$12,000,000 in proceeds from the sale of bonds authorized by House Bill No. 1012. The transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation. If House Bill No. 1012 is not enacted by June 30, ~~(1997)~~ 1998, ~~(\$19,000,000)~~ \$7,800,000 of the special category C account—state appropriation shall lapse.

~~((3))~~ (2) The motor vehicle fund—state appropriation includes \$2,685,000 in proceeds from the sale of bonds authorized by RCW 47.10.819(1) for match on federal demonstration projects. The transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

~~((4))~~ (3) The department shall report annually to the legislative transportation committee on the status of the projects funded by the special category C appropriations contained in this section. The report shall be submitted by January 1 of each year.

~~((5))~~ (4) The motor vehicle fund—state appropriation in this section includes \$600,000 solely for a rest area and information facility in the Nisqually gateway area to Mt. Rainier, provided that at least forty percent of the total project costs are provided from federal, local, or private sources. The contributions from the nonstate sources may be in the form of in-kind contributions including, but not limited to, donations of property and services.

~~((6))~~ (5) The appropriations in this section contain \$118,247,000 reapportionment from the 1995-97 biennium.

~~((8))~~ (6) The motor vehicle fund—state appropriation in this section includes \$250,000 to establish a wetland mitigation pilot project. This appropriation may only be expended if the department of transportation establishes a technical committee to better implement the department's strategic plan. The technical committee shall include, but is not limited to, cities, counties, environmental groups, business groups, tribes, the Puget Sound action team, and the state departments of ecology, fish and wildlife, and community, trade, and economic development, and appropriate federal agencies. The committee shall assist the department in implementing its wetland strategic plan, including working to eliminate barriers to improved wetland and watershed management. To this end, the technical committee shall: (a) Work to facilitate sharing of agency environmental data, including evaluation of off-site and out-of-kind mitigation options; (b) develop agreed-upon guidance that will enable the preservation of wetlands that are under imminent threat from development for use as an acceptable mitigation option; (c) develop strategies that will facilitate the implementation of mitigation banking, including developing mechanisms for valuing and transferring credits; (d) provide input in the development of wetland functions assessment protocols related to transportation projects; (e) develop incentives for interagency participation in joint mitigation projects within watersheds; and (f) explore options for funding environmental mitigation

strategies. The department shall prepare an annual report to the legislative transportation committee and legislative natural resources committees on recommendations developed by the technical committee.

(7) The department shall report January 1st and July 1st of each year, to the legislative transportation committee and the office of financial management of the timing and the scope of work being performed for the regional transit authority. This report shall provide a description of all department activities related to the regional transit authority including investments in state-owned infrastructure.

(8) The translake study funded in this section shall include recommendations to address methods for mitigating traffic noise in the study area.

(9) Funding for the SR 509 project extending south and east from south 188th street in King county is contingent on the development of a proposal linking the project to other freight corridors and a funding plan with participation from partners of the state that are agreed to by the legislative transportation committee and the governor.

(10) The motor vehicle account—federal appropriation in this section is transferrable to the transportation account to ensure efficient funds management and program delivery.

(11) \$2,000,000 of the motor vehicle fund—state appropriation is provided solely for transfer to the advanced environmental mitigation revolving account—state.

(12) The legislature finds that the state's economic development efforts can be enhanced by, in certain instances, providing funds to improve state highways in the vicinity of new industries considering locating in this state or existing industries that are considering significant expansion. The department shall develop criteria for programming and prioritization of highway infrastructure projects that will contribute to economic development as required by RCW 47.05.051(2). The department shall report to the legislative transportation committee on the criteria developed by December 1, 1998.

(13) In conducting the preliminary engineering funded by this 1998 act, the department of transportation will use its existing workforce. The department may not contract for any of the preliminary engineering services funded by this 1998 act without prior approval of the legislative transportation committee.

(14) \$13,000,000 of the motor vehicle fund—state appropriation and \$12,000,000 of the transportation fund—state appropriation are provided solely for preliminary engineering and purchase of right of way for highway construction.

(15) \$35,000,000 of the motor vehicle fund—state appropriation is conditioned upon voter approval of a referendum on a state-wide ballot that provides funding for transportation purposes. If the voters approve such a referendum, \$35,000,000 of the motor vehicle fund—state appropriation is put in reserve solely to be used for the purposes of preliminary engineering and purchase of right of way for highway construction. These moneys may only be expended upon approval of both the legislative transportation committee and the office of financial management.

*Sec. 211 was partially vetoed. See message at end of chapter.

*Sec. 212. 1997 c 457 s 218 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION ECONOMIC PARTNERSHIPS—PROGRAM K

Transportation Fund—State Appropriation	\$	1,280,000
Motor Vehicle Fund—State Appropriation	\$	16,235,000
TOTAL APPROPRIATION	\$	17,515,000

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The motor vehicle fund—state appropriation includes \$16,235,000 in proceeds from the sale of bonds authorized in RCW 47.10.834 for all forms of cash contributions, or the payment of other costs incident to the location, development, design, right of way, and construction of only the SR 16 corridor improvements and park and ride projects selected under the public-private transportation initiative program authorized under chapter 47.46 RCW; and support costs of the public-private transportation initiatives program.

(2) The appropriations in this section contain \$16,235,000 reappropriated from the 1995-97 biennium.

(3) \$100,000 of the motor vehicle fund—state appropriation is provided solely for the purpose of the program evaluation and audit of the public private initiatives in transportation program required under RCW 47.46.030(2). The legislative transportation committee shall act as project manager of the evaluation and audit and shall contract with a consultant or consultants to conduct the evaluation and audit.

*Sec. 212 was partially vetoed. See message at end of chapter.

Sec. 213. 1997 c 457 s 219 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M

Motor Vehicle Fund—State Appropriation	\$	((238,200,000))
		<u>239,200,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	465,000
Motor Vehicle Fund—Private/Local Appropriation	\$	3,335,000
TOTAL APPROPRIATION	\$	((242,000,000))
		<u>243,000,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) If portions of the appropriations in this section are required to fund maintenance work resulting from major disasters not covered by federal emergency funds such as fire, flooding, and major slides, supplemental appropriations will be requested to restore state funding for ongoing maintenance activities.

(2) The department shall deliver the highway maintenance program according to the plans for each major maintenance group to the extent practical.

However, snow and ice expenditures are highly variable depending on actual weather conditions encountered. If extraordinary winter needs result in increased winter maintenance expenditures, the department shall, after prior consultation with the transportation commission, the office of financial management, and the legislative transportation committee adopt one or both of the following courses of action: (a) Reduce planned maintenance activities in other groups to offset the necessary increases for snow and ice control; or (b) continue delivery as planned within other major maintenance groups and request a supplemental appropriation in the following legislative session to fund the additional snow and ice control expenditures.

(3) The department shall request an unanticipated receipt for any federal moneys received for emergency snow and ice removal and shall place an equal amount of the motor vehicle fund—state into unallotted status. This exchange shall not affect the amount of funding available for snow and ice removal.

(4) Funding appropriated for local storm water charges assessed under RCW 90.03.525, which is allocated for, but not paid to, a local storm water utility because the utility did not meet the conditions provided under RCW 90.03.525, may be transferred by the department to program Z of the department to be distributed as grants under the storm water grant program.

*Sec. 214, 1997 c 457 s 220 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P

Motor Vehicle Fund—State Appropriation	\$	((289,777,000))
		<u>288,720,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	274,259,000
Motor Vehicle Fund—Private/Local Appropriation	\$	2,400,000
TOTAL APPROPRIATION	\$	((566,436,000))
		<u>568,379,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The motor vehicle fund—state appropriation includes \$6,800,000 in proceeds from the sale of bonds authorized in RCW 47.10.761 and 47.10.762 for emergency purposes. However, the transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

(2) The appropriations in this section contain \$27,552,000 reappropriated from the 1995-97 biennium.

(3) If the Oregon state legislature enacts a public/private partnership program and the Washington state transportation commission, in consultation with the legislative transportation committee, negotiates and enters into an agreement between Washington and Oregon to place the Lewis and Clark hridge into Oregon's public/private partnership program, up to \$3,000,000 of the motor vehicle fund—state appropriation may be used as Washington's contribution

toward the design of the project pursuant to the agreement between Washington and Oregon. Any additional contributions shall be subject to Washington state legislative appropriations and approvals. The department shall provide a status report on this project to the legislative transportation committee by June 30, 1998.

(4) The transportation commission shall develop a comprehensive policy on tolling that shall include, but not be limited to, identification of the criteria for determining which facilities shall be considered for toll financing, a process for determining the amount of tolls to be assessed, and a process for soliciting and incorporating public input. A report on the policy shall be provided to the legislative transportation committee and the office of financial management by March 1, 1999.

(5) The twenty-year bridge system plan is assumed to be fully funded by existing revenues. The current straight-line planning and budgeting methods for bridge preservation projects do not accommodate the cash flow requirements of major bridge preservation projects such as the Hood Canal Bridge. The department shall recommend to the legislative transportation committee, by December 1, 1998, a sequencing plan for the twenty-year bridge system plan that includes the cash flow requirements associated with the major bridge replacement/ rehabilitation projects.

(6) \$630,000 of the motor vehicle fund—state appropriation is provided for slope stabilization along state route 166 in the Ross Point vicinity. This amount is intended to fund preliminary engineering, right of way acquisition, and to begin construction.

*Sec. 214 was partially vetoed. See message at end of chapter.

Sec. 215. 1997 c 457 s 221 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q

State Patrol Highway Account—State

Appropriation	\$	153,000
Motor Vehicle Fund—State Appropriation	\$	((29,140,000))
		<u>30,412,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	1,000,000
Motor Vehicle Fund—Private/Local		
Appropriation	\$	275,000
TOTAL APPROPRIATION	\$	<u>31,840,000</u>

The appropriation in this section is subject to the following conditions and limitations and specified amount is provided solely for that activity:

(1) The department, in cooperation with the Washington state patrol and the tow truck industry, shall develop and submit to the legislative transportation committee by October 31, 1997, a recommendation for implementing new tow truck services during peak hours on the Puget Sound freeway system.

(2) The department, in cooperation with the Washington state patrol, the department of licensing, the state of Oregon, and the United States department of

transportation, shall install and operate the commercial vehicle information systems and network (CVISN) at a selected pilot site. If the state department of transportation receives additional federal funding for this project that is eligible to supplant state funding, the appropriation in this section shall be reduced by the amount of the state funds supplanted.

Sec. 216. 1997 c 457 s 222 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S

Motor Vehicle Fund—Puget Sound Capital		
Construction Account—State Appropriation	\$	777,000
Motor Vehicle Fund—State Appropriation	\$	((57,462,000))
		<u>70,032,000</u>
Motor Vehicle Fund—Puget Sound Ferry Operations		
Account—State Appropriation	\$	1,093,000
Transportation Fund—State Appropriation	\$	1,158,000
TOTAL APPROPRIATION	\$	((60,490,000))
		<u>73,060,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1)(a) The motor vehicle fund—state appropriation includes ~~\$(2,650,000))~~ 14,300,000 provided solely for programming activities and other efforts needed to bring the department's information systems, and devices with computers built into them, into compliance with the year 2000 requirements of the department of information services. The department is directed to expend the moneys internally reallocated for this purpose before spending from this appropriation. The department is directed to provide quarterly reports on this effort to the legislative transportation committee and the office of financial management beginning October 1, 1997.

(b) Up to \$2,900,000 of the amount provided in (a) of this subsection may be expended for testing and required modifications to electronic devices and other equipment and specialized software that are essential for department operations to ensure they are year 2000 compliant. Before expending any of this amount for these purposes, the department shall consult with the legislative transportation committee and the office of financial management.

(2) The legislative transportation committee shall review and analyze freight mobility issues affecting eastern and southeastern Washington as recommended by the freight mobility advisory committee and report back to the legislature by November 1, 1997. \$500,000 of the motor vehicle fund—state appropriation is provided for this review and analysis. The funding conditioned in this subsection shall be from revenues provided for interjurisdictional studies.

(3) In order to increase visibility for decision making, the department shall review its budgeting and accounting methods for management information systems. The review shall include, but not be limited to, the cost-benefit analysis

of existing processes and evaluation of less complex alternatives such as direct appropriations. The results of the review shall be reported to the legislative transportation committee and the office of financial management by July 1, 1998.

Sec. 217. 1997 c 457 s 224 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U

(1) FOR PAYMENT OF COSTS OF ATTORNEY GENERAL TORT CLAIMS SUPPORT

Motor Vehicle Fund—State Appropriation \$ 2,515,000

(2) FOR PAYMENT OF COSTS OF THE OFFICE OF THE STATE AUDITOR

Motor Vehicle Fund—State Appropriation \$ 840,000

(3) FOR PAYMENT OF COSTS OF DEPARTMENT OF GENERAL ADMINISTRATION FACILITIES AND SERVICES AND CONSOLIDATED MAIL SERVICES

Motor Vehicle Fund—State Appropriation \$ 3,391,000

(4) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF PERSONNEL

Motor Vehicle Fund—State Appropriation \$ 2,240,000

(5) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION

Motor Vehicle Fund—State Appropriation \$ ~~((12,120,000))~~
12,535,000

(6) FOR PAYMENT OF SELF-INSURANCE LIABILITY PREMIUMS AND ADMINISTRATION

Motor Vehicle Fund—Puget Sound Ferry Operations
Account—State Appropriation \$ 2,928,000

(7) FOR PAYMENT OF COSTS OF THE OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

Motor Vehicle Fund—State Appropriation \$ 536,000

(8) FOR PAYMENT OF COSTS OF THE DEPARTMENT OF GENERAL ADMINISTRATION STATE PARKING SERVICES

Motor Vehicle Fund—State Appropriation \$ 90,000

(9) FOR PAYMENT OF THE DEPARTMENT OF GENERAL ADMINISTRATION CAPITAL PROJECTS SURCHARGE

Motor Vehicle Fund—State Appropriation \$ 735,000

(10) FOR ARCHIVES AND RECORDS MANAGEMENT

Motor Vehicle Fund—State Appropriation \$ ~~((295,000))~~
355,000

Sec. 218. 1997 c 457 s 225 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W

Motor Vehicle Fund—Puget Sound Capital

Construction Account—State Appropriation	\$	((243,229,000))
		<u>209,886,000</u>
Motor Vehicle Fund—Puget Sound Capital		
Construction Account—Federal		
Appropriation	\$	30,165,000
Motor Vehicle Fund—Puget Sound Capital		
Construction Account—Private/Local		
Appropriation	\$	765,000
Transportation Fund—Passenger Ferry Account—		
State Appropriation	\$	((579,000))
		<u>640,000</u>
TOTAL APPROPRIATION	\$	((274,738,000))
		<u>241,456,000</u>

The appropriations in this section are provided for improving the Washington state ferry system, including, but not limited to, vessel acquisition, vessel construction, major and minor vessel improvements, and terminal construction and improvements. The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The appropriations in this section are provided to carry out only the projects (version 3) adjusted by the legislature for the 1997-99 budget. The department shall reconcile the 1995-97 capital expenditures within ninety days of the end of the biennium and submit a final report to the legislative transportation committee and office of financial management.

(2) The Puget Sound capital construction account—state appropriation includes \$100,000,000 in proceeds from the sale of bonds authorized by RCW 47.60.800 for vessel and terminal acquisition, major and minor improvements, and long lead time materials acquisition for the Washington state ferries, including construction of new jumbo ferry vessels in accordance with the requirements of RCW 47.60.770 through 47.60.778. However, the department of transportation may use current revenues available to the Puget Sound capital construction account in lieu of bond proceeds for any part of the state appropriation.

(3) The department of transportation shall provide to the legislative transportation committee and office of financial management a quarterly financial report concerning the status of the capital program authorized in this section.

(4) Washington state ferries is authorized to reimburse up to \$3,000,000 from the Puget Sound capital construction account—state appropriation or Puget Sound capital construction account—federal appropriation to the city of Bremerton and the port of Bremerton for Washington state ferries' financial participation in the development of a Bremerton multimodal transportation terminal, port of Bremerton passenger-only terminal expansion, and ferry vehicular connections to downtown traffic circulation improvements. The reimbursement shall specifically support the construction of the following components: Appropriate

passenger-only ferry terminal linkages to accommodate bow-loading catamaran type vessels and the needed transit connections; and the Washington state ferries' component of the Bremerton multimodal transportation terminal as part of the downtown Bremerton redevelopment project, including appropriate access to the new downtown traffic circulation road network.

(5) The Puget Sound capital construction account—state appropriation includes funding for capital improvements on vessels to meet United States Coast Guard Subchapter W regulation revisions impacting SOLAS (safety of life at sea) requirements for ferry operations on the Anacortes to Sidney, B.C. ferry route.

(6) The Puget Sound capital construction account—state appropriation, the Puget Sound capital construction account—federal appropriation, and the passenger ferry account—state appropriation include funding for the construction of one new passenger-only vessel and the department's exercise of the option to build a second passenger-only vessel.

(7) The Puget Sound capital construction account—state appropriation includes funding for the exploration and acquisition of a design for constructing a millennium class ferry vessel.

(8) The Puget Sound capital construction account—state appropriation includes \$90,000 for the purchase of defibrillators. At least one defibrillator shall be placed on each vessel in the ferry fleet.

(9) The appropriations in this section contain \$46,962,000 reappropriated from the 1995-97 biennium.

~~((10)(a) The Puget Sound capital construction account—state appropriation includes \$57,461,000 for the 1997-99 biennium portion of the design and construction of a fourth Jumbo Mark II ferry and for payments related to the lease-purchase of the vessel's engines and propulsion system.~~

~~—(b) If House Bill No. 2108 authorizing the department to procure the vessel utilizing existing construction and equipment acquisition contracts is not enacted during the 1997 legislative session, (a) of this subsection is null and void; \$50,000,000 of the motor vehicle fund—Puget Sound capital construction account—state appropriation shall not be allotted; and \$7,461,000 may be allotted for preservation or renovation of Super class ferries.)~~

Sec. 219. 1997 c 457 s 226 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X

Marine Operating Fund—State Appropriation \$ ~~((267,358,000))~~
270,522,000

The appropriation in this section is subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The appropriation is based on the budgeted expenditure of ~~((29,151,000))~~ \$28,696,000 for vessel operating fuel in the 1997-99 biennium. If the actual cost of fuel is less than this budgeted amount, the excess amount may

not be expended. If the actual cost exceeds this amount, the department shall request a supplemental appropriation.

