

**2022**

**SESSION LAWS**

OF THE

**STATE OF WASHINGTON**

2022 REGULAR SESSION  
SIXTY-SEVENTH LEGISLATURE  
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## WASHINGTON SESSION LAWS GENERAL INFORMATION

### 1. EDITIONS AVAILABLE.

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

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

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

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

### 3. PARTIAL VETOES.

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

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

### 5. EFFECTIVE DATE OF LAWS.

- (a) The state Constitution provides that unless otherwise qualified, the laws of any session take effect ninety days after adjournment sine die. The Secretary of State has determined the effective date for the Laws of the 2022 regular session is June 9, 2022.
- (b) Laws that carry an emergency clause take effect immediately, or as otherwise specified, 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 2022 laws may be found at the back of the final volume.

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## CHAPTER 178

[House Bill 1280]

## PUBLIC FACILITIES—GREENHOUSE GAS EMISSIONS

AN ACT Relating to greenhouse gas emissions reductions in the design of public facilities; and amending RCW 39.35.010, 39.35.020, 39.35.030, and 39.35.050.

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

**Sec. 1.** RCW 39.35.010 and 2015 3rd sp.s. c 19 s 2 are each amended to read as follows:

The legislature hereby finds:

(1) That major publicly owned or leased facilities have a significant impact on our state's consumption of energy and emission of greenhouse gases from the buildings sector;

(2) That energy conservation practices including energy management systems, combined heat and power systems, and renewable energy systems adopted for the design, construction, and utilization of such facilities will have a beneficial effect on our overall supply of energy;

(3) That the beneficial effect of the electric output from combined heat and power systems includes both energy and capacity value;

(4) That the cost of the energy consumed by such facilities, and the greenhouse gas emissions associated with that energy consumption, over the life of the facilities shall be considered in addition to the initial cost of constructing such facilities;

(5) That the cost of energy is significant and major facility designs shall be based on the total life-cycle cost, including the initial construction cost, and the cost, over the economic life of a major facility, of the energy consumed, and of the operation and maintenance of a major facility as they affect energy consumption, including the costs associated with greenhouse gas emissions from energy consumption; and

(6) That the use of energy systems in these facilities which utilize combined heat and power or renewable resources such as solar energy, wood or wood waste, or other nonconventional fuels, and which incorporate energy management systems, shall be considered in the design of all publicly owned or leased facilities.

**Sec. 2.** RCW 39.35.020 and 2015 3rd sp.s. c 19 s 3 are each amended to read as follows:

The legislature declares that it is the public policy of this state to ensure that energy conservation practices, greenhouse gas emissions reduction practices, and renewable energy systems are employed in the design of major publicly owned or leased facilities and that the use of all-electric energy systems and at least one renewable energy or combined heat and power system is considered. To this end the legislature authorizes and directs that public agencies analyze the cost of energy consumption of each major facility and each critical governmental facility to be planned and constructed or renovated after September 8, 1975.

**Sec. 3.** RCW 39.35.030 and 2015 3rd sp.s. c 19 s 4 are each 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) "Combined heat and power" means the sequential generation of electricity and useful thermal energy from a common fuel source where, under normal operating conditions, the facility has a useful thermal energy output of no less than thirty-three percent of the total energy output.

(2) "Critical governmental facility" means a building or district energy system owned by the state or a political subdivision of the state that is expected to:

(a) Be continuously occupied;  
(b) Maintain operations for at least six thousand hours each year;  
(c) Have a peak electricity demand exceeding five hundred kilowatts; and  
(d) Serve a critical public health or public safety function during a natural disaster or other emergency situation that may result in a widespread power outage, including a:

- (i) Command and control center;
- (ii) Shelter;
- (iii) Prison or jail;
- (iv) Police or fire station;
- (v) Communications or data center;
- (vi) Water or wastewater treatment facility;
- (vii) Hazardous waste storage facility;
- (viii) Biological research facility;
- (ix) Hospital; or
- (x) Food preparation or food storage facility.

(3) "Department" means the state department of enterprise services.

(4) "Design standards" means the heating, air-conditioning, ventilating, and renewable resource systems identified, analyzed, and recommended by the department as providing an efficient energy system or systems based on the economic life of the selected buildings.

(5) "Economic life" means the projected or anticipated useful life of a major facility as expressed by a term of years.

(6) "Energy management system" means a program, energy efficiency equipment, technology, device, or other measure including, but not limited to, a management, educational, or promotional program, smart appliance, meter reading system that provides energy information capability, computer software or hardware, communications equipment or hardware, thermostat or other control equipment, together with related administrative or operational programs, that allows identification and management of opportunities for improvement in the efficiency of energy use, including but not limited to a measure that allows:

(a) Energy consumers to obtain information about their energy usage and the cost of energy in connection with their usage;

(b) Interactive communication between energy consumers and their energy suppliers;

(c) Energy consumers to respond to energy price signals and to manage their purchase and use of energy; or

(d) For other kinds of dynamic, demand-side energy management.

(7) "Energy systems" means all utilities, including, but not limited to, heating, air-conditioning, ventilating, lighting, and the supplying of domestic hot water.



(8)(a) "Energy-consumption analysis" means the evaluation of all energy systems and components by demand and type of energy including the internal energy load imposed on a major facility or a critical governmental facility by its occupants, equipment, and components, and the external energy load imposed on a major facility or a critical governmental facility by the climatic conditions of its location. An energy-consumption analysis of the operation of energy systems of a major facility or a critical governmental facility shall include, but not be limited to, the following elements:

~~((+))~~ (i) The comparison of three or more system alternatives, at least one of which shall include renewable energy systems, and one of which shall ~~((comply at a minimum with the sustainable design guidelines of the United States green building council leadership in energy and environmental design silver standard or similar design standard as may be adopted by rule by the department))~~ include all-electric energy systems;

~~((+))~~ (ii) The simulation of each system over the entire range of operation of such facility for a year's operating period;

~~((+))~~ (iii) The evaluation of the energy consumption of component equipment in each system considering the operation of such components at other than full or rated outputs;

~~((+))~~ (iv) The identification and analysis of critical loads for each energy system; and

~~((+))~~ (v) For a critical governmental facility, a combined heat and power system feasibility assessment, including but not limited to an evaluation of:

~~((+))~~ (A) Whether equipping the facility with a combined heat and power system would result in expected energy savings in excess of the expected costs of purchasing, operating, and maintaining the system over a fifteen-year period; and ~~((+))~~ (B) the cost of integrating the variability of combined heat and power resources.

(b) The energy-consumption analysis shall be prepared by a professional engineer or licensed architect who may use computers or such other methods as are capable of producing predictable results.

(9) "Greenhouse gas" has the same meaning as provided in RCW 70A.45.010.

(10) "Initial cost" means the moneys required for the capital construction or renovation of a major facility.

~~((+))~~ (11) "Life-cycle cost" means the initial cost and cost of operation of a major facility or a critical governmental facility over its economic life. This shall be calculated as the initial cost plus the operation, maintenance, and energy costs over its economic life, reflecting anticipated increases in these costs discounted to present value at the current rate for borrowing public funds, as determined by the office of financial management. The energy cost projections used shall be those provided by the department. The department shall update these projections at least every two years.

~~((+))~~ (12) "Life-cycle cost analysis" includes, but is not limited to, the following elements:

(a) The coordination and positioning of a major facility or a critical governmental facility on its physical site;

(b) The amount and type of fenestration employed in a major facility or a critical governmental facility;

(c) The amount of insulation incorporated into the design of a major facility or a critical governmental facility;

(d) The variable occupancy and operating conditions of a major facility or a critical governmental facility; and

(e) An energy-consumption analysis of a major facility or a critical governmental facility.

~~((+2))~~ (13) "Major facility" means any publicly owned or leased building having twenty-five thousand square feet or more of usable floor space.