(2) The appropriation provides for the compensation of ferry employees. The expenditures for compensation paid to ferry employees during the 1997-99 biennium may not exceed (~~(\$177,347,000)~~) \$179,095,000 plus a dollar amount, as prescribed by the office of financial management, that is equal to any insurance benefit increase granted general government employees in excess of \$313.95 a month annualized per eligible marine employee multiplied by the number of eligible marine employees for the respective fiscal year, a dollar amount as prescribed by the office of financial management for costs associated with pension amortization charges, and a dollar amount prescribed by the office of financial management for salary increases during the 1997-99 biennium. For the purposes of this section, the expenditures for compensation paid to ferry employees shall be limited to salaries and wages and employee benefits as defined in the office of financial management's policies, regulations, and procedures named under objects of expenditure "A" and "B" (7.2.6.2).

The prescribed salary and insurance benefit increase or decrease dollar amount that shall be allocated from the governor's compensation appropriations is in addition to the appropriation contained in this section and may be used to increase or decrease compensation costs, effective July 1, 1997, and thereafter, as established in the 1997-99 general fund operating budget.

(3) The department of transportation shall provide to the legislative transportation committee and office of financial management a quarterly financial report concerning the status of the operating program authorized in this section.

(4) The appropriation in this section includes up to \$1,566,000 for additional operating expenses required to comply with United States Coast Guard Subchapter W regulation revisions for vessels operating on the Anacortes to Sidney, B.C. ferry route. The department shall explore methods to minimize the cost of meeting United States Coast Guard requirements and shall report the results to the legislative transportation committee and office of financial management by September 1, 1997.

(5) The department shall request a reduction of the costs associated with the use of the terminal leased from the Port of Anacortes and costs associated with use of the Sidney, British Columbia terminal.

(6) Agreements between Washington state ferries and concessionaires for automatic teller machines on ferry terminals or vessels shall provide for and include banks and credit unions that primarily serve the west side of Puget Sound.

(7) In the event federal funding is provided for one or more passenger-only ferry vessels for the purpose of transporting United States naval personnel, the department of transportation is authorized to acquire and construct such vessels in accordance with the authority provided in RCW 47.56.030, and the department shall establish a temporary advisory committee comprised of representatives of the Washington state ferries, transportation commission, legislative transportation committee, office of financial management, and the United States Navy to

analyze and make recommendations on, at a minimum, vessel performance criteria, docking, vessel deployment, and operating issues.

~~((9))~~ (8) The appropriation provides funding for House Bill No. 2165 (paying interest on retroactive raises for ferry workers).

(9) The commission is authorized to increase Washington state ferry tariffs in excess of the fiscal growth factor, established under chapter 43.135 RCW, in fiscal year 1998 and fiscal year 1999.

(10) Funding for Anacortes to Sidney advertising is contingent upon partners meeting their commitment. In no event may the state share exceed fifty percent of the cash contribution toward the project.

(11) \$1,370,000 of this appropriation is provided solely for the Hiyu operation for Southworth/Vashon 5 days per week for 16 hours per day. Prior to placing the Hiyu in permanent service on a route between Vashon and Southworth, the Washington state ferries shall conduct a study of the impact of additional service on Vashon and Southworth and report back to the legislative transportation committee by May 15, 1998.

(12) \$446,000 of this appropriation is provided solely to provide an additional crew member on Jumbo Mark 2 ferries as required by emergency evacuation regulations adopted by the United States Coast Guard. If the Coast Guard requirement can be met without the hiring of additional staff, the portion of this appropriation provided to meet that requirement shall not be expended.

*Sec. 220, 1997 c 457 s 227 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION AND RAIL—PROGRAM Y

Essential Rail Assistance Account—State

Appropriation	\$ 256,000
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High Capacity Transportation Account—State

Appropriation	(6,225,000)
	<u>13,225,000</u>

Air Pollution Control Account—State

Appropriation	\$ 6,290,000
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Transportation Fund—State Appropriation

	(48,529,000)
	<u>55,029,000</u>

Transportation Fund—Federal Appropriation

	\$ 3,947,000
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Transportation Fund—Private/Local

Appropriation	\$ 105,000
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Central Puget Sound Public Transportation

Account—State Appropriation	(250,000)
	<u>4,250,000</u>

TOTAL APPROPRIATION	(65,602,000)
	<u>83,102,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) Up to (~~(\$40,180,000)~~) \$46,180,000 of the transportation fund—state appropriation is provided for intercity rail passenger service including up to \$8,000,000 for lease purchase of two advanced technology train sets with total purchase costs not to exceed \$20,000,000; up to \$1,000,000 for one spare advanced technology train power-car and other spare parts, subsidies for operating costs not to exceed \$12,000,000, to maintain service of two state contracted round trips between Seattle and Portland and one state contracted round trip between Seattle and Vancouver, British Columbia, and capital projects necessary to provide Seattle-Vancouver, British Columbia, train operating times of under 4 hours.

(2) Up to (~~(\$2,500,000)~~) \$3,000,000 of the transportation fund—state appropriation is provided for the rural mobility program administered by the department of transportation. Priority for grants provided from this account shall be given to projects and programs that can be accomplished in the 1997-99 biennium.

(3) Up to \$600,000 of the high capacity transportation account—state appropriation is provided for rail freight coordination, technical assistance, and planning.

(4) The department shall provide biannual reports to the legislative transportation committee and office of financial management regarding the department's rail freight program. The department shall also notify the committee for project expenditures from all fund sources prior to making those expenditures. The department shall examine the ownership of grain cars and the potential for divestiture of those cars and other similar assets and report those findings to the committee prior to the 1998 legislative session.

(5) Up to \$750,000 of the transportation fund—state appropriation and up to \$250,000 of the central Puget Sound public transportation account—state appropriation are provided to fund activities relating to coordinating special needs transportation among state and local providers. These activities may include demonstration projects, assessments of resources available versus needs, and identification of barriers to coordinating special needs transportation. The department will consult with the superintendent of public instruction, the secretary of the department of social and health services, the office of financial management, the fiscal committees of the house of representatives and senate, special needs consumers, and specialized transportation providers in meeting the goals of this subsection.

(6) The appropriations in this section contain \$4,599,000 reappropriated from the 1995-97 biennium.

(7) The high capacity transportation account—state appropriation includes \$75,000 for the department to develop a strategy and to identify how the agency would expend additional moneys to enhance the commute trip reduction program. The report would include recommendations for grant programs for employers and jurisdictions to reduce SOV usage and to provide transit incentives to meet future

commute trip reduction requirements. The report is due to the legislative transportation committee by January 1, 1998.

(8) In addition to the appropriations contained in this section, the office of financial management shall release the \$2,000,000 transportation fund—state funds appropriated for the intercity rail passenger program in the 1995-97 biennium but held in reserve pursuant to section 502, chapter 165, Laws of 1996.

(9) Up to \$150,000 of the transportation fund—state appropriation is provided for the management and control of the transportation corridor known as the Milwaukee Road corridor owned by the state between Ellensburg and Lind, and to take actions necessary to allow the department to be in a position, with further legislative authorization, to begin to negotiate a franchise with a rail carrier to establish and maintain a rail line over portions of the corridor by July 1, 1999.

(10) Up to \$2,500,000 of the high capacity transportation account—state appropriation and \$4,000,000 of the central Puget Sound public transportation account—state appropriation may be used by the department for activities related to improvement of the King Street station. The department shall provide monthly reports to the legislative transportation committee on activities related to the station, including discussions of funding commitments from others for future improvements to the station.

(11) \$4,000,000 of the high capacity transportation account—state appropriation for passenger rail infrastructure improvement is provided solely for rail improvements to add rail passenger service north of Seattle. These funds are conditioned on match of at least equal amounts from both Burlington Northern Sante Fe and Amtrak for rail line improvements and upon Amtrak purchasing an additional train set for operation in the corridor. These funds shall not be expended until authorized by the legislative transportation committee and the office of financial management; and the participation of international partners in service provided in the corridor shall be considered in such a decision.

*Sec. 220 was partially vetoed. See message at end of chapter.

*Sec. 221. 1997 c 457 s 228 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z

Motor Vehicle Fund—State Appropriation	\$	((8,452,000))
		<u>9,802,000</u>
Motor Vehicle Fund—Federal Appropriation	\$	33,726,000
High Capacity Transportation Account—		
State Appropriation	\$	((500,000))
		<u>650,000</u>
<u>Transportation Account—State Appropriation</u>	<u>\$</u>	<u>1,175,000</u>
TOTAL APPROPRIATION	\$	((42,678,000))
		<u>45,353,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The motor vehicle fund—state appropriation includes \$1,785,000 in proceeds from the sale of bonds authorized by RCW 47.10.819(1). The transportation commission may authorize the use of current revenues available to the department of transportation in lieu of bond proceeds for any part of the state appropriation.

(2) As a condition of receiving the full state subsidy in support of the Puget Island ferry, Wahkiakum county must, by December 31, 1997, increase ferry fares for passengers and vehicles by at least ten percent. If the fares are not increased to meet this requirement, the department, in determining the state subsidy after December 31, 1997, shall reduce the operating deficit by the amount that would have been generated if the ten percent fare increase had been implemented.

(3) The appropriations in this section contain \$1,750,000 reappropriated from the 1995-97 biennium.

(4) Up to \$500,000 of the high capacity transportation account—state appropriation is provided for implementation of the recommendations of the freight mobility advisory committee, and any legislation enacted resulting from those recommendations.

(5) \$175,000 of the transportation fund—state appropriation is provided solely to fund the freight mobility strategic investment board. If Second Substitute House Bill No. 2180 is not enacted by June 30, 1998, this amount shall lapse.

(6) The transportation account—state appropriation includes \$600,000 to establish alternatives for flood management and flood hazard reduction projects in the Chehalis Basin. A technical committee comprised of the department of transportation, department of ecology, the United States army corps of engineers, federal emergency management administration, United States geological survey, affected counties and tribes, and other entities with critical knowledge related to flood hazard reduction projects in the Chehalis Basin shall be formed. Funds shall be distributed to counties within the Chehalis Basin by the department of transportation for projects that further understanding of the causes of flooding and options for flood hazard reduction. Alternatives shall be consistent with fish and habitat recovery efforts. Projects funded shall be coordinated with the technical committee. The department of transportation shall present a report to the legislative transportation committee and other appropriate legislative committees regarding findings and/or progress made by funded projects by December 1, 1998.

(7) The executive director of the transportation improvement board, the director of the county road administration board, and the assistant secretary of the Transaid service center within the department of transportation shall submit to the legislative transportation committee and the office of financial management, by December 1, 1998, a plan and time schedule to consolidate the county road administration board, the transportation improvement board, and the transaid division. Progress reports are required in June 1998 and September 1998.

The plan must attempt to achieve the savings identified in the local government assistance study delivered to the budget development working group

of the legislative transportation committee in January 1998, except the plan may use up to thirty percent of the savings to increase technical assistance above current levels. Elements of the plan must include but not be limited to:

(a) Whether the consolidation will occur within an existing agency or as a separate agency;

(b) Whether the consolidated organization will be governed by a new or existing board or commission or another option;

(c) An organization chart;

(d) Identification of new activities, ongoing activities, and activities that no longer need to continue;

(e) Space requirements;

(f) An accounts and program structure; and

(g) A transition process and costs associated with the transition.

\$50,000 of the motor vehicle fund—state appropriation from the inter-jurisdictional set-aside is provided solely for a facilitator and other costs associated with development of the plan. The assistant secretary for the transaid division will coordinate these activities.

(8) \$750,000 of the motor vehicle fund—state appropriation is provided solely for a median barrier upon the Spokane street viaduct. Use of this funding is contingent upon a commitment of funding from other partners for the remainder of the project cost.

(9) Up to \$150,000 of the high capacity transportation account—state appropriation is provided for the installation of active railroad crossing warning devices at the sunnyside beach park entrance in Steilacoom.

(10) \$400,000 of the transportation fund—state appropriation is provided solely for a study by the legislative transportation committee, in cooperation with the port of Benton, developing a strategic corridor feasibility and master site plan for the port of Benton. If the port of Benton does not provide at least \$200,000 to fund the plan development, the transportation fund—state appropriation referenced in this subsection shall lapse and this subsection shall be null and void.

*Sec. 221 was partially vetoed. See message at end of chapter.

PART III

TRANSPORTATION AGENCIES CAPITAL FACILITIES

*Sec. 301. 1997 c 457 s 301 (uncodified) is amended to read as follows:

(1) The state patrol, the department of licensing, and the department of transportation shall coordinate their activities when siting facilities. This coordination shall result in the collocation of driver and vehicle licensing, vehicle inspection service facilities, and other transportation services whenever possible.

The department of licensing, the department of transportation, and the state patrol shall explore alternative state services, such as vehicle emission testing, that would be feasible to collocate in these joint facilities. All services provided at these transportation service facilities shall be provided at cost to the participating agencies.

(2) The department of licensing may lease develop with option to purchase or lease purchase new customer service centers to be paid for from operating revenues. The Washington state patrol shall provide project management for the department of licensing. Alternatively, a financing contract may be entered into on behalf of the department of licensing in the amounts indicated plus financing expenses and reserves pursuant to chapter 39.94 RCW. The locations and amounts for projects covered under this section are as follows:

- (a) A new customer service center in Vancouver for \$3,709,900;
- (b) A new customer service center in Thurston county for \$4,641,200; and
- (c) A new customer service center in Union Gap for \$3,642,000.

(3) The Washington state patrol, department of licensing, and department of transportation shall provide monthly progress reports to the legislative transportation committee within the transportation executive information system on the capital facilities receiving an appropriation in this act.

(4) The transportation agencies shall perform a review and analysis of current office facilities housing the work force within Thurston county for the department of transportation, Washington state patrol, department of licensing, and traffic safety commission. This review and analysis shall address, as a minimum, the historical growth of the agencies facilities requirements; a comprehensive cost/benefit analysis of current leased vs. owned facilities using the office of financial management lease/purchase decision model; and short-term, mid-term, and long-term facilities proposals, including a comprehensive life-cycle analysis of the proposals. The review and analysis is to be performed jointly by the department of transportation, Washington state patrol, department of licensing, traffic safety commission, department of general administration, and office of financial management. Monthly progress reports shall be provided to the legislative transportation committee. Agencies will make a recommendation on a transportation center to reduce the number of leased facilities and move toward a state-owned facility. A report is to be presented to the legislative transportation committee and the office of financial management no later than Septcember 30, 1998.

*Sec. 301 was partially vetoed. See message at end of chapter.

Sec. 302. 1997 c 457 s 302 (uncodified) is amended to read as follows:

FOR THE WASHINGTON STATE PATROL—CAPITAL PROJECTS

Motor Vehicle Fund—State Patrol Highway

Account—State Appropriation	\$	((7,075,000))
		<u>10,425,000</u>
Transportation Fund—State Appropriation	\$	((4,000,000))
		<u>1,000,000</u>
TOTAL APPROPRIATION	\$	((+1,075,000))
		<u>11,425,000</u>

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity:

(1) The appropriations in the transportation fund and the motor vehicle fund—state patrol highway account are provided for the microwave migration, Yakima district 3 headquarters office, weigh station facilities identified in the budget notes, training academy HVAC system, Vancouver Ridgefield commercial vehicle inspection building, and regular facilities maintenance.

(2) The Washington state patrol, based on an independent real estate appraisal, is authorized to purchase the Port Angeles detachment office for a maximum of \$600,000 provided the appraisal is \$600,000 or above in value. If the appraisal is less than \$600,000, the Washington state patrol is authorized to purchase the building for the appraised value. Certificates of participation will be used for financing the cost of the building and related financing fees.

(3) A report will be prepared and presented to the legislature and office of financial management in January 1998 on the microwave migration project.

(4) The funding for the microwave migration project is limited to \$4,400,000, the amount of revenue from frequency sales.

(5) The intent of the legislature is to have vehicle identification number (VIN) lanes and encourage colocation of other transportation and state services wherever feasible in transportation facilities.

(6) The Washington state patrol is authorized to proceed with the exchange of the Olympia, Washington Martin Way property for a light industrial land complex to be used to consolidate existing separately located state activities and functions. The agency will work with the office of financial management, department of general administration, and the legislative transportation committee in the exchange and approval processes.

**PART IV
TRANSFERS AND DISTRIBUTIONS**

**Sec. 401. 1997 c 457 s 401 (uncodified) is amended to read as follows:
FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR BOND SALES DISCOUNTS AND DEBT TO BE PAID BY MOTOR
VEHICLE FUND AND TRANSPORTATION FUND REVENUE**

Highway Bond Retirement Account Appropriation	\$	195,062,000
Ferry Bond Retirement Account Appropriation . . .	\$	49,606,000
<u>Transportation Improvement Board Bond Retirement</u>		
<u>Account Appropriation</u>	<u>\$</u>	<u>40,000,000</u>
TOTAL APPROPRIATION . . .	\$	((244,668,000))
		284,668,000

The appropriations in this section are subject to the following conditions and limitations and specified amounts are provided solely for that activity. If either House Bill No. 2582 or Senate Bill No. 6315 is enacted by June 30, 1998, then \$40,000,000 of the highway bond retirement account appropriation shall lapse. If neither House Bill No. 2582 nor Senate Bill No. 6315 is enacted by June 30,

1998, then the appropriation for the transportation improvement board bond retirement account shall lapse.

*Sec. 402. 1997 c 457 s 402 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST,
AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES:
FOR BOND SALE EXPENSES AND FISCAL AGENT CHARGES**

Motor Vehicle Fund—Puget Sound Capital		
Construction Account Appropriation	\$	500,000
<i>Motor Vehicle Fund Appropriation</i>	<i>\$</i>	<i>((130,000))</i>
		<u>1,099,000</u>
Transportation Improvement Account		
Appropriation	\$	200,000
Special Category C Account Appropriation	\$	((350,000))
		<u>190,000</u>
Transportation Capital Facilities Account		
Appropriation	\$	1,000
Urban Arterial Account Appropriation	\$	5,000
TOTAL APPROPRIATION	\$	((1,186,000))
		<u>1,995,000</u>

*Sec. 402 was partially vetoed. See message at end of chapter.

NEW SECTION. Sec. 403. *A new section is added to 1997 c 457 (uncodified) to read as follows:*

The office of the state treasurer is authorized to transfer any transportation improvement account and urban arterial trust account balances available in the highway bond retirement account into the transportation improvement board bond retirement account following a cooperative agreement by the department of transportation and the transportation improvement board on the exact amount of the transfer.

*Sec. 403 was vetoed. See message at end of chapter.

Sec. 404. 1997 c 457 s 407 (uncodified) is amended to read as follows:

FOR THE STATE TREASURER—TRANSFERS

(1) R V Account—State Appropriation:		
For transfer to the Motor Vehicle Fund—		
State	\$	1,176,000
(2) Motor Vehicle Fund—State Appropriation:		
For transfer to the Transportation Capital		
Facilities Account—State	\$	((47,569,000))
		<u>42,569,000</u>
(3) ((Small City Account—State Appropriation:		
For transfer to the Urban Arterial Trust		
Account State	\$	3,359,000
(4)) Small City Account—State Appropriation:		

For transfer to the Transportation Improvement		
Account—State	\$	7,500,000

Sec. 405. 1997 c 457 s 408 (uncodified) is amended to read as follows:

FOR THE DEPARTMENT OF TRANSPORTATION—TRANSFERS

Motor Vehicle Fund—State Appropriation

For transfer to the Transportation Equipment Fund—		
State Appropriation	\$	500,000

Transportation Equipment Fund—State Appropriation

For transfer to the Motor Vehicle

<u>Fund—State</u>	<u>\$</u>	<u>3,500,000</u>
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The appropriations transfers in this section ((is)) are provided for the purchase of equipment for the highway maintenance program from the transportation equipment fund - operations.

NEW SECTION. Sec. 406. A new section is added to 1997 c 457 (uncodified) to read as follows:

The department of transportation is authorized to transfer any balances available in the highway construction stabilization account to the motor vehicle account to fund the appropriations contained in this act.

**PART V
MISCELLANEOUS**

C. BUDGET SUBMITTAL AND OVERSIGHT PROVISIONS

****NEW SECTION.** Sec. 501. Any agency requesting transportation funding must submit to the legislative transportation committees the same request and supporting documents presented to the office of financial management at agency budget submittal time.*

*Sec. 501 was vetoed. See message at end of chapter.

****NEW SECTION.** Sec. 502. The public transportation and rail program shall be divided into three separate programs in the 1999-01 biennium. They shall be public transportation, rail-operating, and rail-capital.*

*Sec. 502 was vetoed. See message at end of chapter.

NEW SECTION. Sec. 503. A new section is added to 1997 c 457 (uncodified) to read as follows:

Transportation agencies shall undertake the following activities in order to establish a performance-based budgeting process for the 1999-2001 biennial budget:

- (1) The department of licensing, the department of transportation, and the Washington state patrol, in cooperation with the office of financial management and the legislative transportation committee, shall implement a performance budgeting process that provides a measurable link between agency objectives, service levels, and budget. The agencies shall also develop indicators of performance, stated in terms of expected results, to measure the agencies' progress in achieving the agencies' goals.

(2) The transportation agencies shall submit a strategic plan with their agency request budgets. The strategic plan must include a six-year outlook and define and clarify the agency mission and vision, provide the basis for budget development, and outline the agency's goals and strategies.

(3) The transportation agencies shall establish performance indicators that measure activities and associated goals and strategies in the strategic plan. The agencies shall also provide a preferred level of performance over the next six years.

(4) The legislative transportation committee, the office of financial management, and the transportation agencies shall establish the means of conducting program authorization reviews of all transportation programs. The reviews shall include:

(a) An agency self-assessment to judge the quality and usefulness of: (i) The agency's long-term strategic program goals; (ii) program priorities and objectives; (iii) activities necessary to achieve program priorities and objectives; (iv) service level criteria for the necessary activities; (v) best practices by other states as a possible benchmark of the performance of their programs; and (vi) service level criteria, as measured against different funding levels;

(b) A review of the agency self-assessment and a report to the legislature; and

(c) A report which recommends whether to retain, eliminate, or modify funding and related statutory references for the agency. The parties conducting the review shall consider: (i) Whether the agency performance measures adequately measure the agency goals; (ii) whether the program performs efficiently and effectively, including comparisons with other jurisdictions, if applicable; (iii) whether there are other cost-effective alternative methods of accomplishing the program's mission; and (iv) whether there are any funds saved by the agency's performance.

(5) The transportation agencies shall each designate a program to test the effectiveness of performance-based budgeting for the 1999-2001 budget submittal period.

(6) Each agency shall submit a program list to the legislative transportation committee and the office of financial management at the end of each fiscal year, which describes the functions of the program, the fund sources for the program, and the number of full-time equivalents.

(7) The transportation agencies shall develop agency biennial budget requests at the agency budget program level, rather than the object level, and submit their biennial and supplemental budget requests to the office of financial management via a common budget system beginning July 1, 1998.

(8) The agencies shall input monthly their financial information and quarterly program performance measurements into the transportation executive information system and other systems as required by the office of financial management. There is no requirement to submit a monthly hard copy report to the legislature.

(9) Agencies are not required to develop a new strategic plan, performance measures, or management quality initiatives in place of current performance-based budgeting activities.

(10) If Substitute Senate Bill No. 2890 is enacted by June 30, 1998, this section is null and void.

D. BILLS NECESSARY TO IMPLEMENT THIS ACT

Sec. 504. 1997 c 457 s 511 (uncodified) is amended to read as follows:

The following bills, as identified by bill number in the form as passed by the legislature, are necessary to implement portions of this act: (~~Engrossed Substitute House Bill No. 1011, Substitute House Bill No. 2108, or Substitute Senate Bill No. 5718~~) (1) House Bill Nos. 2659, 2615, 1553, 3110, 2892, 1012, 1487, 1009, 1014, 2417, 2180, 2526, 2839, 3015, 3098, 3117, and 2734.

(2) Senate Bill Nos. 6439 and 6050.

E. EFFICIENCIES AND NEW POLICIES

NEW SECTION. **Sec. 505.** (1) The secretary of transportation shall implement efficiency measures:

(a) Identified by the department, with particular focus on improved efficiency in the department's administrative services and programs; and

(b) Recommended by the joint legislative audit and review committee performance audit.

(2) The secretary shall report on the results and progress of the efficiency measures implementation. The secretary shall deliver the report to the legislative transportation committee by December 1, 1998.

NEW SECTION. **Sec. 506.** The department shall develop a process for expediting the acquisition of state highway rights-of-way through cooperative agreements with private entities that address the purchase of rights-of-way by the private sector and reimbursement by the department of the private entities' costs of acquisition.

F. HIGHWAY CONSTRUCTION PROJECTS

**NEW SECTION. Sec. 507. A new section is added to 1997 c 457 (uncodified) to read as follows:*

The department of transportation shall use appropriations for programs I and P in this act to fund projects identified in the transportation executive management system and legislative budget notes.

**Sec. 507 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 508. 1997 c 457 s 515 is repealed.*

**Sec. 508 was vetoed. See message at end of chapter.*

NEW SECTION. **Sec. 509.** 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. 510.** 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 the Senate March 12, 1998.

Passed the House March 5, 1998.

Approved by the Governor April 3, 1998, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 3, 1998.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to sections 202(6); 202(8), page 8, line 20 through page 9, line 6; 203(13); 207(2); 209, page 18, lines 1 through 2; 209(3); 209(4); 209(5); 211(12); 211(13); 212(3); 214(4); 214(5); 220(10); 221(7); 301(4); 402, page 42, lines 29 through 30; 403; 501; 502; 507 and 508, Engrossed Substitute Senate Bill No. 6456 entitled:

"AN ACT Relating to transportation funding and appropriations;"

Engrossed Substitute Senate Bill No. 6456 provides a supplemental budget for the 1997-99 transportation budget.

Section 202(6), page 7 (Legislative Transportation Committee)

Section 202(6) directs the Legislative Transportation Committee to study and report findings to the Legislature regarding the design-build method of contracting. I am vetoing this proviso because it is unnecessary in light of passage of Substitute Senate Bill 6439, which requires the Department of Transportation (DOT) to conduct a demonstration program using the design-build method of contracting and requires the DOT to present a report within one year of completion of the demonstration projects.

Section 202(8), page 8, line 20 through page 9, line 6 (Legislative Transportation Committee)

Section 202(8) provides a \$1 million appropriation for the purpose of convening a panel of citizens to conduct a comprehensive analysis of state-wide transportation needs, funding, and policies. The panel is to be appointed by the legislature and the Governor.

While there is no question about the commitment of all parties, including myself, to conduct a credible and timely review of transportation issues, I have vetoed page 8, line 20 through page 9, line 6 in order to provide maximum flexibility to the panel to manage the review as effectively as possible within the available dollars. The review activities outlined in the vetoed provisos can serve as guidance, rather than limits, for the panel as they start their deliberations. The veto of these subsections does not preclude the panel from addressing the same issues, but it does allow the panel to adjust the scope and emphasis of the study activities as information is developed.

Section 203(13), page 11 (Washington State Patrol—Field Operations Bureau)

Section 203 (13) prohibits the Chief of the Washington State Patrol from using funding provided in Chapter 457, Laws of 1997 and in this act to increase salaries for positions above the rank of captain. I am vetoing this proviso because it unduly restricts the ability of the Chief to manage the State Patrol. It is also retroactive, and would reduce current salaries. Finally, it contravenes the existing statutory authority in RCW 43.43.020, which grants the Chief the authority to determine the compensation of her officers.

Section 207(2), pages 15-16 (Department of Licensing—Information Systems)

Section 207 (2) stipulates that if the driver's license fee increase contained in Engrossed Substitute House Bill 2730 is not enacted by June 30, 1998, the appropriations provided in this subsection lapse. Engrossed Substitute House Bill 2730 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate possible confusion about whether the Department of Licensing must work to implement the enumerated Business and Technology Assessment Project recommendations without the requisite funding.

Section 209, page 18, lines 1 through 2, (Department of Licensing—Driver Services)

This section reduces the state highway safety fund appropriation to the Department of Licensing. I am vetoing the supplemental appropriation in order to partially restore an

inadvertent reduction that was subtracted twice. A recent court decision, regarding the limitations to the Governor's veto powers, dictates a budget level that is \$2,503,000 less than the original appropriation. When the supplemental budget adjustments were calculated, this reduction occurred twice. The effect of this veto is to reinstate \$868,000 in state highway safety funds to the department. A legislative adjustment of \$1,635,000 will be required in the 1999 legislative session in order to fully restore the intended funding level for the department. The complete restoration of these funds will ensure that the department continues to maintain existing service levels and implements recently enacted legislation. Since the double count appears to have been an inadvertent error, I am requesting that the department make plans for the intended funding level for the remainder of the biennium in anticipation of a legislative adjustment in the 1999 session.

Section 209(3), page 18 (Department of Licensing—Driver Services)

Section 209(3) stipulates that the \$117,000 highway safety account—state appropriation shall lapse if House Bill 3054 is not enacted by June 30, 1998. House Bill 3054 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 209(4), page 18 (Department of Licensing—Driver Services)

Section 209(4) stipulates that the \$80,000 highway safety account—state appropriation shall lapse if House Bill 2730 is not enacted by June 30, 1998. House Bill 2730 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 209(5), page 18 (Department of Licensing—Driver Services)

Section 209(5) stipulates that the \$124,000 highway safety account—state appropriation shall lapse if Senate Bill 6591 is not enacted by June 30, 1998. Senate Bill 6591 was not passed by the Legislature; therefore, I have vetoed this subsection to eliminate any possible confusion.

Section 211(12), page 21-22 (Department of Transportation—Improvements—Program I)

Section 211(12) requires the Department of Transportation (DOT) to develop criteria for programming and prioritization of highway infrastructure projects that will contribute to economic development as required by RCW 47.05.051 (2). Additionally, this subsection provides that the DOT shall report the criteria to the Legislative Transportation Committee by December 1, 1998. I am vetoing this proviso because it is unnecessary. The DOT already factors economic development in the prioritization of projects in its improvement program. If the Legislature wishes to modify the prioritization scheme, they may amend RCW 47.05.051.

Section 211(13), page 22 (Department of Transportation—Improvements—Program I)

Section 211(13) prohibits the Department of Transportation (DOT) from contracting any of the preliminary engineering services funded by this act without prior approval of the Legislative Transportation Committee. I am vetoing this proviso because it infringes on DOT's ability to manage its construction program. By hampering the DOT's ability to contract preliminary engineering, program delivery may be thwarted. Additionally, a legislative committee should not be placed in the role of approving customary functions of an executive branch agency.

Section 212(3), page 23 (Department of Transportation—Transportation Economic Partnerships—Program K)

Section 212(3) provides \$100,000 of the motor vehicle fund—state appropriation solely for the purpose of the program evaluation and audit of the Public Private Initiatives program required under RCW 47.46.030(2). Further, the subsection provides that the Legislative Transportation Committee (LTC) shall act as project manager and be responsible for hiring the consultants to conduct the evaluation and audit. I am vetoing this subsection because it contravenes RCW 47.46.030 (2), which charges the Department of Transportation (DOT) with the duty to conduct a program and fiscal audit of the Public-Private Initiatives Program. However, the statute provides that DOT shall consult with and submit progress reports to the LTC. DOT has agreed to proceed accordingly.

Section 214(4), page 25 (Department of Transportation—Preservation—Program

P)

Section 214(4) requires the Transportation Commission to develop a comprehensive policy on tolls and to submit a report to the Legislative Transportation Committee and the Office of Financial Management by March 1, 1999. While this is a worthwhile and important subject, I believe it is more properly addressed as an option in the larger context of long-term transportation funding.

Section 214(5), page 25 (Department of Transportation—Preservation—Program

P)

Section 214(5) requires the Department of Transportation to recommend a plan for accomplishing the preservation work on the Hood Canal Bridge, and the remainder of the twenty-year bridge system plan, under the constraints of current law revenues. Reliance on current revenues to fund major projects, like the Hood Canal Bridge, will preclude a substantial number of other necessary bridge preservation and highway improvement projects. Any review of the bridge system plan must have the flexibility to consider the need for new revenues.

Section 220(10), page 35 (Department of Transportation—Public Transportation and Rail)

Section 220(10) provides an additional \$4 million Central Puget Sound Public Transportation Account - State appropriation for the Department of Transportation for activities related to the improvement of the King Street Station. The King Street Station redevelopment project was also submitted to the Transportation Improvement Board (TIB) for state funding from the same account. The project has subsequently been selected for state funding through the TIB prioritization process, making this appropriation unnecessary. Therefore, I am vetoing this subsection to eliminate any possible confusion.

Section 221(7), pages 37-38 (Department of Transportation—Local Programs—Program Z)

Section 221(7) provides for the preparation of a consolidation plan for the Transportation Improvement Board (TIB), County Road Administration Board (CRAB), and the Department of Transportation's TransAid Service Center. The 1998 Legislature did consider, but failed to enact, legislation that would have required this same consolidation plan. While I support efforts to streamline government, a more deliberative process that involves the key stakeholders and does not presuppose an outcome must be employed.

Section 301(4), pages 39-40 (Transportation Agencies Capital Facilities)

Section 301(4) requires the transportation agencies, the Department of General Administration, and the Office of Financial Management review, analyze, and report to the Legislative Transportation Committee (LTC) on the consolidation of Thurston County, state transportation agencies. I am vetoing this subsection because it mandates action by non-transportation agencies without providing the funding necessary to accomplish such a review. A more deliberative process that involves the key stakeholders, provides the necessary funding, and does not presuppose an outcome must be employed.

Section 402, lines 29 through 30, page 42 (State Treasurer—Bond Retirement and Interest, And Ongoing Bond Registration and Transfer Charges; For Bond Sale Expenses and Fiscal Agent Charges)

This item is an increase in the appropriation for the State Treasurer for bond sale expenses and fiscal agent charges. Because the supplemental expenditures in this budget are not supported by additional bond revenues, this increased appropriation is unnecessary.

Section 403, page 43

This section authorizes the State Treasurer to transfer any Transportation Improvement Board balances available in the Highway Bond Retirement Account into the Transportation Improvement Board Bond Retirement Account. To be operative, this section required passage of House Bill 2582. House Bill 2582 was not passed by the Legislature; therefore, I have vetoed this section to eliminate any possible confusion.

Section 501, page 45

This section directs agencies that spend transportation funds to submit their budget requests and supporting documents to the Office of Financial Management (OFM) and the Legislative Transportation Committee at the same time. All agency budget requests are public documents, and OFM routinely sends a copy of all budget requests to the Legislature for review soon after they are received, making this section unnecessary.

Section 502, page 45

Section 502 provides that in the 1999-01 biennium, the Department of Transportation's Public Transportation and Rail Program shall be divided into three separate programs—public transportation, rail-operating, and rail-capital. I am vetoing this section because it infringes on the ability of the department to organize and manage this program. The determination of this level of organizational structure should be left to the agency.

Section 507, page 48

Section 507 requires the Department of Transportation to use appropriations for Programs I and P in this act to fund projects identified in the Transportation Executive Management System (TEIS) and Legislative Budget Notes. I am vetoing this section because it circumvents the process established in RCW 47.05. Additionally, I do not support enacting TEIS or Legislative Budget Notes into law through reference.

Section 508, page 48

Section 508 repeals a section from the 1997 Transportation Budget that appropriates \$10 million into reserve status for potential funding of the highway construction program should the federal transportation authorization act not be enacted by October 1, 1997. I am vetoing this section because I believe that this reserve is still appropriate as the successor to the Intermodal Surface Transportation Efficiency Act (ISTEA) has not yet been enacted, and Congress appears poised to act soon.

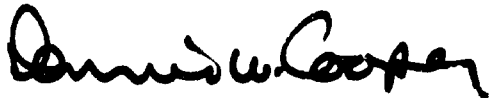
For these reasons, I have vetoed sections 202(6); 202(8), page 8, lines 20 through page 9, line 6; 203(13); 207(2); 209, page 18, lines 1 through 2; 209(3); 209(4); 209(5); 211(12); 211(13); 212(3); 214(4); 214(5); 220(10); 221(7); 301(4); 402, page 42, lines 29 through 30; 403; 501; 502; 507 and 508 of Engrossed Substitute Senate Bill No. 6456.