~~((+3))~~ (14) "Public agency" means every state office, officer, board, commission, committee, bureau, department, and all political subdivisions of the state.

~~((+4))~~ (15) "Renewable energy systems" means methods of facility design and construction and types of equipment for the utilization of renewable energy sources including, but not limited to, hydroelectric power, active or passive solar space heating or cooling, domestic solar water heating, windmills, waste heat, biomass and/or refuse-derived fuels, photovoltaic devices, and geothermal energy.

~~((+5))~~ (16) "Renovation" means additions, alterations, or repairs within any twelve-month period which exceed fifty percent of the value of a major facility or a critical governmental facility and which will affect any energy system.

~~((+6))~~ (17) "Selected buildings" means educational, office, residential care, and correctional facilities that are designed to comply with the design standards analyzed and recommended by the department.

**Sec. 4.** RCW 39.35.050 and 2001 c 214 s 17 are each amended to read as follows:

The department, in consultation with affected public agencies, shall develop and issue guidelines for administering this chapter. The purpose of the guidelines is to define a procedure and method for performance of life-cycle cost analysis to promote the selection of low-life-cycle cost alternatives. At a minimum, the guidelines must contain provisions that:

(1) Address energy considerations during the planning phase of the project;

(2) Identify energy components and system alternatives including energy management systems, all-electric energy systems, renewable energy systems, and ~~((cogeneration))~~ combined heat and power applications prior to commencing the energy consumption analysis;

(3) Identify simplified methods to assure the lowest life-cycle cost alternatives for selected buildings with between twenty-five thousand and one hundred thousand square feet of usable floor area;

(4) Establish times during the design process for preparation, review, and approval or disapproval of the life-cycle cost analysis;

(5) Specify the assumptions to be used for escalation and inflation rates, equipment service lives, economic building lives, and maintenance costs;

(6) Determine life-cycle cost analysis format and submittal requirements to meet the provisions of chapter 201, Laws of 1991;

(7) Provide for review and approval of life-cycle cost analysis.

Passed by the House January 21, 2022.

Passed by the Senate March 1, 2022.

Approved by the Governor March 25, 2022.  
 Filed in Office of Secretary of State March 28, 2022.

## CHAPTER 179

[Engrossed Second Substitute House Bill 1663]

### LANDFILLS—METHANE EMISSIONS

AN ACT Relating to reducing methane emissions from landfills; amending RCW 70A.65.080, 70A.15.1010, and 70A.65.260; reenacting and amending RCW 70A.15.3160; adding a new chapter to Title 70A RCW; and prescribing penalties.

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

**NEW SECTION. Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Active municipal solid waste landfill" means a municipal solid waste landfill that has accepted or is accepting solid waste for disposal and has not been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution does not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Ambient air" means the surrounding outside air.

(4) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(5) "Closed municipal solid waste landfill" means a municipal solid waste landfill that is no longer accepting solid waste for disposal and has been closed in accordance with the requirements set forth in WAC 173-351-500 as it existed on January 10, 2022.

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

(7) "Emission" means a release of air contaminants into the ambient air.

(8) "Gas collection system" means any system that employs various gas collection wells and connected piping, and mechanical blowers, fans, pumps, or compressors to create a pressure gradient and actively extract landfill gas.

(9) "Gas control device" means any device used to dispose of or treat collected landfill gas including, but not limited to, enclosed flares, internal combustion engines, boilers and boiler-to-steam turbine systems, fuel cells, and gas turbines.

(10) "Gas control system" means any system that disposes of or treats collected landfill gas by one or more of the following means: Combustion; gas treatment for subsequent sale, or sale for processing offsite, including for transportation fuel and injection into a natural gas pipeline.

(11) "Municipal solid waste landfill" means a discrete area of land or an excavation that receives household waste and that is not a land application site, surface impoundment, injection well, or pile.

(12) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

**NEW SECTION. Sec. 2.** (1) This chapter applies to all municipal solid waste landfills that received solid waste after January 1, 1992, except as provided in subsection (2) of this section.

(2) This chapter does not apply to the following landfills:

(a) Landfills that receive only hazardous waste, or are currently regulated under the comprehensive environmental response, compensation, and liability act, 42 U.S.C. chapter 103; and

(b) Landfills that receive only inert waste or nondecomposable wastes.

(3) The department must adopt rules to implement this chapter. The rules adopted by the department must be informed by landfill methane regulations adopted by the California air resources board, the Oregon environmental quality commission, and the United States environmental protection agency.

**NEW SECTION. Sec. 3.** (1) Each owner or operator of an active municipal solid waste landfill having fewer than 450,000 tons of waste in place must submit an annual waste in place report to the department or local authority pursuant to section 7 of this act.

(a) The waste in place report must be prepared for the period of January 1st through December 31st of each year. The report must be submitted to the department or local authority during the subsequent calendar year, with the date of submission to be established by rule as adopted by the department.

(b) The waste in place report must be submitted annually until either:

(i) The active municipal solid waste landfill reaches a size greater than or equal to 450,000 tons of waste in place; or

(ii) The owner or operator submits a closure notification pursuant to section 7 of this act.

(2) Each owner or operator of either an active municipal solid waste landfill having greater than or equal to 450,000 tons of waste in place or a closed municipal solid waste landfill having greater than or equal to 750,000 tons of waste in place must calculate the landfill gas heat input capacity pursuant to section 8 of this act and the department's implementing rules and must submit a landfill gas heat input capacity report to the department or local authority.

(a) If the calculated landfill gas heat input capacity is less than 3,000,000 British thermal units per hour recovered, the owner or operator must:

(i) Recalculate the landfill gas heat input capacity annually using the procedures specified in section 8 of this act and the department's implementing rules; and

(ii) Submit an annual landfill gas heat input capacity report to the department or local authority until either of the following conditions are met:

(A) The calculated landfill gas heat input capacity is greater than or equal to 3,000,000 British thermal units per hour recovered; or

(B) If the municipal solid waste landfill is active, the owner or operator submits a closure notification pursuant to section 7 of this act.

(b) If the landfill gas heat input capacity is greater than or equal to 3,000,000 British thermal units per hour recovered, the owner or operator must either:

(i) Comply with the requirements of this chapter and the department's implementing rules; or

(ii) Demonstrate to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of methane of 200 parts per million by volume or greater using the instantaneous surface monitoring procedures specified in section 8 of this act and the department's implementing rules. Based on the monitoring results, the owner or operator must do one of the following:

(A) If there is any measured concentration of methane of 200 parts per million by volume or greater from the surface of an active, inactive, or closed municipal solid waste landfill, comply with this chapter and the department's implementing rules adopted pursuant to section 2 of this act;

(B) If there is no measured concentration of methane of 200 parts per million by volume or greater from the surface of an active municipal solid waste landfill, recalculate the landfill gas heat input capacity annually as required in (a) of this subsection until such time that the owner or operator submits a closure notification pursuant to section 7 of this act and the department's implementing rules adopted pursuant to section 2 of this act; or

(C) If there is no measured concentration of methane of 200 parts per million by volume or greater from the surface of a closed or inactive municipal solid waste landfill, the requirements of this chapter and the department's implementing rules adopted pursuant to section 2 of this act no longer apply, provided that the following information is submitted to and approved by the department or local authority:

(I) A waste in place report pursuant to section 7 of this act and the department's implementing rules adopted pursuant to section 2 of this act; and

(II) All instantaneous surface monitoring records.