With the exception of sections 202(6); 202(8), page 8, lines 20 through page 9, line 6; 203(13); 207(2); 209, page 18, lines 1 through 2; 209(3); 209(4); 209(5); 211(12); 211(13); 212(3); 214(4); 214(5); 220(10); 221(7); 301(4); 402, page 42, lines 29 through 30; 403; 501; 502; 507 and 508, Engrossed Substitute Senate Bill No. 6456 is approved."

AUTHENTICATION

I, Dennis W. Cooper, 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 1998 session (55th Legislature), chapters 246 through 348, respectively, 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 13th day of April, 1998.

A handwritten signature in black ink, appearing to read "Dennis W. Cooper". The signature is written in a cursive style with a large initial "D" and "C".

DENNIS W. COOPER
Code Reviser

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SENATE				
SB	5164		SB	6192
SB	5217		SB	6202
ESSB	5305	PV	ESSB	6203
SSB	5355		ESSB	6204
ESB	5499		ESSB	6205
SSB	5517		SSB	6208
SSB	5532		2SSB	6214
SSB	5582		SB	6219
SB	5622		SB	6220
SB	5631		SB	6223
SSB	5636		SSB	6229
ESB	5695		E2SSB	6235
2SSB	5727		ESSB	6238
ESSB	5760		SSB	6253
ESSB	5769		ESB	6257
SSB	5853		SSB	6258
SSB	5873		2SSB	6264
ESSB	5936		SB	6270
SSB	6077		SB	6278
ESSB	6108	PV	SSB	6285
SB	6113		E2SSB	6293
SSB	6114		SSB	6297
SB	6118		SB	6299
SSB	6119		SB	6301
SB	6122		SSB	6302
ESB	6123		SB	6303
SSB	6129		ESB	6305
SSB	6130		SSB	6306
SSB	6136		SB	6311
ESB	6139		ESSB	6323
ESB	6142		SSB	6324
SB	6149		ESB	6325
SSB	6150		ESSB	6328
SSB	6153		SB	6329
SB	6155		2SSB	6330
2SSB	6156		SSB	6341
SB	6158		SSB	6346
SB	6159		SB	6348
SSB	6161	PV	SB	6352
ESSB	6165	PV	SB	6353
ESSB	6166		SSB	6355
2SSB	6168		SSB	6358
SB	6169		SB	6380
SB	6171		SB	6398
SB	6172		SB	6400
ESSB	6174		ESSB	6408
SSB	6175		ESSB	6418
SSB	6181		SSB	6420
SSB	6182		ESSB	6421
ESSB	6187		SSB	6425
2SSB	6190		SB	6429
ESSB	6191		SSB	6439
			SB	6441

"PV" Denotes partlal veto by Governor [2197]

BILL NO. TO CHAPTER NO. OF 1998 STATUTES

Number		Chapter Number Laws of 1998	Number	Chapter Number Laws of 1998		
E2SSB	6445	269	SHB	1077	24	
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SSB	6455	347	SHB	1083	218	
ESSB	6456	348	PV	SHB	1088	129
ESSB	6470	332	PV	HB	1117	4
SSB	6474	36	SHB	1121	130	
SB	6483	18	SHB	1126	304	
SSB	6489	19	ESHB	1130	1	
ESSB	6492	270	HB	1165	219	
SSB	6507	20	HB	1172	220	
E2SSB	6509	271	PV	SHB	1184	275
SSB	6518	242	SHB	1193	101	
ESSB	6533	333	PV	SHB	1211	169
SSB	6535	197	ESHB	1221	203	PV
SB	6536	334	ESHB	1223	276	
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SB	6541	299	HB	1248	38	
2SSB	6544	272	PV	HB	1250	39
SSB	6550	243	HB	1252	277	
SB	6552	335	SHB	1253	102	
ESSB	6560	300	PV	EHB	1254	204
E2SSB	6562	345	PV	HB	1297	305
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SB	6581	163	E2SHB	1328	170	
SB	6599	336	2E2SHB	1354	342	
ESSB	6600	244	EHB	1408	253	PV
SSB	6603	198	SHB	1441	221	
SB	6604	98	HB	1487	171	
SSB	6605	99	2SHB	1501	41	
ESSB	6622	337	HB	1549	306	
ESB	6628	199	PV	2SHB	1618	132
SB	6631	22	2ESHB	1746	133	
ESSB	6648	127	SHB	1750	61	
SSB	6655	344	PV	ESHB	1769	222
SB	6662	338	SHB	1781	223	
SSB	6667	59	SHB	1829	134	
SB	6668	339	HB	1835	135	
SSB	6669	100	SHB	1867	136	
SB	6698	164	SHB	1939	307	
SSB	6727	302	SHB	1971	62	
SB	6728	200	SHB	1977	63	
SB	6729	128	SHB	1992	224	
SSB	6731	201	SHB	2051	308	
SSB	6737	202	SHB	2077	278	
SSB	6746	303	HB	2141	172	
SSB	6751	216	HB	2144	25	
SB	6758	273	SHB	2166	173	
			HB	2278	309	
			HB	2293	64	
			SHB	2295	26	
			ESHB	2297	27	
			ESHB	2300	225	
			EHB	2302	65	
HOUSE						
EHB	1042	168				
2SHB	1065	23				
SHB	1072	217				
ESHB	1074	274				

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Number		Chapter Number Laws of 1998		Number	Chapter Number Laws of 1998	
HB	2309	310		HB	2568	111
SHB	2312	279		HB	2575	30
ESHB	2313	137	PV	SHB	2576	46
SHB	2315	311		HB	2577	76
SHB	2321	28		ESHB	2596	112
HB	2335	312		HB	2598	174
E2SHB	2339	248		SHB	2611	255
E2SHB	2342	313		ESHB	2615	175
E2SHB	2345	280	PV	HB	2628	78
ESHB	2346	66		SHB	2634	80
EHB	2350	67		SHB	2659	176
SHB	2351	138		HB	2663	47
HB	2355	42		SHB	2680	113
SHB	2364	29		SHB	2688	142
SHB	2368	139		HB	2692	79
HB	2371	254		HB	2698	35
SHB	2386	103		HB	2704	143
HB	2387	104		EHB	2707	83
SHB	2394	105		SHB	2710	84
HB	2402	226		SHB	2711	316
SHB	2411	106		HB	2717	31
EHB	2414	68		HB	2732	77
ESHB	2417	281		ESHB	2752	149
2SHB	2430	69		EHB	2772	317
SHB	2431	107		SHB	2773	318
HB	2436	108		HB	2779	48
ESHB	2439	165		2SHB	2782	114
SHB	2452	70		HB	2784	49
SHB	2459	140		HB	2788	85
SHB	2461	71		SHB	2790	86
HB	2463	227		EHB	2791	81
EHB	2465	72		HB	2797	50
HB	2476	167		ESHB	2819	87
ESHB	2477	228		SHB	2822	230
ESHB	2491	340		SHB	2826	144
ESHB	2496	246		ESHB	2830	286
HB	2499	73		E2SHB	2831	287
HB	2500	205		ESHB	2836	60
EHB	2501	282	PV	HB	2837	51
HB	2503	74		2SHB	2849	319
ESHB	2514	247	PV	SHB	2858	145
SHB	2523	43		ESHB	2871	320
SHB	2529	109		2SHB	2879	249
HB	2534	75		E2SHB	2880	231
HB	2537	44		E2SHB	2881	232
SHB	2544	283	PV	SHB	2885	206
HB	2550	284		EHB	2894	321
ESHB	2551	285		ESHB	2900	88
HB	2553	110		ESHB	2901	89
SHB	2556	314	PV	HB	2905	146
HB	2557	229		HB	2907	52
HB	2558	141		SHB	2917	115
SHB	2560	45		EHB	2920	32
HB	2566	315		SHB	2922	116

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SHB 2931	33	
ESHB 2933	343	
E2SHB 2935	322	
SHB 2936	147	
HB 2945	177	
ESHB 2947	233	
SHB 2960	90	
HB 2965	91	
HB 2969	178	
SHB 2973	53	
HB 2990	92	
SHB 2998	150	
SHB 3001	256	
SHB 3015	179	
EHB 3041	288	PV
HB 3053	117	
SHB 3056	34	
SHB 3057	180	
2SHB 3058	257	PV
HB 3060	258	
2SHB 3070	207	PV
SHB 3076	234	
2SHB 3089	208	PV
SHB 3096	323	
SHB 3099	289	
HB 3103	93	
SHB 3109	148	
SHB 3110	181	
HB 3902	1	97E1

RCW SECTIONS AFFECTED BY 1998 STATUTES

LEGEND			RCW	CH.	SEC.	
ADD	=	Add a new section	9.95.212	AMD	245	2
AMD	=	Amend existing law	9A.04.080	REMD	221	2
DECD	=	Decodify existing law	9A.36.031	AMD	94	1
RECD	=	Recodify existing law	9A.40.060	AMD	55	1
REEN	=	Reenact existing law	9A.44	ADD	221	1
REMD	=	Reenact and amend	9A.44	ADD	139	2
REP	=	Repeal existing law	9A.44.040	REMD	242	1
			9A.44.130	REMD	220	1
			9A.44.130	REMD	139	1
			9A.44.135	AMD	220	2
			9A.44.140	AMD	220	3
			9A.56.010	AMD	236	1
			9A.56.050	AMD	236	4
			9A.56.140	AMD	236	3
			9A.56.170	AMD	236	2
			9A.76	ADD	252	1-3
			10.05.010	AMD	208	1
			10.05.100	AMD	208	2
			10.05.120	AMD	208	3
			10.05.160	AMD	208	4
			10.77	ADD	297	31,35
						47,50
						56
			10.77.005	AMD	297	28
			10.77.005	RECD	297	56
			10.77.010	AMD	297	29
			10.77.020	AMD	297	30
			10.77.030	AMD	297	32
			10.77.040	AMD	297	33
			10.77.060	AMD	297	34
			10.77.070	AMD	297	36
			10.77.080	AMD	297	37
			10.77.090	AMD	297	38
			10.77.110	AMD	297	39
			10.77.140	AMD	297	40
			10.77.150	AMD	297	41
			10.77.180	AMD	297	42
			10.77.190	AMD	297	43
			10.77.200	AMD	297	44
			10.77.210	AMD	297	45
			10.89.010	AMD	205	1
			10.89.050	AMD	205	2
			10.95.020	REMD	305	1
			10.97.030	AMD	297	49
			10.98.090	AMD	197	1
			10.99.045	AMD	55	2
			10.101.010	AMD	79	2
			11	ADD	292	101-116
			11.02.005	AMD	292	117
			11.02.070	AMD	292	504
			11.07.010	AMD	292	118
			11.54.070	AMD	292	201
			11.68.110	AMD	292	202
			11.68.114	AMD	292	203
			11.84	ADD	292	502
			11.84.900	AMD	292	503

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<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
11.114.030	AMD	292	301	15.17.130	RECD	154	37
12.36.020	AMD	52	1	15.17.140	AMD	154	9
12.36.030	AMD	52	2	15.17.150	AMD	154	10
12.36.050	AMD	52	3	15.17.160	REP	154	36
12.36.080	AMD	52	4	15.17.170	AMD	154	11
12.40.105	AMD	52	5	15.17.180	REP	154	36
12.40.110	AMD	52	6	15.17.190	AMD	154	12
13.04.460	REP	245	176	15.17.200	AMD	154	13
13.32A.250	AMD	296	37	15.17.210	AMD	154	14
13.34.020	AMD	314	1	15.17.220	REP	154	36
13.34.030	AMD	130	1	15.17.230	AMD	154	15
13.34.050	AMD	328	1	15.17.240	AMD	154	16
13.34.060	AMD	328	2	15.17.250	REP	154	36
13.34.090	AMD	141	1	15.17.260	AMD	154	17
13.34.090	AMD	328	3	15.17.280	REP	154	36
13.34.120	AMD	328	4	15.17.290	AMD	154	18
13.34.130	AMD	130	2	15.17.910	REP	154	36
13.34.130	AMD	314	2	15.17.920	REP	154	36
13.34.145	REMD	130	3	15.17.930	REP	154	36
13.34.145	REMD	314	3	15.17.950	REP	154	36
13.34.165	AMD	296	38	15.17.950	DECD	154	38
13.34.180	AMD	314	4	15.54	ADD	36	16,21
13.34.190	AMD	314	5	15.54.270	AMD	36	2
13.34.270	AMD	229	2	15.54.275	AMD	36	3
13.40	ADD	269	12	15.54.325	AMD	36	4
13.40.0357	REMD	290	5	15.54.330	AMD	36	5
13.40.150	AMD	86	1	15.54.335	REP	36	23
13.50.010	REMD	269	4	15.54.340	AMD	36	6
14.20.050	AMD	187	1	15.54.380	AMD	36	7
14.20.060	AMD	187	2	15.54.414	AMD	36	8
15	ADD	154	21-32	15.54.420	AMD	36	9
15.04.020	REP	154	36	15.54.436	AMD	36	10
15.04.030	REP	154	36	15.54.470	AMD	36	11
15.04.040	REP	154	36	15.54.474	AMD	36	12
15.04.060	REP	154	36	15.54.480	AMD	36	13
15.04.070	REP	154	36	15.54.800	AMD	36	15
15.04.080	REP	154	36	15.63.010	REP	11	1
15.04.090	AMD	345	1	15.63.020	REP	11	1
15.04.100	AMD	154	19	15.63.030	REP	11	1
15.04.100	RECD	154	37	15.63.040	REP	11	1
15.17	ADD	154	20,37	15.63.050	REP	11	1
15.17.010	AMD	154	1	15.63.060	REP	11	1
15.17.020	AMD	154	2	15.63.070	REP	11	1
15.17.030	AMD	154	3	15.63.080	REP	11	1
15.17.040	REP	154	36	15.63.090	REP	11	1
15.17.050	AMD	154	4	15.63.100	REP	11	1
15.17.060	AMD	154	5	15.63.110	REP	11	1
15.17.070	REP	154	36	15.63.120	REP	11	1
15.17.080	AMD	154	6	15.63.130	REP	11	1
15.17.090	AMD	154	7	15.63.140	REP	11	1
15.17.100	REP	154	36	15.63.150	REP	11	1
15.17.110	REP	154	36	15.63.160	REP	11	1
15.17.115	REP	154	36	15.63.170	REP	11	1
15.17.120	REP	154	36	15.63.180	REP	11	1
15.17.130	AMD	154	8	15.63.190	REP	11	1

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RCW		CH	SEC.	RCW		CH	SEC.
15.63.200	REP	11	1	18.16.050	AMD	20	1
15.63.210	REP	11	1	18.19.170	AMD	32	1
15.63.220	REP	11	1	18.20	ADD	272	2,13
15.63.230	REP	11	1				16
15.63.240	REP	11	1	18.20.020	AMD	272	14
15.63.900	REP	11	1	18.20.190	AMD	272	15
15.63.910	REP	11	1	18.27.030	AMD	279	3
15.63.920	REP	11	1	18.35.010	AMD	142	1
15.76	ADD	345	2	18.35.020	AMD	142	2
16.36	ADD	8	17-19	18.35.040	AMD	142	3
			21	18.35.060	AMD	112	4
16.36.005	AMD	8	1	18.35.090	AMD	142	5
16.36.010	AMD	8	2	18.35.100	AMD	142	6
16.36.020	AMD	8	3	18.35.105	AMD	142	7
16.36.030	REP	8	22	18.35.110	REMD	142	8
16.36.040	AMD	8	4	18.35.120	AMD	142	9
16.36.050	AMD	8	5	18.35.140	AMD	142	10
16.36.060	AMD	8	6	18.35.161	AMD	142	11
16.36.070	AMD	8	7	18.35.172	AMD	142	12
16.36.080	AMD	8	8	18.35.185	AMD	142	13
16.36.090	AMD	8	9	18.35.190	AMD	142	14
16.36.096	AMD	8	10	18.35.195	AMD	142	15
16.36.100	AMD	8	11	18.35.205	AMD	142	16
16.36.103	REP	8	22	18.35.230	AMD	142	17
16.36.105	AMD	8	12	18.35.240	AMD	142	18
16.36.107	REP	8	22	18.35.250	AMD	142	19
16.36.108	REP	8	22	18.35.260	AMD	142	20
16.36.109	REP	8	22	18.48	ADD	272	7,8
16.36.110	AMD	8	13	18.50.150	AMD	245	6
16.36.120	REP	8	22	18.57	ADD	314	37,43
16.36.130	REP	8	22	18.57A.020	AMD	132	13
16.44.020	REP	8	22	18.71	ADD	132	12
16.44.030	REP	8	22	18.71	ADD	314	36,42
16.44.040	REP	8	22	18.71.0195	AMD	132	2
16.44.045	REP	8	22	18.71.300	AMD	132	3
16.44.050	REP	8	22	18.71.310	AMD	132	4
16.44.060	REP	8	22	18.71.320	AMD	132	5
16.44.070	REP	8	22	18.71.330	AMD	132	6
16.44.080	REP	8	22	18.71.340	AMD	132	7
16.44.090	REP	8	22	18.71A.020	AMD	132	14
16.44.110	REP	8	22	18.74	ADD	143	1
16.44.120	REP	8	22	18.79	ADD	314	38,44
16.44.130	AMD	8	14	18.85.010	AMD	46	2
16.44.130	RECD	8	21	18.85.330	AMD	46	3
16.44.140	AMD	8	15	18.88A.210	AMD	272	10
16.44.140	RECD	8	21	18.88A.230	AMD	272	11
16.44.150	REP	8	22	18.100	ADD	293	7
16.44.160	AMD	8	16	18.100.060	AMD	293	1
16.44.160	RECD	8	21	18.100.065	AMD	293	2
16.44.180	REP	8	22	18.100.090	AMD	293	3
16.57	ADD	263	5,6	18.100.100	AMD	293	4
17.10.070	AMD	245	3	18.100.114	AMD	293	6
17.26.015	AMD	245	4	18.130.040	REMD	243	16
18	ADD	243	1-15	18.130.070	AMD	132	8
18.16.050	AMD	245	5	18.130.080	AMD	132	9