**NEW SECTION. Sec. 4.** (1) The owner or operator of any municipal solid waste landfill that has a calculated landfill gas heat input capacity greater than or equal to 3,000,000 British thermal units per hour recovered must install a gas collection and control system that meets the requirements of this section and the department's implementing rules adopted pursuant to section 2 of this act, unless the owner or operator demonstrates to the satisfaction of the department or local authority that after four consecutive quarterly monitoring periods there is no measured concentration of methane of 200 parts per million by volume or greater using the instantaneous surface monitoring procedures specified in section 8 of this act and the department's implementing rules adopted pursuant to section 2 of this act. If a municipal solid waste landfill partners with a third party to operate all or a portion of the gas collection and control system or energy recovery device, the obligation to comply with the requirements of this chapter are the responsibility of the owner or operator of the relevant portion of the gas collection and control system or energy recovery device.

(2) The gas collection and control system must handle the expected gas generation flow rate from the entire area of the municipal solid waste landfill and must collect gas at an extraction rate to comply with the surface methane emission limits set forth in section 5 of this act and the department's implementing rules.

(3) The gas collection and control system must be designed and operated so that there is no landfill gas leak that exceeds 500 parts per million by volume, measured as methane, at any component under positive pressure.

(4) The gas collection and control system, if it uses a flare, must achieve a methane destruction efficiency of at least 99 percent by weight and must use either an enclosed flare or, if the system uses an open flare, the open flare must comply with the following requirements:

(a) The open flare must meet the requirements of 40 C.F.R. Sec. 60.18 (as last amended by 73 Fed. Reg. 78209, December 22, 2008);

(b) An open flare installed and operating prior to December 31, 2022, may operate until January 1, 2032, unless the owner or operator demonstrates to the satisfaction of the department or local authority that the landfill gas heat input capacity is less than 3,000,000 British thermal units per hour pursuant to section 8 of this act and the department's implementing rules adopted pursuant to section 2 of this act and is insufficient to support the continuous operation of an enclosed flare or other gas control device; and

(c) The owner or operator may temporarily operate an open flare during the repair or maintenance of the gas control system, or while awaiting the installation of an enclosed flare, or to address offsite gas migration issues. Any owner or operator seeking to temporarily operate an open flare must submit a written request to the department or local authority pursuant to section 10 of this act and the department's implementing rules adopted pursuant to section 2 of this act.

(5) If the gas collection and control system does not use a flare, it must either route the collected gas to an energy recovery device or devices, or must route the collected gas to a treatment system that processes the collected gas for subsequent sale or use.

(6) If a gas collection and control system routes the collected gas to an energy recovery device or devices, the owner or operator of the energy recovery device or devices must comply with the following requirements:

(a) The device or devices must achieve a methane destruction efficiency of at least 97 percent by weight, except for lean-burn internal combustion engines that were installed and operating prior to January 1, 2022, which must reduce the outlet methane concentration to less than 3,000 parts per million by volume, dry basis corrected to 15 percent oxygen; and

(b) If a boiler or a process heater is used as the gas control device, the landfill gas stream must be introduced into the flame zone, except that where the landfill gas is not the primary fuel for the boiler or process heater, introduction of the landfill gas stream into the flame zone is not required.

(7) If a gas collection and control system routes the collected gas to a treatment system that processes the collected gas for subsequent sale or use, the owner or operator of the treatment system must ensure the system achieves a methane leak rate of three percent or less by weight. Venting of processed landfill gas to the ambient air is not allowed. If the processed landfill gas cannot be routed for subsequent sale or use, then the treated landfill gas must be controlled according to subsection (4) of this section.

(8) The owner or operator of a municipal solid waste landfill must conduct a source test for any gas control device or devices subject to this section using the test methods identified in section 8 of this act and the department's implementing rules adopted pursuant to section 2 of this act. If a gas control device is currently in compliance with source testing requirements as of the effective date of this section, the owner or operator must conduct the source test no less frequently

than once every five years. If a gas control device is currently not in compliance with source testing requirements as of the effective date of this section, or if a subsequent source test shows the gas control device is out of compliance, the owner or operator must conduct the source test no less frequently than once per year until two subsequent consecutive tests both show compliance. Upon two subsequent consecutive compliant tests, the owner or operator may return to conducting the source test no less frequently than once every five years.

**NEW SECTION. Sec. 5.** (1) Except as provided in section 4 of this act, beginning January 1st of the year following the year in which the department adopts rules to implement this chapter, or upon commencing operation of a newly installed gas collection and control system or modification of an existing gas collection and control system pursuant to section 4 of this act, whichever is later, and except as provided by the department to accommodate significant technological improvements, which may include the installation of an energy recovery device or devices, not to exceed 24 months after the department adopts rules to implement this chapter, no location on a municipal solid waste landfill surface may exceed the following methane concentration limits, dependent upon whether the owner or operator of the municipal solid waste landfills conducts, pursuant to section 6 of this act, instantaneous surface emissions monitoring or integrated surface emissions monitoring:

(a) Five hundred parts per million by volume, other than nonrepeatable, momentary readings, as determined by instantaneous surface emissions monitoring; or

(b) An average methane concentration limit of 25 parts per million by volume as determined by integrated surface emissions monitoring.

(2) Any reading exceeding the limits set forth in subsection (1) of this section must be recorded as an exceedance and the following actions must be taken:

(a) The owner or operator must record the date, location, and value of each exceedance, along with retest dates and results. The location of each exceedance must be clearly marked and identified on a topographic map of the municipal solid waste landfill, drawn to scale, with the location of both the monitoring grids and the gas collection system clearly identified; and

(b) The owner or operator must take corrective action, which may include, but not be limited to, maintenance or repair of the cover, or well vacuum adjustments. The location or locations of any exceedance must be remonitored within 10 calendar days of a measured exceedance.

(3) The requirements of this section do not apply to:

(a) The working face of the landfill;

(b) Areas of the landfill surface where the landfill cover material has been removed for the purpose of installing, expanding, replacing, or repairing components of the landfill cover system, the landfill gas collection and control system, the leachate collection and removal system, or a landfill gas condensate collection and removal system;

(c) Areas of the landfill surface where the landfill cover material has been removed for law enforcement activities requiring excavation; or

(d) Areas of the landfill in which the landfill owner or operator, or a designee of the owner or operator, is engaged in active mining for minerals or metals.

**NEW SECTION. Sec. 6.** (1) The owner or operator of a municipal solid waste landfill with a gas collection and control system must conduct instantaneous or integrated surface monitoring of the landfill surface according to the requirements specified in implementing rules adopted by the department pursuant to section 2 of this act.

(2) The owner or operator of a municipal solid waste landfill with a gas collection and control system must monitor the gas control system according to the requirements specified in implementing rules adopted by the department pursuant to section 2 of this act.

(3) The owner or operator of a municipal solid waste landfill with a gas collection and control system must monitor each individual wellhead to determine the gauge pressure according to the requirements specified in implementing rules adopted by the department pursuant to section 2 of this act.

**NEW SECTION. Sec. 7.** (1) The owner or operator of a municipal solid waste landfill must maintain records and prepare reports as prescribed in this section and in the department's implementing rules adopted pursuant to section 2 of this act.

(2) The owner or operator of a municipal solid waste landfill must maintain records related to monitoring, testing, landfill operations, and the operation of the gas control device, gas collection system, and gas control system. The records must be provided by the owner or operator to the department or local authority within five business days of a request from the department or local authority.

(3) The owner or operator of a municipal solid waste landfill that ceases to accept waste must submit a closure notification to the department or local authority within 30 days of ceasing to accept waste.

(4) The owner or operator of a municipal solid waste landfill must submit a gas collection and control system equipment removal report to the department or local authority within 30 days of well capping or the removal or cessation of operation of the gas collection, treatment, or control system equipment.

(5) The owner or operator of either an active municipal solid waste landfill with 450,000 or more tons of waste in place or a closed municipal solid waste landfill with 750,000 or more tons of waste in place must prepare an annual report for the period of January 1st through December 31st of each year. The annual report must include a calculation of landfill gas heat input capacity. Each annual report must be submitted to the department and local authority during the subsequent calendar year, with the date of submission to be established through rules adopted by the department.

(6) The owner or operator of an active municipal solid waste landfill with fewer than 450,000 tons of waste in place must submit a waste in place report to the department or local authority.

**NEW SECTION. Sec. 8.** (1) Any instrument used for the measurement of methane must be a hydrocarbon detector or other equivalent instrument approved by the department or local authority based on standards adopted by the department that address calibration, specifications, and performance criteria.

(2) The determination of landfill gas heat input capacity must be calculated consistent with the department's implementing rules adopted pursuant to section 2 of this act.



(3) The owner or operator of a municipal solid waste landfill must measure the landfill surface concentration of methane using a hydrocarbon detector meeting the requirements of this section and the department's implementing rules adopted pursuant to section 2 of this act.

(4) The owner or operator of a municipal solid waste landfill must measure leaks using a hydrocarbon detector meeting the requirements of this section and the department's implementing rules adopted pursuant to section 2 of this act.

(5) The expected gas generation flow rate must be determined according to the department's implementing rules adopted pursuant to section 2 of this act.

(6) The control device destruction efficiency must be determined according to the department's implementing rules adopted pursuant to section 2 of this act.

(7) Gauge pressure must be determined using a hand-held manometer, magnehelic gauge, or other pressure measuring device approved by the department or local authority.

(8) Alternative test methods may be used if they are approved in writing by the department or local authority.

**NEW SECTION. Sec. 9.** (1) The department or local authority must allow the capping or removal of the gas collection and control system at a closed municipal solid waste landfill, provided the following three requirements are met:

(a) The gas collection and control system was in operation for at least 15 years, unless the owner or operator demonstrates to the satisfaction of the department or local authority that due to declining methane rates, the municipal solid waste landfill will be unable to operate the gas collection and control system for a 15 year period;

(b) Surface methane concentration measurements do not exceed the limits specified in section 5 of this act; and

(c) The owner or operator submits an equipment removal report to the department or local authority pursuant to section 7 of this act and the department's implementing rules adopted pursuant to section 2 of this act.

(2) Nothing in this section may be interpreted to modify or supersede requirements related to the capping or removal of gas collection and control systems that may exist under the state clean air act, the federal clean air act, or rules adopted pursuant to either the state clean air act or the federal clean air act.

**NEW SECTION. Sec. 10.** (1) The owner or operator of a municipal solid waste landfill may request alternatives to the compliance measures, monitoring requirements, and test methods and procedures set forth in sections 4, 6, and 8 of this act, and the department's implementing rules adopted pursuant to section 2 of this act. Any alternatives requested by the owner or operator must be submitted in writing to the department.

(2) The criteria that the department may use to evaluate alternative compliance option requests include, but are not limited to: Compliance history; documentation containing the landfill gas flow rate and measured methane concentrations for individual gas collection wells or components; permits; component testing and surface monitoring results; gas collection and control system operation, maintenance, and inspection records; and historical meteorological data.

(3) The department must review the requested alternatives and either approve or disapprove the alternatives within 120 days. The department may request that additional information be submitted as part of the review of the requested alternatives.

(4) If a request for an alternative compliance option is denied, the department must provide written reasons for the denial.

(5) The department must deny a request for alternative compliance measures if the request does not provide levels of enforceability or methane emissions control that are equivalent to those set forth in this chapter or in the department's implementing rules adopted pursuant to section 2 of this act.

**NEW SECTION. Sec. 11.** The department or local authority may request that any owner or operator of a municipal solid waste landfill demonstrate that a landfill does not meet the applicability criteria specified in section 2 of this act. Such a demonstration must be submitted to the department or local authority within 90 days of a written request received from the department or local authority.

**NEW SECTION. Sec. 12.** Any person who violates this chapter or any rules that implement this chapter may incur a civil penalty pursuant to RCW 70A.15.3160. The department shall waive penalties in the event the owner or operator of the landfill is actively taking corrective actions to control any methane exceedances. Penalties collected under this section must be deposited into the air pollution control account created in RCW 70A.15.1010 and may only be used to implement chapter 70A.--- RCW (the new chapter created in section 18 of this act).

**NEW SECTION. Sec. 13.** The department and local authorities may assess and collect such fees as may be necessary to recover the direct and indirect costs associated with the implementation of this chapter.

**Sec. 14.** RCW 70A.65.080 and 2021 c 316 s 10 are each amended to read as follows:

(1) A person is a covered entity as of the beginning of the first compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 for any calendar year from 2015 through 2019, or if additional data provided as required by this chapter indicates that emissions for any calendar year from 2015 through 2019 equaled or exceeded any of the following thresholds, or if the person is a first jurisdictional deliverer and imports electricity into the state during the compliance period:

(a) Where the person owns or operates a facility and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent;

(b) Where the person is a first jurisdictional deliverer and generates electricity in the state and emissions associated with this generation equals or exceeds 25,000 metric tons of carbon dioxide equivalent;

(c) Where the person is a first jurisdictional deliverer importing electricity into the state and the cumulative annual total of emissions associated with the imported electricity, whether from specified or unspecified sources, exceeds 25,000 metric tons of carbon dioxide equivalent. In consultation with any linked jurisdiction to the program created by this chapter, by October 1, 2026, the department, in consultation with the department of commerce and the utilities

and transportation commission, shall adopt by rule a methodology for addressing imported electricity associated with a centralized electricity market;

(d) Where the person is a supplier of fossil fuel other than natural gas and from that fuel 25,000 metric tons or more of carbon dioxide equivalent emissions would result from the full combustion or oxidation, excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington; and

(e)(i) Where the person supplies natural gas in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts for fuel products that are produced or imported with a documented final point of delivery outside of Washington and combusted outside of Washington, and excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) delivered to opt-in entities;

(ii) Where the person who is not a natural gas company and has a tariff with a natural gas company to deliver to an end-use customer in the state in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) the amounts delivered to opt-in entities;

(iii) Where the person is an end-use customer in the state who directly purchases natural gas from a person that is not a natural gas company and has the natural gas delivered through an interstate pipeline to a distribution system owned by the purchaser in amounts that would result in exceeding 25,000 metric tons of carbon dioxide equivalent emissions if fully combusted or oxidized, excluding the amounts: (A) Supplied to covered entities under (a) through (d) of this subsection; and (B) delivered to opt-in entities.

(2) A person is a covered entity as of the beginning of the second compliance period and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2023 through 2025, where the person owns or operates a waste to energy facility utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

(3)~~((a))~~ A person is a covered entity beginning January 1, 2031, and all subsequent compliance periods if the person reported emissions under RCW 70A.15.2200 or provided emissions data as required by this chapter for any calendar year from 2027 through 2029, where the person owns or operates a~~((~~

~~(i) Landfill utilized by a county and city solid waste management program and the facility's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent; or~~

~~(ii) Railroad))~~ railroad company, as that term is defined in RCW 81.04.010, and the railroad company's emissions equal or exceed 25,000 metric tons of carbon dioxide equivalent.