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RCW		CH.	SEC.	RCW		CH.	SEC.
18.130.175	AMD	132	10	23B.10	ADD	23	9
18.130.300	AMD	132	11	23B.11.080	AMD	103	1310
18.140.020	AMD	120	1	23B.11.090	AMD	103	1311
19	ADD	24	1	23B.11.100	AMD	103	1312
19	ADD	149	1-6	23B.11.110	AMD	103	1313
19	ADD	300	1-4	23B.14	ADD	23	10
			6,7	23B.15	ADD	23	11
19.02.885	REP	245	176	23B.15.060	AMD	102	2
19.27	ADD	249	14	24.03	ADD	23	12,13
19.27	ADD	37	1	24.03.045	AMD	102	3
19.27.078	REP	245	176	24.06	ADD	23	14,15
19.27A.020	AMD	245	8	24.06.045	AMD	102	4
19.28.120	AMD	279	4	25	ADD	103	101-107
19.28.200	AMD	98	1				201-204
19.28.610	AMD	98	2				301-308
19.31.020	AMD	228	1				401-406
19.34	ADD	33	2				501-504
19.34.100	AMD	33	1				601-603
19.77.030	AMD	39	1				701-705
19.94.185	AMD	245	9				801-807
19.118.021	AMD	298	2				901-910
19.118.031	AMD	298	3				1001-1012
19.118.041	AMD	298	4				1101-1103
19.118.061	AMD	298	5				1201-1205
19.118.080	AMD	245	7				1301-1307
19.118.090	AMD	298	6	25.04	ADD	102	7
19.146.050	AMD	311	1	25.04.010	REP	103	1308
21.20	ADD	15	12,18	25.04.020	REP	103	1308
21.20.005	AMD	15	1	25.04.030	REP	103	1308
21.20.020	AMD	15	2	25.04.040	REP	103	1308
21.20.040	AMD	15	3	25.04.050	REP	103	1308
21.20.050	AMD	15	4	25.04.060	REP	103	1308
21.20.060	AMD	15	5	25.04.070	REP	103	1308
21.20.070	AMD	15	6	25.04.080	REP	103	1308
21.20.080	AMD	15	7	25.04.090	REP	103	1308
21.20.090	AMD	15	8	25.04.100	REP	103	1308
21.20.100	AMD	15	9	25.04.110	REP	103	1308
21.20.110	AMD	15	10	25.04.120	REP	103	1308
21.20.140	AMD	15	11	25.04.130	REP	103	1308
21.20.310	AMD	15	13	25.04.140	REP	103	1308
21.20.320	AMD	15	14	25.04.150	REP	103	1308
21.20.330	AMD	15	15	25.04.160	REP	103	1308
21.20.340	AMD	15	16	25.04.170	REP	103	1308
21.20.370	AMD	15	17	25.04.180	REP	103	1308
21.20.410	AMD	15	19	25.04.190	REP	103	1308
21.20.430	AMD	15	20	25.04.200	REP	103	1308
21.20.540	AMD	15	21	25.04.210	REP	103	1308
23.86	ADD	23	4	25.04.220	REP	103	1308
23B.01	ADD	23	5	25.04.230	REP	103	1308
23B.02	ADD	23	6	25.04.240	REP	103	1308
23B.04	ADD	23	7,8	25.04.250	REP	103	1308
23B.04.010	AMD	102	1	25.04.260	REP	103	1308
23B.06.010	AMD	104	1	25.04.270	REP	103	1308
23B.06.020	AMD	104	2	25.04.280	REP	103	1308
23B.06.240	AMD	104	3	25.04.290	REP	103	1308

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RCW		CH.	SEC.	RCW		CH.	SEC.
25.04.300	REP	103	1308	26.23.0401	REP	245	176
25.04.310	REP	103	1308	26.23.050	AMD	160	2
25.04.320	REP	103	1308	26.23.055	AMD	160	3
25.04.330	REP	103	1308	26.23.060	AMD	160	8
25.04.340	REP	103	1308	26.23.120	AMD	160	4
25.04.350	REP	103	1308	26.28	ADD	317	1
25.04.360	REP	103	1308	26.44	ADD	314	9
25.04.370	REP	103	1308	26.44.020	REMD	314	7
25.04.380	REP	103	1308	26.44.030	AMD	328	5
25.04.390	REP	103	1308	26.44.100	AMD	314	8
25.04.400	REP	103	1308	27.04.110	AMD	245	10
25.04.410	REP	103	1308	28A	ADD	244	1-9
25.04.420	REP	103	1308	28A.150	ADD	244	15
25.04.430	REP	103	1308	28A.225.010	AMD	244	14
25.04.700	REP	103	1308	28A.225.090	AMD	296	39
25.04.705	REP	103	1308	28A.230.190	AMD	319	202
25.04.710	AMD	102	5	28A.300.300	AMD	245	11
25.04.710	REP	103	1308	28A.300.320	AMD	319	201
25.04.715	AMD	102	6	28A.305.235	AMD	302	2
25.04.715	REP	103	1308	28A.305.235	RECD	302	3
25.04.720	REP	103	1308	28A.310.300	AMD	244	13
25.04.725	REP	103	1308	28A.415	ADD	271	2
25.04.730	REP	103	1308	28A.415.260	AMD	245	12
25.04.735	REP	103	1308	28A.600	ADD	131	2
25.04.740	REP	103	1308	28A.600	ADD	63	2
25.04.745	REP	103	1308	28A.600	ADD	225	2
25.04.750	REP	103	1308	28A.600.475	AMD	269	11
25.10	ADD	277	1,2,5	28A.630	ADD	319	301
25.10.020	AMD	102	8	28A.630.825	AMD	245	13
25.10.453	AMD	277	3	28A.630.885	AMD	225	1
25.10.553	AMD	277	4	28B	ADD	344	9-16
25.10.800	AMD	103	1314	28B.04.070	REP	245	176
25.10.810	AMD	103	1315	28B.06.050	REP	245	176
25.10.820	AMD	103	1316	28B.10.029	AMD	111	2
25.10.830	AMD	103	1317	28B.10.029	AMD	344	5
25.10.840	AMD	103	1318	28B.10.060	REP	344	17
25.15.010	AMD	102	9	28B.10.692	REP	245	176
25.15.015	AMD	102	11	28B.10.887	AMD	245	14
25.15.045	AMD	293	5	28B.15.100	AMD	75	1
25.15.325	AMD	102	10	28B.15.910	AMD	346	904
25.15.395	AMD	103	1319	28B.20.100	AMD	95	1
25.15.400	AMD	103	1320	28B.20.130	AMD	245	16
25.15.405	AMD	103	1321	28B.20.382	AMD	245	17
25.15.410	AMD	103	1322	28B.25.010	REP	344	17
25.15.415	AMD	103	1323	28B.25.020	AMD	245	18
26.04.010	AMD	1	3	28B.25.020	REP	344	17
26.04.020	AMD	1	4	28B.25.030	REP	344	17
26.10.030	AMD	130	4	28B.25.033	REP	344	17
26.16.120	AMD	292	505	28B.25.037	REP	344	17
26.18.100	REMD	77	1	28B.25.040	REP	344	17
26.18.110	AMD	77	2	28B.25.050	REP	344	17
26.19.020	AMD	163	2	28B.25.070	REP	344	17
26.19.065	AMD	163	1	28B.25.075	REP	344	17
26.23	ADD	160	6,7	28B.25.090	REP	344	17
26.23.040	AMD	160	5	28B.25.100	REP	344	17

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RCW		CH.	SEC.	RCW		CH.	SEC.
28B.25.900	REP	344	17	31.30.220	REP	12	1
28B.30.100	AMD	95	2	31.30.230	REP	12	1
28B.30.150	AMD	245	19	31.30.240	REP	12	1
28B.30.537	AMD	245	20	31.30.250	REP	12	1
28B.30.636	REP	245	176	31.30.260	REP	12	1
28B.35	ADD	344	4	31.30.270	REP	12	1
28B.35.100	AMD	95	3	31.30.900	REP	12	1
28B.40.100	AMD	95	4	34.05	ADD	280	2
28B.50.259	AMD	245	21	34.05.325	AMD	125	1
28B.50.874	AMD	116	14	34.05.330	AMD	280	5
28B.50.900	REP	245	176	34.05.354	AMD	280	6
28B.65.050	AMD	245	22	34.05.370	AMD	280	7
28B.80.280	AMD	245	23	34.05.482	AMD	79	3
28B.80.360	AMD	245	24	34.05.542	AMD	186	1
28B.80.612	AMD	245	25	34.05.610	AMD	280	9
28B.95	ADD	69	2,3	34.05.630	AMD	21	1
28B.95.060	AMD	69	4	34.05.640	AMD	21	2
28B.106.900	REP	245	176	34.05.655	AMD	21	3
28B.125.010	AMD	245	15	35.13	ADD	286	2,3
28B.130.020	AMD	344	7	35.13.182	AMD	286	1
29.04.200	AMD	245	26	35.13.270	AMD	106	1
29.15.030	AMD	22	1	35.13A.010	AMD	326	1
29.21.015	AMD	19	1	35.13A.020	AMD	326	2
29.33.145	AMD	58	1	35.20.230	AMD	238	1
29.33.350	AMD	58	2	35.21	ADD	285	1
29.33.360	AMD	58	3	35.21	ADD	249	9
30.04.280	AMD	45	1	35.21	ADD	179	2
30.08	ADD	45	2	35.22	ADD	119	4
30.53.070	AMD	45	3	35.22.620	AMD	278	2
31.04.105	AMD	28	1	35.23.352	AMD	278	3
31.12	ADD	122	7	35.58.273	AMD	321	25
31.12.407	AMD	122	5	35.58.410	AMD	321	26
31.12.408	AMD	122	6	35.61.150	AMD	121	1
31.12A	ADD	122	2-4	35.63	ADD	119	1
31.12A.007	AMD	122	1	35.63.230	AMD	249	5
31.30.010	REP	12	1	35.67	ADD	61	1
31.30.020	REP	12	1	35.67	ADD	31	2
31.30.030	REP	12	1	35.82	ADD	140	2
31.30.040	REP	12	1	35.82.040	AMD	140	1
31.30.050	REP	12	1	35.82.050	AMD	140	3
31.30.060	REP	12	1	35A.14.801	AMD	106	2
31.30.070	REP	12	1	35A.21	ADD	249	10
31.30.080	REP	12	1	35A.63	ADD	119	2
31.30.090	REP	12	1	35A.63.250	AMD	249	6
31.30.100	REP	12	1	35A.82.010	AMD	176	2
31.30.110	REP	12	1	36.01	ADD	65	1
31.30.120	REP	12	1	36.23.065	AMD	226	1
31.30.130	REP	12	1	36.23.067	AMD	226	2
31.30.150	REP	12	1	36.29.010	AMD	106	3
31.30.160	REP	12	1	36.29.160	AMD	106	4
31.30.170	REP	12	1	36.32	ADD	119	5
31.30.180	REP	12	1	36.32.270	AMD	278	4
31.30.190	REP	12	1	36.32.340	AMD	245	27
31.30.200	REP	12	1	36.34	ADD	278	10
31.30.210	REP	12	1	36.35	ADD	106	23

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RCW		CH	SEC.	RCW		CH.	SEC.
36.35.030	REP	106	24	39.94.020	AMD	291	3
36.35.040	REP	106	24	39.94.030	AMD	291	4
36.35.050	REP	106	24	39.94.040	AMD	291	5
36.35.060	REP	106	24	39.96.070	AMD	245	35
36.35.070	AMD	106	22	40.24.010	AMD	138	1
36.47.020	AMD	245	28	40.24.030	AMD	138	2
36.47.070	AMD	245	29	40.24.070	AMD	138	3
36.48.010	AMD	106	6	40.24.080	AMD	138	4
36.57A.050	AMD	121	15	40.24.900	REP	138	5
36.70	ADD	249	8	41	ADD	340	1-3
36.70	ADD	119	3	41	ADD	341	1-25
36.70.992	AMD	249	7				101-112
36.70A	ADD	286	7				114
36.70A.040	AMD	171	1				201-213
36.70A.060	AMD	286	5				311-313
36.70A.070	AMD	171	2	41.04	ADD	292	501
36.70A.200	AMD	171	3	41.04.020	AMD	116	1
36.70A.210	AMD	171	4	41.04.275	AMD	340	12
36.70A.360	AMD	112	2	41.04.275	REP	340	13
36.70A.367	AMD	289	2	41.04.340	AMD	254	1
36.70A.385	AMD	245	30	41.04.340	AMD	116	2
36.70A.460	AMD	249	11	41.04.605	AMD	116	3
36.79.060	AMD	245	31	41.04.610	AMD	116	4
36.89.080	AMD	74	1	41.04.615	AMD	116	5
36.90.010	AMD	107	1	41.04.620	AMD	116	6
36.90.030	AMD	107	2	41.04.630	AMD	116	7
36.90.050	AMD	107	3	41.04.630	AMD	245	36
38.52.535	AMD	245	32	41.04.635	AMD	116	8
38.52.540	AMD	304	14	41.04.640	AMD	116	9
39.04	ADD	278	1	41.05	ADD	62	2
39.04.120	AMD	196	1	41.05.011	AMD	341	706
39.04.150	REMD	278	11	41.05.190	AMD	245	37
39.04.155	AMD	278	12	41.05.220	AMD	245	38
39.29	ADD	101	11	41.05.280	AMD	245	39
39.29.003	AMD	101	1	41.06.070	REMD	245	40
39.29.006	AMD	101	2	41.06.285	AMD	245	41
39.29.011	AMD	101	3	41.20	ADD	157	4
39.29.016	AMD	101	4	41.20.060	AMD	157	3
39.29.018	AMD	101	5	41.24	ADD	307	1-3
39.29.025	AMD	101	6	41.24.160	AMD	151	1
39.29.035	REP	101	12	41.24.400	AMD	307	4
39.29.040	AMD	101	7	41.26	ADD	17	1
39.29.055	AMD	101	8	41.26.460	AMD	340	5
39.29.065	AMD	101	9	41.26.500	AMD	341	604
39.29.068	AMD	101	10	41.32	ADD	17	2
39.29.068	AMD	245	33	41.32.530	AMD	340	6
39.32.030	REP	105	17	41.32.785	AMD	340	7
39.32.035	AMD	105	3	41.32.800	AMD	341	605
39.32.040	AMD	105	4	41.32.8401	AMD	341	701
39.32.050	REP	105	17	41.34	ADD	341	306-308
39.46.110	AMD	106	7	41.34.020	AMD	341	301
39.50.010	AMD	106	8	41.34.030	AMD	341	302
39.84.090	AMD	245	34	41.34.060	AMD	341	303
39.94	ADD	291	1	41.34.070	AMD	117	1
39.94.010	AMD	291	2	41.34.080	AMD	341	304

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RCW		CH.	SEC.	RCW		CH.	SEC.
41.34.100	AMD	341	305	42.17.31909	AMD	154	33
41.40	ADD	17	3,4	42.17.350	AMD	30	1
41.40	ADD	157	1	42.52.010	AMD	7	1
41.40	ADD	341	113	42.52.150	AMD	7	2
41.40.010	REMD	341	601	43.01.090	AMD	105	5
41.40.062	AMD	341	602	43.01.236	AMD	344	8
41.40.088	REMD	341	603	43.01.240	AMD	245	46
41.40.188	AMD	340	8	43.03.260	REP	245	176
41.40.660	AMD	340	9	43.03.310	AMD	164	1
41.40.690	AMD	341	606	43.05.110	AMD	176	84
41.45	ADD	283	2-4	43.05.900	REP	245	176
41.45	ADD	341	407	43.06.115	AMD	245	47
41.45.010	AMD	341	401	43.06A	ADD	288	1-5
41.45.020	AMD	283	1	43.06A.020	AMD	288	7
41.45.020	AMD	341	402	43.07	ADD	23	18
41.45.050	AMD	341	403	43.07	ADD	38	1
41.45.060	AMD	340	11	43.07.120	REMD	103	1309
41.45.060	AMD	283	6	43.07.290	AMD	245	86
41.45.060	AMD	341	404	43.09	ADD	232	3,4
41.45.061	AMD	341	405	43.10	ADD	223	2
41.45.070	AMD	340	10	43.19	ADD	105	1
41.45.070	AMD	341	406	43.19.19052	AMD	245	54
41.45.090	AMD	283	7	43.19.1923	AMD	105	6
41.50	ADD	341	515	43.19.1925	AMD	105	7
41.50.030	AMD	341	501	43.19.1927	REP	105	17
41.50.060	AMD	341	502	43.19.1935	AMD	105	8
41.50.075	AMD	341	503	43.19.19362	AMD	245	55
41.50.080	AMD	341	504	43.19.500	AMD	105	9
41.50.085	AMD	14	2	43.19.550	REP	111	1
41.50.086	AMD	341	505	43.19.552	REP	111	1
41.50.086	AMD	341	506	43.19.554	REP	111	1
41.50.088	AMD	116	10	43.19.558	AMD	105	10
41.50.088	AMD	341	507	43.19.558	REP	111	1
41.50.100	REP	245	176	43.19.565	AMD	111	3
41.50.110	AMD	341	508	43.19.582	REP	111	1
41.50.150	AMD	341	509	43.19.605	AMD	105	11
41.50.152	AMD	341	510	43.19.610	AMD	105	12
41.50.255	AMD	341	511	43.19.615	AMD	105	13
41.50.500	AMD	341	512	43.19A.030	AMD	245	57
41.50.670	AMD	341	513	43.20.235	AMD	245	58
41.50.770	AMD	116	11	43.20A.725	AMD	245	59
41.50.780	AMD	116	12	43.20B	ADD	66	2
41.50.780	AMD	245	42	43.20B.620	AMD	79	4
41.50.790	AMD	341	514	43.20B.630	AMD	79	5
41.52.040	AMD	245	43	43.21B.110	AMD	262	18
41.52.070	AMD	245	44	43.21B.110	AMD	156	8
41.54	ADD	341	705	43.21B.110	AMD	36	22
41.54.010	AMD	341	702	43.21C.0382	AMD	249	12
41.54.030	REMD	341	703	43.21J.030	AMD	245	60
41.54.040	AMD	341	704	43.22.480	AMD	37	4
41.56	ADD	244	12	43.23.070	AMD	8	20
41.59.080	AMD	244	11	43.31	ADD	345	3
42.16.017	AMD	245	45	43.31.411	AMD	245	61
42.17.160	AMD	55	3	43.31.422	AMD	76	1
42.17.310	REMD	69	1	43.31.425	AMD	76	2