~~((b) Subsection (a) of this subsection does not apply to owners or operators of landfills that:~~

~~(i) Capture at least 75 percent of the landfill gas generated by the decomposition of waste using methods under 40 C.F.R. Part 98, Subpart HH—Municipal Solid Waste landfills, and subsequent updates; and~~

~~(ii) Operate a program, individually or through partnership with another entity, that results in the production of renewable natural gas or electricity from landfill gas generated by the facility.~~

~~(e) It is the intent of the legislature to adopt a greenhouse gas reduction policy specific to landfills. If such a policy is not enacted by January 1, 2030, the requirements of this subsection (3) take full effect.)~~

(4) When a covered entity reports, during a compliance period, emissions from a facility under RCW 70A.15.2200 that are below the thresholds specified in subsection (1) or (2) of this section, the covered entity continues to have a compliance obligation through the current compliance period. When a covered entity reports emissions below the threshold for each year during an entire compliance period, or has ceased all processes at the facility requiring reporting under RCW 70A.15.2200, the entity is no longer a covered entity as of the beginning of the subsequent compliance period unless the department provides notice at least 12 months before the end of the compliance period that the facility's emissions were within 10 percent of the threshold and that the person will continue to be designated as a covered entity in order to ensure equity among all covered entities. Whenever a covered entity ceases to be a covered entity, the department shall notify the appropriate policy and fiscal committees of the legislature of the name of the entity and the reason the entity is no longer a covered entity.

(5) For types of emission sources described in subsection (1) of this section that begin or modify operation after January 1, 2023, and types of emission sources described in subsection (2) of this section that begin or modify operation after 2027, coverage under the program starts in the calendar year in which emissions from the source exceed the applicable thresholds in subsection (1) or (2) of this section, or upon formal notice from the department that the source is expected to exceed the applicable emissions threshold, whichever happens first. Sources meeting these conditions are required to transfer their first allowances on the first transfer deadline of the year following the year in which their emissions were equal to or exceeded the emissions threshold.

(6) For emission sources described in subsection (1) of this section that are in operation or otherwise active between 2015 and 2019 but were not required to report emissions for those years under RCW 70A.15.2200 for the reporting periods between 2015 and 2019, coverage under the program starts in the calendar year following the year in which emissions from the source exceed the applicable thresholds in subsection (1) of this section as reported pursuant to RCW 70A.15.2200 or provided as required by this chapter, or upon formal notice from the department that the source is expected to exceed the applicable emissions threshold for the first year that source is required to report emissions, whichever happens first. Sources meeting these criteria are required to transfer their first allowances on the first transfer deadline of the year following the year in which their emissions, as reported under RCW 70A.15.2200 or provided as required by this chapter, were equal to or exceeded the emissions threshold.

(7) The following emissions are exempt from coverage in the program, regardless of the emissions reported under RCW 70A.15.2200 or provided as required by this chapter:

(a) Emissions from the combustion of aviation fuels;

(b) Emissions from watercraft fuels supplied in Washington that are combusted outside of Washington;

(c) Emissions from a coal-fired electric generation facility exempted from additional greenhouse gas limitations, requirements, or performance standards under RCW 80.80.110;

(d) Carbon dioxide emissions from the combustion of biomass or biofuels;

(e)(i) Motor vehicle fuel or special fuel that is used exclusively for agricultural purposes by a farm fuel user. This exemption is available only if a buyer of motor vehicle fuel or special fuel provides the seller with an exemption certificate in a form and manner prescribed by the department. For the purposes of this subsection, "agricultural purposes" and "farm fuel user" have the same meanings as provided in RCW 82.08.865.

(ii) The department must determine a method for expanding the exemption provided under (e)(i) of this subsection to include fuels used for the purpose of transporting agricultural products on public highways. The department must maintain this expanded exemption for a period of five years, in order to provide the agricultural sector with a feasible transition period; ~~(and)~~

(f) Emissions from facilities with North American industry classification system code 92811 (national security); and

(g) Emissions from municipal solid waste landfills that are subject to, and in compliance with, chapter 70A.--- RCW (the new chapter created in section 18 of this act).

(8) The department shall not require multiple covered entities to have a compliance obligation for the same emissions. The department may by rule authorize refineries, fuel suppliers, facilities using natural gas, and natural gas utilities to provide by agreement for the assumption of the compliance obligation for fuel or natural gas supplied and combusted in the state. The department must be notified of such an agreement at least 12 months prior to the compliance obligation period for which the agreement is applicable.

(9)(a) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other locations. The legislature further intends to see innovative new businesses locate and grow in Washington that contribute to Washington's prosperity and environmental objectives.

(b) Consistent with the intent of the legislature to avoid the leakage of emissions to other jurisdictions, in achieving the state's greenhouse gas limits in RCW 70A.45.020, the state, including lead agencies under chapter 43.21C RCW, shall pursue the limits in a manner that recognizes that the siting and placement of new or expanded best-in-class facilities with lower carbon emitting processes is in the economic and environmental interests of the state of Washington.

(c) In conducting a life-cycle analysis, if required, for new or expanded facilities that require review under chapter 43.21C RCW, a lead agency must evaluate and attribute any potential net cumulative greenhouse gas emissions resulting from the project as compared to other existing facilities or best

available technology including best-in-class facilities and emerging lower carbon processes that supply the same product or end use. The department may adopt rules to determine the appropriate threshold for applying this analysis.

(d) Covered emissions from an entity that is or will be a covered entity under this chapter may not be the basis for denial of a permit for a new or expanded facility. Covered emissions must be included in the analysis undertaken pursuant to (c) of this subsection. Nothing in this subsection requires a lead agency or a permitting agency to approve or issue a permit to a permit applicant, including to a new or expanded fossil fuel project.

(e) A lead agency under chapter 43.21C RCW or a permitting agency shall allow a new or expanded facility that is a covered entity or opt-in entity to satisfy a mitigation requirement for its covered emissions under chapter 316, Laws of 2021 and under any greenhouse gas emission mitigation requirements for covered emissions under chapter 43.21C RCW by submitting to the department the number of compliance instruments equivalent to its covered emissions during a compliance period.

**Sec. 15.** RCW 70A.15.3160 and 2021 c 317 s 25, 2021 c 315 s 16, and 2021 c 132 s 1 are each reenacted and amended to read as follows:

(1)(a) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of this chapter, chapter 70A.25, 70A.60, 70A.450, ~~((or 70A.60))~~ 70A.535 ((RCW)), or ~~70A.---~~ RCW (the new chapter created in section 18 of this act), RCW 76.04.205, or any of the rules in force under such chapters or section may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation. Enforcement actions related to violations of RCW 76.04.205 must be consistent with the provisions of RCW 76.04.205.

(b) Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2)(a) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

(b) The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4)(a) Except as provided in (b) of this subsection, all penalties recovered under this section by the department or the department of natural resources shall be paid into the state treasury and credited to the air pollution control account established in RCW 70A.15.1010 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for

the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(b) All penalties recovered for violations of chapter 70A.60 RCW must be paid into the state treasury and credited to the refrigerant emission management account created in RCW 70A.60.050.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly underreporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) The department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan.

**Sec. 16.** RCW 70A.15.1010 and 2021 c 315 s 13 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 70A.15.2200(2), and receipts from nonpermit program sources under RCW 70A.15.2210(1) and 70A.15.2230(7), and all receipts from RCW 70A.15.5090 (~~and~~), 70A.15.5120, and section 12 of this act 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 this chapter, chapters 70A.25 and 70A.--- (the new chapter created in section 18 of this act) RCW, and RCW 70A.60.060. Moneys collected under section 12 of this act may only be used to implement chapter 70A.--- RCW (the new chapter created in section 18 of this act).

(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 70A.15.2210(1), 70A.15.2260, 70A.15.2270, and 70A.15.2230(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70A.15.2210(1), 70A.15.2260, 70A.15.2270, and 70A.15.2230(7). Moneys in the account may be spent only after appropriation.