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<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
43.31.428	AMD	76	3	43.84.150	AMD	14	4
43.31.526	AMD	245	62	43.88	ADD	299	3,4
43.33.130	AMD	245	63	43.88.030	REMD	346	910
43.33A	ADD	116	13	43.88.065	REP	245	176
43.33A.140	AMD	14	1	43.88.160	AMD	135	1
43.33A.190	AMD	341	707	43.88.350	AMD	105	16
43.41.240	AMD	245	64	43.88.570	AMD	232	2
43.43	ADD	10	2	43.99	ADD	264	1-6
43.43	ADD	17	5	43.99F.040	AMD	245	80
43.43.040	AMD	194	1	43.105.160	AMD	177	3
43.43.350	AMD	193	1	43.105.190	AMD	177	4
43.43.500	AMD	67	1	43.121.090	REP	245	176
43.43.510	AMD	67	2	43.121.130	AMD	245	48
43.43.540	AMD	220	4	43.131	ADD	155	7,8
43.43.700	AMD	141	2	43.131	ADD	345	8,9
43.43.830	AMD	10	1	43.131.333	REP	108	1
43.43.834	AMD	10	3	43.131.334	REP	108	1
43.43.842	AMD	10	4	43.131.389	AMD	108	2
43.43.934	REMD	245	65	43.131.390	AMD	108	3
43.51.210	AMD	42	1	43.135	ADD	321	14
43.51.215	AMD	42	2	43.135.060	AMD	321	15
43.51.400	AMD	245	66	43.147.070	AMD	245	49
43.51.944	AMD	245	67	43.160	ADD	321	9
43.52.360	AMD	245	68	43.160.070	AMD	321	27
43.52.560	AMD	245	69	43.160.076	AMD	321	28
43.52.565	AMD	245	70	43.160.076	AMD	55	4
43.59	ADD	165	3	43.160.080	AMD	321	30
43.59.010	AMD	165	2	43.160.210	REMD	321	31
43.59.130	REP	245	176	43.160.210	REMD	55	5
43.63A.220	REP	245	176	43.163.090	AMD	245	50
43.63A.550	AMD	245	71	43.163.120	AMD	245	51
43.63B	ADD	124	7	43.163.130	AMD	48	1
43.63B.010	AMD	124	6	43.163.210	AMD	48	2
43.63B.060	AMD	124	8	43.163.900	REP	245	176
43.70	ADD	37	5,6	43.168.130	AMD	245	52
43.70.066	AMD	245	72	43.175.020	AMD	245	53
43.70.240	AMD	245	73	43.200.180	AMD	245	81
43.70.280	AMD	29	1	43.200.190	AMD	245	82
43.70.330	AMD	245	74	43.200.200	AMD	245	83
43.70.340	AMD	37	7	43.210.020	AMD	109	1
43.70.530	AMD	245	75	43.210.030	AMD	109	2
43.70.545	AMD	245	76	43.210.040	AMD	109	3
43.70.555	AMD	245	77	43.210.050	AMD	245	84
43.70.600	AMD	245	78	43.330	ADD	37	8
43.72.850	REP	245	176	43.330	ADD	299	2,5
43.72.860	AMD	245	79	43.330.090	AMD	245	85
43.79	ADD	302	3	44.04	ADD	62	1,3
43.79.270	AMD	177	1	44.40.070	AMD	245	87
43.79.280	AMD	177	2	44.40.150	AMD	245	88
43.79.460	AMD	302	1	46.01.260	AMD	207	3
43.79A.040	REMD	268	1	46.08.065	AMD	111	4
43.82.120	AMD	105	14	46.09.240	AMD	144	1
43.82.125	AMD	105	15	46.12	ADD	203	12
43.84.061	AMD	14	3	46.12.095	AMD	203	10
43.84.092	AMD	341	708	46.12.101	AMD	203	11

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<u>RCW</u>		<u>CH</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
46.16.015	AMD	342	6	46.61.503	AMD	213	4
46.16.068	AMD	321	32	46.61.504	AMD	213	5
46.16.381	AMD	294	1	46.61.5055	REMD	206	1
46.20	ADD	165	4	46.61.5055	REMD	207	1
46.20.035	AMD	41	10	46.61.5055	REMD	210	4
46.20.091	AMD	41	11	46.61.5055	REMD	211	1
46.20.095	AMD	165	5	46.61.5055	REMD	214	1
46.20.161	AMD	41	12	46.61.5055	REMD	215	1
46.20.205	AMD	41	13	46.61.5057	REP	41	14
46.20.265	AMD	41	2	46.61.5058	AMD	207	2
46.20.285	AMD	41	3	46.61.506	AMD	213	6
46.20.285	AMD	207	4	46.61.5152	AMD	41	9
46.20.291	AMD	165	12	46.61.520	AMD	211	2
46.20.305	AMD	165	13	46.61.581	AMD	294	2
46.20.308	AMD	41	4	46.61.780	AMD	165	17
46.20.308	AMD	207	7	46.63.020	REMD	294	3
46.20.308	AMD	209	1	46.65.070	AMD	214	2
46.20.308	AMD	213	1	46.65.080	AMD	214	3
46.20.3101	AMD	207	8	46.65.100	AMD	214	4
46.20.3101	AMD	209	2	46.68	ADD	212	2
46.20.3101	AMD	213	2	46.68.041	AMD	212	3
46.20.311	AMD	212	1	46.70	ADD	282	2
46.20.344	REP	203	14	46.70.011	AMD	46	1
46.20.355	AMD	41	5	46.70.101	AMD	282	7
46.20.355	AMD	209	3	46.79	ADD	282	4
46.20.391	AMD	207	9	46.80	ADD	282	6
46.20.391	AMD	209	4	46.81A.020	AMD	245	91
46.20.520	AMD	245	89	46.82.430	AMD	165	6
46.20.720	AMD	210	2	46.83.040	AMD	165	7
46.23.030	REP	245	176	46.87.080	AMD	115	1
46.25.120	AMD	41	6	46.96	ADD	298	1
46.29.040	AMD	41	7	47	ADD	173	1-3
46.32.100	AMD	172	1				6,7
46.37.280	AMD	165	16	47	ADD	175	1-9
46.37.400	AMD	2	1	47.01.220	REP	245	176
46.52.060	AMD	169	1	47.01.250	AMD	245	92
46.52.070	AMD	165	8	47.01.900	AMD	245	93
46.52.100	AMD	204	1	47.04.180	AMD	245	94
46.52.100	AMD	165	9	47.05.021	AMD	171	5
46.52.120	AMD	218	1	47.05.021	AMD	245	95
46.52.120	AMD	165	10	47.05.030	AMD	171	6
46.52.130	AMD	165	11	47.05.051	AMD	175	12
46.55.010	AMD	203	8	47.06	ADD	171	7
46.55.100	AMD	203	9	47.06	ADD	175	10
46.55.105	AMD	203	2	47.06.040	AMD	199	1
46.55.110	AMD	203	3	47.10	ADD	321	16-21
46.55.113	AMD	203	4	47.12.249	REP	245	176
46.55.120	AMD	203	5	47.12.330	AMD	181	2
46.55.130	AMD	203	6	47.14.050	AMD	245	96
46.61	ADD	211	5	47.24.010	AMD	245	97
46.61	ADD	214	5	47.26.163	REP	245	176
46.61.165	AMD	245	90	47.36.400	AMD	180	1
46.61.502	AMD	213	3	47.46	ADD	179	4
46.61.503	AMD	41	8	47.60	ADD	166	1-3
46.61.503	AMD	207	5	47.60.470	REP	245	176

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RCW		CH.	SEC.	RCW		CH.	SEC.
47.60.544	REP	245	176	53.04.110	AMD	240	1
47.68.250	AMD	188	1	53.08.120	AMD	278	6
47.80.023	AMD	171	8	53.12.260	AMD	121	3
47.80.030	AMD	171	9	54.04.070	AMD	278	7
47.82.050	REP	245	176	54.12.080	AMD	121	4
48.02	ADD	23	19	54.16.030	AMD	49	1
48.06.060	AMD	23	1	57.08.050	AMD	278	8
48.06.200	AMD	23	2	57.08.081	AMD	106	9
48.07.070	AMD	23	3	57.08.081	AMD	285	2
48.14	ADD	313	3	57.12.010	AMD	121	5
48.14.0201	AMD	323	1	57.16.110	AMD	106	5
48.14.080	AMD	312	1	59.12.030	AMD	276	6
48.16.070	AMD	25	1	59.18	ADD	276	4,5
48.18	ADD	301	1	59.18.030	AMD	276	1
48.31.020	AMD	284	8	59.18.130	AMD	276	2
48.38	ADD	284	5-7	59.18.180	AMD	276	3
48.38.010	AMD	284	1	59.20.030	AMD	118	1
48.38.020	AMD	284	2	59.20.080	AMD	118	2
48.38.040	AMD	284	3	59.20.090	AMD	118	3
48.38.050	AMD	284	4	59.21.010	AMD	124	1
48.41.070	AMD	245	98	59.21.015	REP	124	9
48.42.040	AMD	241	16	59.21.021	AMD	124	2
48.43	ADD	241	1-15	59.21.025	AMD	124	3
48.44	ADD	23	16	59.21.040	AMD	124	4
48.46	ADD	23	17	59.21.050	AMD	124	5
48.87.090	REP	245	176	59.22.090	AMD	245	105
48.88.060	REP	245	176	59.28.110	REP	245	176
49.12	ADD	334	2	60.52	ADD	99	2
49.12.005	AMD	334	1	60.52.030	AMD	99	1
49.17	ADD	37	3	61	ADD	255	1-6
49.17.050	AMD	224	1	61.24	ADD	295	1,6
49.30.005	AMD	245	99				15,16
49.46.130	REMD	239	2	61.24.010	AMD	295	2
49.46.150	REP	245	176	61.24.020	AMD	295	3
50.04.320	AMD	162	1	61.24.030	AMD	295	4
50.20	ADD	161	3,4	61.24.040	AMD	295	5
50.20.140	AMD	161	2	61.24.050	AMD	295	7
50.24.014	AMD	346	901	61.24.060	AMD	295	8
50.24.014	AMD	161	7	61.24.070	AMD	295	9
50.44.035	AMD	245	100	61.24.080	AMD	295	10
50.44.050	AMD	233	2	61.24.090	AMD	295	11
50.44.053	AMD	233	3	61.24.100	AMD	295	12
50.60.901	AMD	245	101	61.24.110	AMD	295	13
50.62.040	AMD	245	102	61.24.130	AMD	295	14
50.65.331	REP	245	176	62A.2	ADD	134	1-4
50.72.070	AMD	245	103	63	ADD	274	1-8
51.04.030	AMD	230	1	63.10.020	AMD	113	1
51.12.120	AMD	279	2	63.10.040	AMD	113	2
51.32.116	REP	245	176	65.04.015	AMD	27	3
51.36.080	AMD	245	104	65.04.045	AMD	27	1
52.14.010	AMD	121	2	65.04.047	AMD	27	2
52.14.110	AMD	278	5	66.08.026	AMD	265	2
52.16.050	AMD	5	1	66.08.028	REP	245	176
52.18.010	AMD	16	1	66.16.041	AMD	265	3
52.18.050	AMD	16	2	66.20.010	AMD	126	1

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<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
66.24.010	REMD	126	2	70.24.400	AMD	245	126
66.24.244	AMD	126	3	70.38	ADD	322	50
66.24.320	AMD	126	4	70.41.320	AMD	245	127
66.24.400	AMD	126	5	70.44.050	AMD	121	7
66.24.420	AMD	126	6	70.44.140	AMD	278	9
66.24.425	AMD	126	7	70.47.060	REMD	314	17
66.24.440	AMD	126	8	70.47.060	REMD	148	1
66.24.450	AMD	114	1	70.54	ADD	150	1
66.24.450	AMD	126	9	70.74.191	AMD	40	1
66.24.455	AMD	126	10	70.87.010	AMD	137	1
66.28.010	AMD	126	11	70.87.030	AMD	137	2
66.28.010	AMD	127	1	70.87.090	AMD	137	3
66.28.040	AMD	256	1	70.87.120	AMD	137	4
66.28.040	AMD	126	12	70.93	ADD	257	6
66.28.200	AMD	126	13	70.93.010	AMD	257	1
66.44.010	AMD	18	1	70.93.020	AMD	257	2
66.44.200	AMD	259	1	70.93.030	AMD	257	3
66.44.270	AMD	4	1	70.93.090	AMD	257	4
66.44.310	AMD	126	14	70.93.180	AMD	257	5
66.98.060	AMD	126	15	70.93.200	AMD	257	8
67.16	ADD	345	10-12	70.93.210	AMD	257	9
67.16.012	AMD	345	4	70.93.250	AMD	257	10
67.16.100	AMD	345	5	70.93.250	AMD	245	128
67.16.105	AMD	345	6	70.94.015	AMD	321	33
67.16.170	AMD	345	7	70.94.130	AMD	342	1
67.28	ADD	35	2	70.94.162	AMD	245	129
67.28.181	AMD	35	1	70.94.473	AMD	342	8
67.28.1817	AMD	35	3	70.94.650	REMD	43	1
67.32.120	REP	245	176	70.94.656	AMD	245	130
67.70.050	REMD	245	106	70.94.743	AMD	68	1
68.52.220	AMD	121	6	70.95	ADD	156	2,5-7
69.06	ADD	136	2				9
69.06.010	AMD	136	1	70.95	ADD	36	18
69.06.020	AMD	136	3	70.95.020	AMD	90	1
69.06.030	AMD	136	4	70.95.020	AMD	156	1
69.06.050	AMD	136	5	70.95.030	AMD	36	17
69.30	ADD	44	1	70.95.170	AMD	156	3
69.41	ADD	222	2	70.95.190	AMD	156	4
69.41	ADD	70	1	70.95.210	AMD	90	3
69.41.010	AMD	222	1	70.95.240	AMD	36	19
69.41.010	AMD	70	2	70.95.263	AMD	245	131
69.43.010	AMD	245	107	70.95.810	AMD	245	132
69.50	ADD	222	4	70.95.830	REP	36	23
69.50.101	AMD	222	3	70.95C.030	AMD	245	133
69.50.201	AMD	245	108	70.95C.090	REP	245	176
69.50.401	AMD	290	1	70.95C.250	AMD	245	134
69.50.401	AMD	82	2	70.95E.070	REP	245	176
69.50.406	AMD	290	2	70.96A	ADD	314	33,41
69.50.520	REMD	346	909	70.96A	ADD	296	24-27
69.50.525	AMD	245	109				29-32
69.51.070	REP	245	176	70.96A.020	REMD	296	22
70	ADD	93	1-3	70.96A.095	AMD	296	23
70.02.050	AMD	158	1	70.96A.097	AMD	296	28
70.05	ADD	34	3	70.96A.420	AMD	245	135
70.05.125	AMD	266	1	70.96A.500	AMD	245	136

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<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
70.98.210	REP	245	176	71.05.200	AMD	297	11
70.105.160	AMD	245	110	71.05.210	AMD	297	12
70.105D.020	AMD	6	1	71.05.230	AMD	297	13
70.105D.070	AMD	81	2	71.05.280	AMD	297	15
70.105D.070	AMD	346	905	71.05.290	AMD	297	16
70.112.050	AMD	245	111	71.05.300	AMD	297	17
70.114A	ADD	37	2	71.05.330	AMD	297	20
70.114A.080	REP	37	9	71.05.340	AMD	297	21
70.114A.090	REP	245	176	71.05.390	AMD	297	22
70.118.030	AMD	152	1	71.05.530	AMD	297	23
70.119A.160	AMD	245	112	71.05.560	AMD	297	24
70.120	ADD	342	5	71.09.060	AMD	146	1
70.120.070	AMD	342	2	71.24.035	REMD	245	137
70.120.100	AMD	342	3	71.24.410	AMD	245	138
70.120.170	AMD	342	4	71.34	ADD	296	11
70.120.180	REP	245	176				14-21
70.120.220	REP	245	176	71.34.010	AMD	296	7
70.123.060	REP	245	176	71.34.020	AMD	296	8
70.128	ADD	272	3,9	71.34.025	AMD	296	9
70.128.070	AMD	272	4	71.34.030	AMD	296	12
70.128.180	REP	245	176	71A.10	ADD	216	1
70.129.030	AMD	272	5	71A.10.020	AMD	216	2
70.129.160	AMD	245	113	71A.12	ADD	216	5,7,8
70.148.020	AMD	245	114	71A.16.010	AMD	216	3
70.148.050	AMD	245	115	71A.16.030	AMD	216	4
70.149.110	REP	245	176	71A.20	ADD	216	6
70.155.080	AMD	133	2	72.02.170	REP	245	176
70.155.100	AMD	133	3	72.05	ADD	269	5,6
70.162.050	AMD	245	116				8-10
70.168.030	AMD	245	117				13-16
70.170.060	AMD	245	118	72.05.020	AMD	269	2
70.175.100	AMD	245	119	72.09	ADD	83	1
70.180.110	AMD	245	120	72.09.040	AMD	245	139
70.180.120	AMD	245	121	72.09.420	REP	273	1
70.180.900	REP	245	176	72.09.460	AMD	244	10
70.190.050	AMD	245	122	72.09.480	AMD	261	2
70.190.060	AMD	314	12	72.09.560	AMD	245	140
70.190.100	AMD	245	123	72.10	ADD	297	48
70.190.110	AMD	245	124	72.23.025	AMD	245	141
70.190.130	AMD	314	13	72.36.030	AMD	322	49
70.195.010	AMD	245	125	72.65.210	AMD	245	142
71.05	ADD	297	14,18	74.04.005	REMD	80	1
			19	74.04.005	REMD	79	6
			25-27	74.04.025	AMD	245	143
71.05.010	AMD	297	2	74.04.300	AMD	79	7
71.05.015	REP	297	52	74.04.380	AMD	79	8
71.05.020	AMD	297	3	74.04.500	AMD	79	9
71.05.030	AMD	297	4	74.04.510	AMD	79	10
71.05.035	AMD	297	5	74.04.515	AMD	79	11
71.05.050	AMD	297	6	74.04.520	AMD	79	12
71.05.080	REP	297	52	74.04.750	AMD	79	13
71.05.130	AMD	297	7	74.08.046	AMD	79	14
71.05.150	AMD	297	8	74.08.080	AMD	79	15
71.05.160	AMD	297	9	74.08.331	AMD	79	16
71.05.170	AMD	297	10	74.08A	ADD	88	1