**Sec. 17.** RCW 70A.65.260 and 2021 c 316 s 29 are each amended to read as follows:

(1) The climate commitment account is created in the state treasury. The account must receive moneys distributed to the account from the climate investment account created in RCW 70A.65.250. Moneys in the account may be spent only after appropriation. Projects, activities, and programs eligible for funding from the account must be physically located in Washington state and include, but are not limited to, the following:

(a) Implementing the working families tax rebate in RCW 82.08.0206;

(b) Supplementing the growth management planning and environmental review fund established in RCW 36.70A.490 for the purpose of making grants or loans to local governments for the purposes set forth in RCW 43.21C.240, 43.21C.031, 36.70A.500, and 36.70A.600, for costs associated with RCW 36.70A.610, and to cover costs associated with the adoption of optional elements of comprehensive plans consistent with RCW 43.21C.420;

(c) Programs, activities, or projects that reduce and mitigate impacts from greenhouse gases and copollutants in overburdened communities, including strengthening the air quality monitoring network to measure, track, and better understand air pollution levels and trends and to inform the analysis, monitoring, and pollution reduction measures required in RCW 70A.65.020;

(d) Programs, activities, or projects that deploy renewable energy resources, such as solar and wind power, and projects to deploy distributed generation, energy storage, demand-side technologies and strategies, and other grid modernization projects;

(e) Programs, activities, or projects that increase the energy efficiency or reduce greenhouse gas emissions of industrial facilities including, but not limited to, proposals to implement combined heat and power, district energy, or on-site renewables, such as solar and wind power, to upgrade the energy efficiency of existing equipment, to reduce process emissions, and to switch to less emissions intensive fuel sources;

(f) Programs, activities, or projects that achieve energy efficiency or emissions reductions in the agricultural sector including:

(i) Fertilizer management;

(ii) Soil management;

(iii) Bioenergy;

(iv) Biofuels;

(v) Grants, rebates, and other financial incentives for agricultural harvesting equipment, heavy-duty trucks, agricultural pump engines, tractors, and other equipment used in agricultural operations;

(vi) Grants, loans, or any financial incentives to food processors to implement projects that reduce greenhouse gas emissions;

(vii) Renewable energy projects;



- (viii) Farmworker housing weatherization programs;
- (ix) Dairy digester research and development;
- (x) Alternative manure management; and
- (xi) Eligible fund uses under RCW 89.08.615;

(g) Programs, activities, or projects that increase energy efficiency in new and existing buildings, or that promote low carbon architecture, including use of newly emerging alternative building materials that result in a lower carbon footprint in the built environment over the life cycle of the building and component building materials;

(h) Programs, activities, or projects that promote the electrification and decarbonization of new and existing buildings, including residential, commercial, and industrial buildings;

(i) Programs, activities, or projects that improve energy efficiency, including district energy, and investments in market transformation of high efficiency electric appliances and equipment for space and water heating;

(j) Clean energy transition and assistance programs, activities, or projects that assist affected workers or people with lower incomes during the transition to a clean energy economy, or grow and expand clean manufacturing capacity in communities across Washington state including, but not limited to:

(i) Programs, activities, or projects that directly improve energy affordability and reduce the energy burden of people with lower incomes, as well as the higher transportation fuel burden of rural residents, such as bill assistance, energy efficiency, and weatherization programs;

(ii) Community renewable energy projects that allow qualifying participants to own or receive the benefits of those projects at reduced or no cost;

(iii) Programs, activities, or other worker-support projects for bargaining unit and nonsupervisory fossil fuel workers who are affected by the transition away from fossil fuels to a clean energy economy. Worker support may include, but is not limited to: (A) Full wage replacement, health benefits, and pension contributions for every worker within five years of retirement; (B) full wage replacement, health benefits, and pension contributions for every worker with at least one year of service for each year of service up to five years of service; (C) wage insurance for up to five years for workers reemployed who have more than five years of service; (D) up to two years of retraining costs, including tuition and related costs, based on in-state community and technical college costs; (E) peer counseling services during transition; (F) employment placement services, prioritizing employment in the clean energy sector; and (G) relocation expenses;

(iv) Direct investment in workforce development, via technical education, community college, institutions of higher education, apprenticeships, and other programs including, but not limited to:

(A) Initiatives to develop a forest health workforce established under RCW 76.04.521; and

(B) Initiatives to develop new education programs, emerging fields, or jobs pertaining to the clean energy economy;

(v) Transportation, municipal service delivery, and technology investments that increase a community's capacity for clean manufacturing, with an emphasis on communities in greatest need of job creation and economic development and potential for commute reduction;

(k) Programs, activities, or projects that reduce emissions from landfills and waste-to-energy facilities through diversion of organic materials, methane capture or conversion strategies, ~~((or other means))~~ installation of gas collection devices and gas control systems, monitoring and reporting of methane emissions, or other means, prioritizing funding needed for any activities by local governments to comply with chapter 70A.--- RCW (the new chapter created in section 18 of this act);

(l) Carbon dioxide removal projects, programs, and activities; and

(m) Activities to support efforts to mitigate and adapt to the effects of climate change affecting Indian tribes, including capital investments in support of the relocation of Indian tribes located in areas at heightened risk due to anticipated sea level rise, flooding, or other disturbances caused by climate change. The legislature intends to dedicate at least \$50,000,000 per biennium from the account for purposes of this subsection.

(2) Moneys in the account may not be used for projects or activities that would violate tribal treaty rights or result in significant long-term damage to critical habitat or ecological functions. Investments from this account must result in long-term environmental benefits and increased resilience to the impacts of climate change.

NEW SECTION. Sec. 18. Sections 1 through 13 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. Sec. 19. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the House March 9, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

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## CHAPTER 180

[Engrossed Second Substitute House Bill 1799]

### ORGANIC MATERIALS—VARIOUS PROVISIONS

AN ACT Relating to organic materials management; amending RCW 70A.205.040, 70A.205.015, 69.80.031, 69.80.040, 89.08.615, 43.155.020, 36.70.330, 39.30.040, 70A.455.010, 70A.455.020, 70A.455.040, 70A.455.050, 70A.455.060, 70A.455.070, 70A.455.080, 70A.455.090, 70A.455.100, and 70A.455.030; reenacting and amending RCW 43.21B.110 and 43.21B.300; adding new sections to chapter 70A.205 RCW; adding a new section to chapter 43.21C RCW; adding a new section to chapter 15.04 RCW; adding a new section to chapter 36.70A RCW; adding a new section to chapter 35.63 RCW; adding a new section to chapter 35A.63 RCW; adding new sections to chapter 43.19A RCW; adding a new section to chapter 70A.455 RCW; adding a new chapter to Title 70A RCW; creating new sections; repealing RCW 70A.455.110 and 70A.455.900; and prescribing penalties.

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

NEW SECTION. Sec. 1. (1) The legislature finds that landfills are a significant source of emissions of methane, a potent greenhouse gas. Among other economic and environmental benefits, the diversion of organic materials to productive uses will reduce methane emissions.

(2) In order to reduce methane emissions associated with organic materials, the legislature finds that it will be beneficial to improve a variety of aspects of how organic materials and organic material wastes are reduced, managed, incentivized, and regulated under state law. Therefore, it is the intent of the legislature to support the diversion of organic materials from landfills through a variety of interventions to support productive uses of organic material wastes, including by:

(a) Requiring some local governments to begin providing separated organic material collection services within their jurisdictions in order to increase volumes of organic materials collected and delivered to composting and other organic material management facilities and reduce the volumes of organic materials collected in conjunction with other solid waste and delivered to landfills;

(b) Requiring local governments to consider state organic material management goals and requirements in the development of their local solid waste plans;

(c) Requiring some businesses to manage their organic material wastes in a manner that does not involve landfilling them, in order to address one significant source of organic materials that currently frequently end up in landfills;

(d) Reducing legal liability risk barriers to the donation of edible food in order to encourage the recovery of foods that might otherwise be landfilled;

(e) Establishing the Washington center for sustainable food management within the department of ecology in order to coordinate and improve statewide food waste reduction and diversion efforts;

(f) Establishing various new funding and financial incentives intended to increase composting and other forms of productive organic materials management, helping to make the responsible management of organic materials more cost-competitive with landfilling of organic material wastes;

(g) Facilitating the siting of organic material management facilities in order to ensure that adequate capacity exists to process organic materials at the volumes necessary to achieve state organic material diversion goals;

(h) Encouraging cities and counties to procure more of the compost and finished products created from their organic material wastes in order to support the economic viability of processes to turn organic materials into finished products, and increasing the likelihood that composting and other responsible organic material management options are economically viable; and

(i) Amending standards related to the labeling of plastic and compostable products in order to reduce contamination of the waste streams handled by compost and organic material management facilities and improve the economic viability of those responsible organic material management options.