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RCW		CH	SEC	RCW		CH	SEC
74.08A	ADD	89	1	74.46.640	AMD	322	35
74.09	ADD	314	34,35	74.46.650	AMD	322	36
74.09.120	AMD	322	45	74.46.660	AMD	322	37
74.09.415	AMD	245	144	74.46.670	REP	322	52
74.09.520	AMD	245	145	74.46.680	AMD	322	38
74.13	ADD	296	1	74.46.690	AMD	322	39
74.13.021	AMD	229	3	74.46.770	AMD	322	40
74.13.031	REMD	314	10	74.46.780	AMD	322	41
74.13.032	AMD	296	4	74.46.800	AMD	322	42
74.13.045	AMD	245	146	74.46.820	AMD	322	43
74.13.055	AMD	245	147	74.46.840	AMD	322	44
74.13.260	AMD	245	148	75	ADD	246	1-12
74.13.350	AMD	229	1				16-18
74.14A.050	AMD	245	149	75.08.011	AMD	190	70
74.15	ADD	269	7	75.08.160	AMD	190	71
74.15.020	AMD	269	3	75.08.274	AMD	190	72
74.15.130	AMD	314	6	75.08.274	REP	191	46
74.20.340	AMD	245	150	75.08.295	AMD	190	73
74.20A.080	REMD	160	1	75.08.300	AMD	190	74
74.25A.045	AMD	79	17	75.08.460	REP	245	176
74.38.070	AMID	300	8	75.08.510	AMD	250	2
74.39A.050	AMD	85	1	75.10.010	REP	190	124
74.41.070	AMD	245	151	75.10.020	REP	190	124
74.46	ADD	322	9,10	75.10.030	REP	190	124
			18-20	75.10.040	REP	190	124
			22-28	75.10.050	REP	190	124
			31,46	75.10.060	REP	190	124
74.46.010	AMD	322	1	75.10.080	REP	190	124
74.46.020	AMD	322	2	75.10.090	REP	190	124
74.46.040	AMD	322	3	75.10.100	RECD	190	125
74.46.050	AMD	322	4	75.10.110	REP	190	124
74.46.060	AMD	322	5	75.10.120	REP	190	124
74.46.080	AMD	322	6	75.10.130	REP	190	124
74.46.090	AMD	322	7	75.10.140	REP	190	124
74.46.100	AMD	322	8	75.10.170	REP	190	124
74.46.105	REP	322	52	75.10.180	REP	190	124
74.46.115	REP	322	52	75.10.190	REP	190	124
74.46.130	REP	322	52	75.10.200	REP	190	124
74.46.150	REP	322	52	75.10.210	REP	190	124
74.46.160	REP	322	52	75.10.220	RECD	190	125
74.46.170	REP	322	52	75.12.010	AMD	190	75
74.46.180	REP	322	52	75.12.015	AMD	190	76
74.46.190	AMD	322	11	75.12.020	REP	190	124
74.46.210	REP	322	52	75.12.031	REP	190	124
74.46.220	AMD	322	12	75.12.040	AMD	190	77
74.46.230	AMD	322	13	75.12.070	REP	190	124
74.46.270	AMD	322	14	75.12.090	REP	190	124
74.46.280	AMD	322	15	75.12.100	REP	190	124
74.46.300	AMD	322	16	75.12.115	REP	190	124
74.46.410	AMD	322	17	75.12.120	REP	190	124
74.46.475	AMD	322	21	75.12.125	REP	190	124
74.46.595	REP	322	53	75.12.127	REP	190	124
74.46.610	AMD	322	32	75.12.132	AMD	190	78
74.46.620	AMD	322	33	75.12.140	AMD	190	79
74.46.630	AMD	322	34	75.12.210	AMD	190	80

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RCW	CH.	SEC.	RCW	CH.	SEC.		
75.12.230	AMD	190	81	75.30.070	AMD	190	100
75.12.320	AMD	190	49	75.30.130	REMD	190	101
75.12.320	RECD	190	125	75.30.140	AMD	190	102
75.12.390	AMD	190	82	75.30.160	AMD	190	103
75.12.400	REP	190	124	75.30.210	AMD	190	104
75.12.410	REP	190	124	75.30.250	AMD	190	105
75.12.420	REP	190	124	75.30.280	AMD	190	106
75.12.430	REP	190	124	75.30.290	AMD	190	107
75.12.440	AMD	190	83	75.30.350	AMD	190	108
75.12.650	AMD	190	84	75.30.450	AMD	190	109
75.20	ADD	249	3	75.30.480	AMD	245	154
75.20.040	AMD	190	85	75.50	ADD	249	16
75.20.060	AMD	190	86	75.50	ADD	251	2
75.20.100	REMD	190	87	75.50.050	REP	245	176
75.20.103	AMD	190	88	75.50.100	AMD	245	155
75.20.110	AMD	190	89	75.50.100	AMD	191	27
75.24	ADD	153	2,3	75.50.115	AMD	96	1
75.24.050	REP	190	124	75.50.120	REP	245	176
75.24.060	AMD	245	152	75.52.110	AMD	245	156
75.24.080	AMD	190	90	75.54.010	AMD	245	157
75.24.090	REP	190	124	75.54.140	AMD	191	28
75.24.100	AMD	190	91	75.58.010	AMD	190	110
75.24.110	AMD	190	92	76.09	ADD	100	1
75.25.005	REP	191	44	76.12	ADD	71	1
75.25.012	REP	191	46	76.12.110	AMD	347	55
75.25.080	REMD	191	1	76.12.120	REMD	71	2
75.25.080	RECD	191	42	77	ADD	190	1-48
75.25.091	REP	191	44				50-66
75.25.092	AMD	191	2				68,69
75.25.095	REP	191	44				113
75.25.110	REP	191	44				125,126
75.25.120	AMD	191	3	77.04.111	REP	245	176
75.25.120	RECD	191	42	77.08.010	AMD	190	111
75.25.130	REP	191	44	77.08.045	AMD	191	31
75.25.140	AMD	191	4	77.12.055	AMD	190	112
75.25.140	RECD	191	42	77.12.060	REP	190	124
75.25.150	REP	190	124	77.12.070	REP	190	124
75.25.150	REP	191	44	77.12.080	AMD	190	114
75.25.170	REP	191	44	77.12.090	AMD	190	115
75.25.180	REP	191	44	77.12.095	AMD	190	116
75.25.190	AMD	191	5	77.12.120	AMD	190	117
75.25.190	RECD	191	42	77.12.120	RECD	190	125
75.25.200	REP	191	44	77.12.130	RECD	190	125
75.28.010	AMD	190	93	77.12.170	AMD	87	2
75.28.030	AMD	267	1	77.12.170	AMD	191	38
75.28.045	AMD	190	94	77.12.670	AMD	191	32
75.28.046	AMD	267	2	77.12.690	AMD	245	158
75.28.047	AMD	267	3	77.12.690	AMD	191	33
75.28.048	AMD	267	4	77.12.710	AMD	245	159
75.28.095	AMD	190	95	77.12.810	AMD	191	30
75.28.113	AMD	190	96	77.16.010	AMD	190	118
75.28.125	AMD	190	97	77.16.020	AMD	190	119
75.28.710	AMD	190	98	77.16.040	REP	190	124
75.28.740	AMD	190	99	77.16.050	REP	190	124
75.28.770	AMD	245	153	77.16.060	REP	190	124

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RCW	CH.	SEC.	RCW	CH.	SEC.		
77.16.080	REP	190	124	77.44.010	AMD	191	39
77.16.090	REP	190	124	77.44.030	AMD	191	29
77.16.095	AMD	190	120	78.56.160	AMD	245	161
77.16.100	REP	190	124	79.01.295	AMD	245	162
77.16.110	REP	190	124	79.70	ADD	50	2
77.16.120	REP	190	124	79.70.070	AMD	50	1
77.16.130	REP	190	124	79.90.480	AMD	185	2
77.16.135	AMD	190	67	80	ADD	318	1-5
77.16.135	RECD	190	125	80.01.090	AMD	245	163
77.16.150	RFP	190	124	80.04.130	AMD	110	1
77.16.160	REP	190	124	80.16.020	AMD	47	1
77.16.170	AMD	190	121	80.16.030	AMD	47	2
77.16.180	REP	190	124	80.16.050	AMD	47	3
77.16.190	REP	190	124	80.16.060	AMD	47	4
77.16.220	AMD	190	122	80.16.070	AMD	47	5
77.16.250	REP	190	124	80.36	ADD	337	1-3
77.16.260	REP	190	124	80.36.310	AMD	337	4
77.16.310	REP	190	124	80.36.320	AMD	337	5
77.16.320	REP	190	124	80.36.330	AMD	337	6
77.16.330	REP	190	124	80.36.380	REP	245	176
77.16.610	REP	190	124	80.36.860	REP	245	176
77.21.010	REP	190	124	81.04.520	AMD	245	164
77.21.020	AMD	191	35	81.16.020	AMD	47	6
77.21.030	AMD	191	36	81.16.030	AMD	47	7
77.21.040	REP	190	124	81.16.050	AMD	47	8
77.21.060	REP	190	124	81.16.060	AMD	47	9
77.32	ADD	191	13-16	81.16.070	AMD	47	10
			18,19	81.53.281	AMD	245	166
			42,43	81.66.030	AMD	173	4
77.32.005	AMD	191	6	81.80.450	AMD	245	167
77.32.010	AMD	191	7	81.88	ADD	123	1
77.32.014	AMD	191	8	81.100.060	AMD	321	34
77.32.025	AMD	191	9	81.104	ADD	199	
77.32.050	AMD	191	10	81.104.110	REMD	245	165
77.32.060	AMD	245	160	81.104.160	REMD	321	35
77.32.060	REP	191	45	81.112.050	AMD	192	1
77.32.070	AMD	191	11	82.01.110	REP	245	176
77.32.090	AMD	191	12	82.03.130	AMD	54	1
77.32.092	REP	191	44	82.03.190	AMD	54	2
77.32.101	REP	191	44	82.04	ADD	170	1,2
77.32.155	AMD	191	17	82.04	ADD	308	3
77.32.161	REP	191	44	82.04	ADD	312	2,7
77.32.230	REP	191	44	82.04	ADD	313	2
77.32.235	AMD	191	20	82.04	ADD	343	1
77.32.240	AMD	191	21	82.04	ADD	179	3
77.32.250	AMD	191	22	82.04	ADD	331	1
77.32.320	AMD	191	23	82.04	ADD	332	3,4
77.32.340	REP	191	44	82.04	ADD	336	2
77.32.350	AMD	191	24	82.04	ADD	338	2
77.32.350	AMD	191	25	82.04	ADD	200	1
77.32.352	REP	191	44	82.04.050	AMD	275	1
77.32.360	REP	191	44	82.04.050	AMD	308	1
77.32.370	AMD	191	26	82.04.050	AMD	315	1
77.32.380	AMD	87	1	82.04.050	AMD	332	2
77.32.390	REP	191	44	82.04.060	AMD	332	5

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<u>RCW</u>		<u>CH</u>	<u>SEC.</u>	<u>RCW</u>		<u>CH.</u>	<u>SEC.</u>
82.04.120	AMD	168	1	82.14.046	AMD	321	37
82.04.190	REMD	308	2	82.14.200	AMD	321	8
82.04.190	REMD	332	6	82.14.310	AMD	321	11
82.04.240	AMD	312	3	82.14.320	REMD	321	12
82.04.250	AMD	312	4	82.14.330	AMD	321	13
82.04.250	AMD	343	5	82.14.370	AMD	55	6
82.04.260	REMD	170	4	82.14B	ADD	304	6-11
82.04.260	REMD	311	2	82.14B.020	AMD	304	2
82.04.260	AMD	312	5	82.14B.030	AMD	304	3
82.04.270	AMD	312	6	82.14B.040	AMD	304	4
82.04.270	AMD	343	2	82.14B.060	AMD	304	5
82.04.270	AMD	329	1	82.16	ADD	179	5
82.04.280	AMD	343	3	82.16.042	AMD	316	2
82.04.290	AMD	170	3	82.19.010	AMD	257	7
82.04.290	AMD	308	4	82.24.135	AMD	53	1
82.04.290	AMD	308	5	82.29A	ADD	179	6
82.04.290	AMD	312	8	82.32	ADD	115	7
82.04.290	AMD	343	4	82.32.010	AMD	304	12
82.04.290	AMD	331	2	82.32.105	AMD	304	13
82.04.312	AMD	316	1	82.32.210	AMD	311	8
82.04.365	REP	336	4	82.32.215	AMD	311	9
82.04.366	REP	336	4	82.32.220	AMD	311	10
82.04.367	AMD	324	1	82.32.330	AMD	234	1
82.04.392	AMD	311	3	82.33A.010	AMD	245	168
82.04.405	AMD	311	4	82.34.080	REP	9	2
82.04.4285	AMD	176	3	82.34.100	AMD	9	1
82.04.4289	AMD	325	1	82.36	ADD	176	8-12
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82.08	ADD	178	1				29,35
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82.08.0255	REMD	176	4	82.36.010	REMD	176	6
82.08.02565	REMD	330	1	82.36.020	AMD	176	7
82.08.02567	AMD	309	1	82.36.030	REP	176	89
82.08.02571	REP	336	4	82.36.032	AMD	176	13
82.08.02572	REP	336	4	82.36.038	REP	176	89
82.08.0262	AMD	311	5	82.36.045	AMD	176	16
82.08.0263	AMD	311	6	82.36.047	AMD	176	17
82.08.0268	AMD	167	1	82.36.060	AMD	176	18
82.08.0283	AMD	168	2	82.36.070	AMD	176	19
82.08.02915	AMD	183	1	82.36.070	AMD	115	2
82.08.0297	AMD	79	18	82.36.080	AMD	176	20
82.08.150	AMD	126	16	82.36.090	AMD	176	21
82.12	ADD	178	2	82.36.100	AMD	176	22
82.12.020	AMD	332	7	82.36.120	AMD	176	23
82.12.0254	AMD	311	7	82.36.130	AMD	311	11
82.12.0256	REMD	176	5	82.36.130	AMD	176	24
82.12.02565	AMD	330	2	82.36.140	AMD	176	25
82.12.02567	AMD	309	2	82.36.150	AMD	176	26
82.12.02595	AMD	182	1	82.36.160	AMD	176	27
82.12.0277	AMD	168	3	82.36.170	AMD	176	28
82.12.02915	AMD	183	2	82.36.180	AMD	176	30
82.12.0297	AMD	79	19	82.36.190	AMD	176	31
82.14	ADD	321	10	82.36.200	AMD	176	32
82.14.045	AMD	321	7	82.36.210	AMD	176	33

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82.36.230	AMD	176	34	82.46	ADD	106	10
82.36.280	AMD	176	36	82.47.010	AMD	176	85
82.36.300	AMD	176	37	82.50.410	AMD	321	23
82.36.310	AMD	176	38	82.50.510	AMD	321	24
82.36.310	AMD	115	3	82.60.110	AMD	245	169
82.36.330	AMD	176	39	82.61.070	REP	245	176
82.36.335	AMD	176	40	82.63.080	REP	245	176
82.36.350	AMD	176	41	82.66.040	AMD	339	1
82.36.370	AMD	176	42	82.80.010	AMD	176	86
82.36.375	AMD	176	44	82.80.020	AMD	281	1
82.36.390	AMD	176	45	82.80.080	AMD	281	2
82.36.400	AMD	176	46	83.100.020	AMD	292	401
82.38	ADD	176	52-57	83.110.010	AMD	292	402
			59,69	84.04.060	AMD	106	12
			72,73	84.08.130	AMD	54	3
			81-83	84.12.200	AMD	335	1
			88	84.12.230	AMD	311	12
82.38	ADD	115	6	84.12.280	AMD	335	2
82.38.020	AMD	176	50	84.12.330	AMD	335	3
82.38.030	AMD	176	51	84.12.360	AMD	335	4
82.38.040	REP	176	89	84.33.091	AMD	311	13
82.38.070	AMD	176	58	84.33.200	AMD	245	170
82.38.080	AMD	176	60	84.34.020	AMD	320	7
82.38.082	REP	176	89	84.34.065	AMD	320	8
82.38.086	REP	176	89	84.34.111	AMD	311	14
82.38.090	AMD	176	61	84.34.131	AMD	311	15
82.38.100	AMD	176	62	84.34.141	AMD	311	16
82.38.110	AMD	176	63	84.34.145	AMD	311	17
82.38.120	AMD	176	64	84.34.150	AMD	311	18
82.38.120	AMD	115	4	84.36	ADD	202	1
82.38.130	AMD	176	65	84.36.010	AMD	179	8
82.38.140	REMD	176	66	84.36.037	AMD	311	19
82.38.150	AMD	176	67	84.36.037	AMD	189	1
82.38.160	AMD	176	68	84.36.041	AMD	311	20
82.38.170	AMD	176	70	84.36.043	AMD	174	1
82.38.180	AMD	176	71	84.36.045	AMD	184	1
82.38.190	AMD	176	74	84.36.080	AMD	335	5
82.38.210	AMD	176	75	84.36.130	AMD	201	1
82.38.220	AMD	176	76	84.36.161	AMD	311	21
82.38.230	AMD	176	77	84.36.330	REP	311	31
82.38.235	AMD	176	78	84.36.353	AMD	311	22
82.38.240	AMD	176	79	84.36.381	AMD	333	1
82.38.260	AMD	176	80	84.36.473	AMD	311	23
82.44	ADD	321	2	84.36.800	REMD	311	24
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82.44.023	AMD	145	1	84.36.805	REMD	311	25
82.44.023	AMD	321	38	84.36.805	REMD	184	2
82.44.025	AMD	321	39	84.36.805	REMD	202	3
82.44.041	AMD	321	4	84.36.810	REMD	311	26
82.44.110	AMD	321	5	84.36.810	REMD	202	4
82.44.150	AMD	321	6	84.36.815	AMD	311	27
82.44.155	AMD	321	40	84.36.825	AMD	311	28
82.44.180	AMD	321	41	84.36.830	AMD	310	1
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84.40.030	REMD	320	9	90.48.369	REP	245	176
84.40.036	AMD	335	6	90.48.465	AMD	262	16
84.41.130	AMD	245	171	90.48.480	AMD	245	174
84.44.050	AMD	321	42	90.56.100	AMD	245	175
84.55.092	AMD	16	3	90.58.147	AMD	249	4
84.56.025	AMD	327	1	90.58.330	REP	245	176
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84.64.270	RECD	106	23	90.64.005	AMD	262	1
84.64.300	AMD	106	14	90.64.010	AMD	262	2
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84.64.310	RECD	106	23	90.64.050	AMD	262	12
84.64.320	RECD	106	23	90.64.060	REP	262	19
84.64.330	AMD	106	15	90.64.070	AMD	262	13
84.64.330	RECD	106	23	90.64.080	AMD	262	14
84.64.340	AMD	106	16	90.64.090	REP	262	20
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84.64.350	AMD	106	17	90.71.020	AMD	246	14
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84.64.380	RECD	106	23	90.76.040	AMD	155	3
84.64.390	RECD	106	23	90.76.050	AMD	155	4
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84.64.410	RECD	106	23	90.76.090	AMD	155	6
84.64.420	AMD	106	19	90.76.903	REP	155	9
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454	214	AMD	346	222	457	216	AMD	348	210
454	301	AMD	346	301	457	217	AMD	348	211
454	302	AMD	346	302	457	218	AMD	348	212
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454	504	AMD	346	509	457	225	AMD	348	218
454	505	AMD	346	510	457	226	AMD	348	219
454	506	AMD	346	512	457	227	AMD	348	220
454	507	AMD	346	513	457	228	AMD	348	221
454	508	AMD	346	515	457	301	AMD	348	301
454	601	AMD	346	601	457	302	AMD	348	302
454	602	AMD	346	602	457	401	AMD	348	401
454	603	AMD	346	603	457	402	AMD	348	402
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HISTORY OF STATE MEASURES FILED WITH THE SECRETARY OF STATE