## PART 1

### State Targets and Organic Material Waste Collection Requirements

NEW SECTION. **Sec. 101.** A new section is added to chapter 70A.205 RCW to read as follows:

(1)(a) The state establishes a goal for the landfill disposal of organic materials at a level representing a 75 percent reduction by 2030 in the statewide disposal of organic material waste, relative to 2015 levels.

(b) The state establishes a goal that no less than 20 percent of the volume of edible food that was disposed of as of 2015 be recovered for human consumption by 2025.

(2) The provisions of subsection (1) of this section are in addition to the food waste reduction goals of RCW 70A.205.715(1).

**NEW SECTION. Sec. 102.** A new section is added to chapter 70A.205 RCW to read as follows:

(1) Beginning January 1, 2027, in each jurisdiction that implements a local solid waste plan under RCW 70A.205.040:

(a) Source-separated organic solid waste collection services must be provided at least every other week or at least 26 weeks annually to:

(i) All residents; and

(ii) Nonresidential customers that generate more than .25 cubic yard per week of organic materials for management; and

(b) All organic solid waste collected from residents and businesses under (a) of this subsection must be managed through organic materials management.

(2) A jurisdiction may charge and collect fees or rates for the services provided under subsection (1) of this section, consistent with the jurisdiction's authority to impose fees and rates under chapters 35.21, 35A.21, 36.58, and 36.58A RCW.

(3)(a) Except as provided in (d) of this subsection, the requirements of this section do not apply in a jurisdiction if the department determines that the following apply:

(i) The jurisdiction disposed of less than 5,000 tons of solid waste in the most recent year for which data is available;

(ii) The jurisdiction has a total population of less than 25,000 people; or

(iii) The jurisdiction has a total population between 25,000 and 50,000 people and curbside organic solid waste collection services are not offered in any area within the jurisdiction, as of July 1, 2022.

(b) The requirements of this section do not apply:

(i) In census tracts that have a population density of less than 75 people per square mile that are serviced by the jurisdiction and located in unincorporated portions of a county, as determined by the department, in counties not planning under chapter 36.70A RCW; and

(ii) Outside of urban growth areas designated pursuant to RCW 36.70A.110 in unincorporated portions of a county planning under chapter 36.70A RCW.

(c) In addition to the exemptions in (a) and (b) of this subsection, the department may issue a renewable waiver to jurisdictions or portions of a jurisdiction under this subsection for up to five years, based on consideration of factors including the distance to organic materials management facilities, the sufficiency of the capacity to manage organic materials at facilities to which organic materials could feasibly and economically be delivered from the jurisdiction, and restrictions in the transport of organic materials under chapter 17.24 RCW. The department may adopt rules to specify the type of information that a waiver applicant must submit to the department and to specify the department's process for reviewing and approving waiver applications.

(d) Beginning January 1, 2030, the department may adopt a rule to require that the provisions of this section apply in the jurisdictions identified in (b) and

(c) of this subsection, but only if the department determines that the goals established in section 101(1) of this act have not or will not be achieved.

(4) Any city that newly begins implementing an independent solid waste plan under RCW 70A.205.040 after July 1, 2022, must meet the requirements of subsection (1) of this section.

**Sec. 103.** RCW 70A.205.040 and 2010 c 154 s 2 are each amended to read as follows:

(1) Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties. The purpose is to plan for solid waste and materials reduction, collection, and handling and management services and programs throughout the state, as designed to meet the unique needs of each county and city in the state. When updating a solid waste management plan developed under this chapter, after June 10, 2010, local comprehensive plans must consider and plan for the following handling methods or services:

(a) Source separation of recyclable materials and products, organic materials, and wastes by generators;

(b) Collection of source separated materials;

(c) Handling and proper preparation of materials for reuse or recycling;

(d) Handling and proper preparation of organic materials for ~~((composting or anaerobic digestion))~~ organic materials management; and

(e) Handling and proper disposal of nonrecyclable wastes.

(2) When updating a solid waste management plan developed under this chapter, after June 10, 2010, each local comprehensive plan must, at a minimum, consider methods that will be used to address the following:

(a) Construction and demolition waste for recycling or reuse;

(b) Organic material including yard debris, food waste, and food contaminated paper products for ~~((composting or anaerobic digestion))~~ organic materials management;

(c) Recoverable paper products for recycling;

(d) Metals, glass, and plastics for recycling; and

(e) Waste reduction strategies.

(3)(a) When newly developing, updating, or amending a comprehensive solid waste management plan developed under this chapter, after July 1, 2024, each local comprehensive solid waste management plan must consider the transition to the requirements of section 102 of this act, and each comprehensive solid waste management plan implemented by a county must identify:

(i) The priority areas within the county for the establishment of organic materials management facilities. Priority areas must be in industrial zones, agricultural zones, or rural zones, and may not be located in overburdened communities identified by the department of ecology under chapter 70A.02 RCW. Priority areas should be designated with an attempt to minimize incompatible uses and potential impacts on residential areas; and

(ii) Organic materials management facility volumetric capacity required to manage the county's organic materials in a manner consistent with the goals of section 101 of this act.

(b) When newly developing, updating, or amending a comprehensive solid waste management plan developed under this chapter, after January 1, 2027,

each local comprehensive solid waste management plan must be consistent with the requirements of section 102 of this act.

(c)(i) Notwithstanding (a) and (b) of this subsection, and except as provided in (c)(ii) of this subsection, a jurisdiction implementing a local comprehensive solid waste management plan under this chapter may not site the increase or expansion of any existing organic materials management facility that processed more than 200,000 tons of material, relative to 2019 levels.

(ii) The limitation in (c)(i) of this subsection does not apply to the siting of any anaerobic digester or anaerobic digestion facility.

(4) Each city shall:

(a) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan;

(b) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or

(c) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

~~((4))~~ (5) Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

~~((5))~~ (6) After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

~~((6))~~ (7) Local governments shall not be required to include a hazardous waste element in their solid waste management plans.

**NEW SECTION. Sec. 104.** (1) The department of ecology must contract with a third-party consultant to conduct a study of the adequacy of local government solid waste management funding, including options and recommendations to provide funding for solid waste programs in the future if significant statewide policy changes are enacted. The department must include the Washington association of county solid waste managers, the association of Washington cities, an association that represents the private sector solid waste industry, and other stakeholders in scoping the study and reviewing the consultant's findings and recommendations prior to submittal to the legislature.

(2) The study must include:

(a) Consideration for jurisdictional type, location, size, service level, and other relevant differences between cities and counties;

(b) A review and update of current funding types and levels available, and their rate of adoption;

(c) The funding needs to implement the solid waste core services model developed by the Washington association of county solid waste managers;

(d) Alternative funding models utilized by other publicly managed solid waste programs in other states or countries that may be relevant to Washington; and

(e) An evaluation of the impacts on solid waste funding resources available to cities and counties from statewide solid waste management policy proposals considered by the legislature or enacted in the last four years, including proposals to:

- (i) Reduce the quantity of organic waste to landfills;
- (ii) Manage products through product stewardship or extended producer responsibility programs;
- (iii) Improve or install new or updated methane capture systems;
- (iv) Increase postconsumer content requirements for materials collected in solid waste programs; and

(v) Other related proposals that may impact solid waste funding resources.