INITIATIVES TO THE PEOPLE (SUPPLEMENTING 1996 LAWS, PAGE 1848)

- *INITIATIVE MEASURE NO. 655** (Shall it be a gross misdemeanor to take, hunt, or attract black bears with bait, or to hunt bears, cougars, bobcat or lynx with dogs?)—Filed on January 5, 1996 by Joseph F. Scott of Seattle. 228,148 signatures were submitted and found sufficient. The measure was subsequently certified and submitted to the voters at the November 5, 1996 general election. It was approved by the following vote: For—1,387,577 Against—815,385.
- INITIATIVE MEASURE NO. 656** (Shall pit bull dogs be defined as "potentially dangerous," and subjected to strict requirements for registration, secure enclosures, leashes, collars, warning signs, bonds, and vaccinations?)—Filed on January 5, 1996 by Laurence C. Mathews of Yakima. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 657** (Shall taxes on property used as the owner's principal residence be limited, state taxes on such properties be eliminated, and assessment based on "adjusted value"?)—Filed on January 5, 1996 by Donald W. Carter of Olympia. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 658** (Shall an office of state inspector general be created to investigate complaints of malfeasance or abuse by government agencies and business licensees?)—Filed on January 5, 1996 by Mx. T. Englerius of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 659** (Shall the use of gill nets and certain other net fishing gear be prohibited, and release of accidentally caught out-of-season fish be required?)—Filed on January 17, 1996 by Robert I. Keating of Freeland. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 660** (Shall the state and its counties, cities and towns be prohibited from appropriating any funds to support the national security agency of the federal government?)—Filed on January 8, 1996 by Elizabeth Patrick of Spokane. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 661** (Shall the state of Washington restrict the activities of the national security agency, and certain officers be barred from engaging in national security agency activities?)—Filed on January 8, 1996 by Elizabeth Patrick. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 662** (Shall an office of state inspector general be created, with certain administrative and investigative powers, headed by a director appointed for a nonrenewable five-year term?)—Filed on February 12, 1996 by Maximus T. Englerius of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 663** (Shall the industrial, medicinal, and personal use of hemp (cannabis or marijuana) be permitted under some conditions, taxed, and regulated by the liquor control board?)—Filed on January 30, 1996 by Thomas A. Roban of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 664** (Shall the state repeal all existing state taxes, and levy instead a 1% tax on all transfers of property and a temporary 1% property tax?)—Filed on

INITIATIVES TO THE PEOPLE

February 16, 1996 by Clarence P. Keating, Jr. of Seattle. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 665 (Shall government agencies be required to make disclosures about laws, to respond to requests for clarification, and to prove constitutionality if the law is questioned?)—Filed on February 12, 1996 by Peter M. Brennan of Vancouver. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 666 (Relating to fishing)—Filed on February 22, 1996 by Robert I. Keating of Freeland. Measure was refiled as Initiative Measure No. 668.

INITIATIVE MEASURE NO. 667 (Shall property tax values be frozen at their 1995 levels, plus a maximum two percent annual inflation, and annual tax levy increases be gradually reduced?)—Filed on February 20, 1996 by Steven R. Hargrove of Poulsbo. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 668 (Shall the use of gill nets be prohibited, and release be required of out-of-season fish or juvenile chinook salmon under 22 inches long?)—Filed on February 27, 1996 by Robert I. Keating of Freeland. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 669 (Shall governments be forbidden to grant any protection or recognize rights based on sexual orientation, and shall schools be prohibited from presenting homosexuality as acceptable?)—Filed on February 28, 1996 by Mark Roshak of Bothell. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 670 (Shall the secretary of state be instructed to place a ballot notice concerning congressional and legislative candidates who have not supported Congressional term limits?)—Filed on April 1, 1996 by Charles G. Moore of Redmond. 232,522 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 5, 1996 general election. It was rejected by the following vote: **For**—937,873 **Against**—1,146,865.

INITIATIVE MEASURE NO. 671 (Shall amended tribal/state agreements be authorized permitting limited electronic gaming on Indian lands for tribal government purposes, with joint regulation and specified use of revenues?)—Filed on April 11, 1996 by Doreen M. Maloney of Mount Vernon. 290,996 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 5, 1996 general election. It was rejected by the following vote: **For**—934,344 **Against**—1,222,492.

INITIATIVE MEASURE NO. 672 (Shall grandparents be entitled to petition for visitation rights with their grandchildren, in dissolution, separation and custody proceedings?)—Filed on April 22, 1996 by Donna J. Honeycutt of Kennewick. Sponsor failed to submit signatures for checking.

INITIATIVE MEASURE NO. 673 (Shall health insurance plans be regulated as to provision of services by designated health care providers, managed care provision, and disclosure of certain plan information?)—Filed on January 8, 1997 by Stephen E. Wehrly of Vashon. 241,508 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 4, 1997 general election. It was rejected by the following vote: **For**—521,161 **Against**—1,087,903.

INITIATIVE MEASURE NO. 674 (Shall state spending on schools, colleges, and libraries be exempt from the state expenditure cap and revenue increase restrictions established in Initiative 601?)—Filed on January 14, 1997 by Jasper MacSarrow of Seattle. Sponsor failed to submit signatures for checking.

INITIATIVES TO THE PEOPLE

- INITIATIVE MEASURE NO. 675 (Shall property values for tax purposes be rebased to their 1992 levels, and new limitations be imposed on increases in property value and taxes imposed?)—Filed on January 28, 1997 by Donald Carter of Olympia. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 676 (Shall the transfer of handguns without trigger-locking devices be prohibited and persons possessing or acquiring a handgun be required to obtain a handgun safety license?)—Filed on February 3, 1997 by Thomas C. Wales of Seattle. 239,805 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 4, 1997 general election. It was rejected by the following vote: For—496,690 Against—1,194,004.
- INITIATIVE MEASURE NO. 677 (Shall discrimination based on sexual orientation be prohibited in employment, employment agency, and union membership practices, without requiring employee partner benefits or preferential treatment?)—Filed on February 11, 1997 by Suzanne J. Thomas of Seattle. 229,793 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 4, 1997 general election. It was rejected by the following vote: For—666,073 Against—985,169.
- INITIATIVE MEASURE NO. 678 (Shall dental hygienists who obtain a special license endorsement be permitted to perform designated dental hygiene services without the supervision of a licensed dentist?)—Filed on February 10, 1997 by Anita R. Munson of Bellingham. 272,764 signatures were submitted and found sufficient. The measure was subsequently certified to the ballot and was submitted to the voters at the November 4, 1997 general election. It was rejected by the following vote: For—787,607 Against—883,488.
- INITIATIVE MEASURE NO. 679 (Relating to property taxes)—Filed on February 3, 1997 by Winton G. Cannon of Bellevue. Measure was refiled as Initiative No. 681.
- INITIATIVE MEASURE NO. 680 (Relating to vehicle excise taxes)—Filed on February 3, 1997 by Winton G. Cannon of Bellevue. Measure was refiled as Initiative No. 682.
- INITIATIVE MEASURE NO. 681 (Shall property taxes be assessed and valued as of the 1989 assessment, property be assessed at 80 percent of value, and levy requirements be changed?)—Filed on March 5, 1997 by Winton G. Cannon of Bellevue. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 682 (Shall current motor vehicle fees and vehicle excise taxes be repealed, and replaced with a new license and fee system based on four defined categories?)—Filed on March 5, 1997 by Winton G. Cannon of Bellevue. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 683 (Shall violent drug-related and drug possession penalties be revised, medical use of Schedule I controlled substances be permitted, and a drug prevention commission be established?)—Filed on March 5, 1997 by Robert K. Killian of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 684 (Shall the retail sales tax be increased by one-half of one percent, with the increased revenue earmarked for fish and wildlife enhancement and education?)—Filed on March 19, 1997 by Stanley R. Reed of Oak Harbor. Sponsor failed to submit signatures for checking.
- INITIATIVE MEASURE NO. 685 (Shall penalties for drug possession and drug-related violent crime be revised, medical use of Schedule I controlled substances be permitted, and a drug prevention commission established?)—Filed on April 4, 1997 by Robert K. Killian of Seattle. 245,193 signatures were submitted and found sufficient. The measure was

INITIATIVES TO THE PEOPLE

subsequently certified to the ballot and was submitted to the voters at the November 4, 1997 general election. It was rejected by the following vote: **For—659,244 Against—1,006,964.**

INITIATIVES TO THE LEGISLATURE

(SUPPLEMENTING 1996 LAWS, PAGE 1865)

- INITIATIVE TO THE LEGISLATURE NO. 184 (Shall property tax values be frozen at their 1995 levels, plus a maximum two percent annual inflation, and annual tax levy increases be gradually reduced?)—Filed on March 13, 1996 by Steven R. Harjane of Poulsbo. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 185 (Shall the state of Washington apply to Congress for a constitutional convention to consider abolishing Congressional voting in favor of direct balloting by the people?)—Filed on March 14, 1996 by William R. Walker of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 186 (Shall an office of state inspector general be created to investigate and challenge incorrect or unjust governmental practices and enforce fair business practices by licensees?)—Filed on March 13, 1996 by Mx. T. Englerius of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 187 (Shall a 60-day waiting period be required before a marriage is performed, and waiting periods required before a marriage with minor children may be dissolved?)—Filed on March 13, 1996 by Bill Harrington of Tacoma. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 188 (Shall marine water protection programs be extended, oil spill prevention increased and funded by oil shipment taxes, offshore oil-drilling banned, and salmon habitat incentives offered?)—Filed on March 27, 1996 by Jeffrey D. Parsons of Tumwater. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 189 (Shall additional limits and restrictions be placed on contributions to political campaigns and ballot measures from corporations, businesses, political parties, political committees, and individuals?)—Filed on March 19, 1996 by Roger Kluck of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 190 (Shall all persons buying, selling, distributing or possessing a firearm or ammunition in Washington be required to have a valid firearm and ammunition safety license?)—Filed on March 27, 1996 by Scott S. Carpenter of Bellevue. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 191 (Shall an office of state inspector general be created to investigate complaints of malfeasance or abuse by government agencies and business licensees?)—Filed on April 4, 1996 by Mx. T. Englerius of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 192 (Shall every health insurance plan be required to cover the services of all licensed podiatrists, chiropractors, naturopaths, optometrists, osteopaths, pharmacists, physicians and psychologists?)—Filed on April 4, 1996 by John C. Peick of Issaquah. The sponsor submitted 188,967 signatures for checking and they were found insufficient to qualify the measure to be submitted to the 1997 legislature.
- INITIATIVE TO THE LEGISLATURE NO. 193 (Shall the English language be declared the state's only official language for the conduct of all business by state and local government, with limited exceptions?)—Filed on April 19, 1996 by James L. Morrison of Yakima. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 194 (Shall persons convicted of certain sex crimes involving children be sentenced to life imprisonment without parole, plus a fine of no-less

INITIATIVES TO THE LEGISLATURE

- than \$100,000?—Filed on May 29, 1996 by Christopher P. Clifford of Renton. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 195 (Shall the state repeal all existing state taxes, and levy instead a 1% tax on all transfers of property and a temporary 1% property tax?—Filed on June 27, 1996 by Clarence P. Keating, Jr. of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 196 (Shall taxes on property used as the owner's principal residence be limited, state taxes on such properties be eliminated, and assessment based on "adjusted value"?—Filed on March 19, 1997 by Donald Carter of Olympia. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 197 (Shall the industrial, medicinal, and personal use of hemp (cannabis or marijuana) be permitted under some conditions, taxed, and regulated by the liquor control board?—Filed on March 12, 1997 by Thomas A. Rohan of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 198 (Shall an Office of State Inspector General be created to investigate complaints of abuse by government agencies, and to enforce fair and ethical business practices?—Filed on March 19, 1997 by Maximus T. Englerius of Seattle. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 199 (Shall registered nurses who have been licensed for ten or more years be authorized to practice medicine?—Filed on March 25, 1997 by Paul Keister of Pasco. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 200 (Shall government be prohibited from discriminating or granting preferential treatment based on race, sex, color, ethnicity or national origin in public employment, education, and contracting?—Filed on March 26, 1997 by Scott Smith and Tim Eynan of Seattle. 280,511 signatures were filed and found sufficient. The measure was certified to the Legislature on January 21, 1998. The Legislature referred the measure to the 1998 general election ballot.
- INITIATIVE TO THE LEGISLATURE NO. 201 (Shall the state's ad valorem property tax for the support of the common schools be repealed, beginning with the 1998 tax levy?—Filed on March 25, 1997 by Paul Keister of Pasco. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 202 (Shall state officials be subject to new salary limitations, enhanced liability for wasted funds, and wrongful conduct, and shall citizen panels conduct employment security hearings?—Filed on April 11, 1997 by Patrick M. Crawford of Little Rock. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 203 (Shall the State apply to Congress to call a federal constitutional convention to consider proposed constitutional amendments calling for nationwide electronic voting on certain matters?—Filed on April 3, 1997 by William Walker of Auburn. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 204 (Shall officials be subject to new salary limitations, increased liability for wrongful conduct, and polygraph examinations, and shall citizen panels conduct employment security hearings?—Filed on April 28, 1997 by Patrick M. Crawford of Olympia. Sponsor failed to submit signatures for checking.
- INITIATIVE TO THE LEGISLATURE NO. 205 (Shall an Office of State Inspector General be created to investigate complaints of government malfeasance, unethical business practices, and judicial abuses?—Filed on April 14, 1997 by Maximus T. Englerius of Seattle. Sponsor failed to submit signatures for checking.

INITIATIVES TO THE LEGISLATURE

INITIATIVE TO THE LEGISLATURE NO. 206 (Shall certain state laws regulating land use and development, including laws governing growth management, land use permit decisions, and regional transportation planning, be repealed?)—Filed on July 1, 1997 by James L. Morrison of Yakima. Sponsor failed to submit signatures for checking.

INITIATIVE TO THE LEGISLATURE NO. 207 (Shall public education be exempt from spending limit and tax increase conditions of Initiative 601, appropriations be made, and public education laws be revised?)—Filed on June 30, 1997 by Kaye M. Pethe and Daniel A. Decker of Lake Forest Park. Sponsors failed to submit signatures for checking.

INITIATIVE TO THE LEGISLATURE NO. 208 (Shall a youth athletic facilities council be created to prepare a state-wide plan to develop youth athletic facilities, encourage regional coordination, and administer grant programs?)—Filed on September 16, 1997 by Malcolm S. Sotebeer of Seattle. Sponsor failed to submit signatures for checking.

REFERENDUM BILLS
(SUPPLEMENTING 1996 LAWS, PAGE 1876)

(Measures passed by the Legislature and referred to the voters)

REFERENDUM BILL NO. 46 (Section 2, Chapter 2, Laws of 1997, Regular Session, Relating to **property taxes**.)—Measure was not submitted to the voters as Referendum Bill No. 46, but was submitted as Referendum Bill No. 47.

REFERENDUM BILL NO. 47 (Chapter 3, Laws of 1997, Regular Session, Shall property taxes be limited by modifying the 106 percent limit, allowing property valuation increases to be spread over time, and reducing the state levy?)—Measure submitted to voters for decision at the November 4, 1997 general election and was approved by the following vote: **For—1,009,309 Against—579,620.**

REFERENDUM BILL NO. 48 (Chapter 220, Laws of 1997, Regular Session, Shall a public stadium authority be authorized to build and operate a football/soccer stadium and exhibition center financed by tax revenues and private contributions?)—Measure submitted to the voters for decision at the June 17, 1997 special election and was approved by the following vote: **For—820,364 Against—783,584.**

**HISTORY OF CONSTITUTIONAL AMENDMENTS
ADOPTED SINCE STATEHOOD**

(SUPPLEMENTING 1996 LAWS, PAGE 1881)

No. 90 Section 2, Article VII. Re: **Limitation on levies.** Adopted November, 1997.

No. 91 Section 10, Article VIII. Re: **Energy, water, or stormwater or sewer services conservation assistance.** Adopted November, 1997.