(3) The study must evaluate a range of forecasted fiscal impacts for each type of policy change on local government solid waste management programs, including:

- (a) The level of service provided by local government;
- (b) Costs to the local government;
- (c) Existing revenue levels; and
- (d) The need for additional revenue.

(4) The department must submit the report, including findings and any recommendations, to the appropriate committees of the legislature by July 1, 2023.

**Sec. 105.** RCW 70A.205.015 and 2020 c 20 s 1161 are each amended to read as follows:

~~((As used in this chapter, unless the context indicates otherwise:))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.
- (4) "Department" means the department of ecology.
- (5) "Director" means the director of the department of ecology.
- (6) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (7) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (8) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (9) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.
- (10) "Inert waste landfill" means a landfill that receives only inert waste, as determined under RCW 70A.205.030, and includes facilities that use inert wastes as a component of fill.
- (11) "Jurisdictional health department" means city, county, city-county, or district public health department.

(12) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.

(13) "Local government" means a city, town, or county.

(14) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.

(15) "Multiple-family residence" means any structure housing two or more dwelling units.

(16) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(17) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70A.205.075(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(18) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(19) "Residence" means the regular dwelling place of an individual or individuals.

(20) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70A.226 RCW.

(21) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70A.226 RCW and wastewater as regulated in chapter 90.48 RCW.

(22) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(23) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(24) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(25) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.



(26) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in this section, but does not include biosolids or biosolids products regulated under chapter 70A.226 RCW or wastewaters regulated under chapter 90.48 RCW.

(27) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(28) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter.

(29)(a)(i) "Organic materials" means any solid waste that is a biological substance of plant or animal origin capable of microbial degradation.

(i) Organic materials include, but are not limited to, manure, yard debris, food waste, food processing waste, wood waste, and garden waste.

(b) "Organic materials" does not include any materials contaminated by herbicides, pesticides, pests, or other sources of chemical or biological contamination that would render a finished product of an organic material management process unsuitable for general public or agricultural use.

(30) "Organic materials management" means management of organic materials through composting, anaerobic digestion, vermiculture, black soldier fly, or similar technologies.

## PART 2

### Requirements for Organics Management by Businesses

NEW SECTION. Sec. 201. A new section is added to chapter 70A.205 RCW to read as follows:

(1)(a) Beginning July 1, 2023, and each July 1st thereafter, the department must determine which counties and any cities preparing independent solid waste management plans:

(i) Provide for businesses to be serviced by providers that collect food waste and organic material waste for delivery to solid waste facilities that provide for the organic materials management of organic material waste and food waste; and

(ii) Are serviced by solid waste facilities that provide for the organic materials management of organic material waste and food waste and have capacity to accept increased volumes of organic materials deliveries.

(b)(i) The department must determine and designate that the restrictions of this section apply to businesses in a jurisdiction unless the department determines that the businesses in some or all portions of the city or county have:

(A) No available businesses that collect and deliver organic materials to solid waste facilities that provide for the organic materials management of organic material waste and food waste; or

(B) No available capacity at the solid waste facilities to which businesses that collect and deliver organic materials could feasibly and economically deliver organic materials from the jurisdiction.

(ii)(A) In the event that a county or city provides written notification to the department indicating that the criteria of (b)(i)(A) of this subsection are met, then the restrictions of this section apply only in those portions of the jurisdiction that have available service-providing businesses.

(B) In the event that a county or city provides written notification to the department indicating that the criteria of (b)(i)(B) of this subsection are met, then the restrictions of this section do not apply to the jurisdiction.

(c) The department must make the result of the annual determinations required under this section available on its website.

(d) The requirements of this section may be enforced by jurisdictional health departments consistent with this chapter, except that:

(i) A jurisdictional health department may not charge a fee to permit holders to cover the costs of the jurisdictional health department's administration or enforcement of the requirements of this section; and

(ii) Prior to issuing a penalty under this section, a jurisdictional health department must provide at least two written notices of noncompliance with the requirements of this section to the owner or operator of a business subject to the requirements of this section.

(2)(a)(i) Beginning January 1, 2024, a business that generates at least eight cubic yards of organic material waste per week must arrange for organic materials management services specifically for organic material waste;

(ii) Beginning January 1, 2025, a business that generates at least four cubic yards of organic material waste per week must arrange for organic materials management services specifically for organic material waste; and

(iii) Beginning January 1, 2026, a business that generates at least four cubic yards of solid waste per week shall arrange for organic materials management services specifically for organic material waste, unless the department determines, by rule, that additional reductions in the landfilling of organic materials would be more appropriately and effectively achieved, at reasonable cost to regulated businesses, through the establishment of a different volumetric threshold of solid waste or organic material waste than the threshold of four cubic yards of solid waste per week.

(b) The following wastes do not count for purposes of determining waste volumes in (a) of this subsection:

(i) Wastes that are managed on-site by the generating business;

(ii) Wastes generated from the growth and harvest of food or fiber that are managed off-site by another business engaged in the growth and harvest of food or fiber;

(iii) Wastes that are managed by a business that enters into a voluntary agreement to sell or donate organic materials to another business for off-site use; and

(iv) Wastes generated in exceptional volumes as a result of a natural disaster or other infrequent and unpreventable event.

(3) A business may fulfill the requirements of this section by:

(a) Source separating organic material waste from other waste, subscribing to a service that includes organic material waste collection and organic materials management, and using such a service for organic material waste generated by the business;

(b) Managing its organic material waste on-site or self-hauling its own organic material waste for organic materials management;

(c) Qualifying for exclusion from the requirements of this section consistent with subsection (1)(b) of this section; or

(d) For a business engaged in the growth, harvest, or processing of food or fiber, entering into a voluntary agreement to sell or donate organic materials to another business for off-site use.

(4)(a) A business generating organic material waste shall arrange for any services required by this section in a manner that is consistent with state and local laws and requirements applicable to the collection, handling, or recycling of solid and organic material waste.

(b) Nothing in this section requires a business to dispose of materials in a manner that conflicts with federal or state public health or safety requirements. Nothing in this section requires businesses to dispose of wastes generated in exceptional volumes as a result of a natural disaster or other infrequent and unpreventable event through the options established in subsection (3) of this section.

(5) When arranging for gardening or landscaping services, the contract or work agreement between a business subject to this section and a gardening or landscaping service must require that the organic material waste generated by those services be managed in compliance with this chapter.

(6)(a) This section does not limit the authority of a local governmental agency to adopt, implement, or enforce a local organic material waste recycling requirement, or a condition imposed upon a self-hauler, that is more stringent or comprehensive than the requirements of this chapter.

(b) This section does not modify, limit, or abrogate in any manner any of the following:

(i) A franchise granted or extended by a city, county, city and county, or other local governmental agency;

(ii) A contract, license, certificate, or permit to collect solid waste previously granted or extended by a city, county, city and county, or other local governmental agency;

(iii) The right of a business to sell or donate its organic materials; and

(iv) A certificate of convenience and necessity issued to a solid waste collection company under chapter 81.77 RCW.

(c) Nothing in this section modifies, limits, or abrogates the authority of a local jurisdiction with respect to land use, zoning, or facility siting decisions by or within that local jurisdiction.

(d) Nothing in this section changes or limits the authority of the Washington utilities and transportation commission to regulate collection of solid waste, including curbside collection of residential recyclable materials, nor does this section change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020.

(7) The definitions in this subsection apply throughout this section unless the context clearly indicates otherwise.

(a)(i) "Business" means a commercial or public entity including, but not limited to, a firm, partnership, proprietorship, joint stock company, corporation, or association that is organized as a for-profit or nonprofit entity.

(ii) "Business" does not include a multifamily residential entity.

(b) "Food waste" has the same meaning as defined in RCW 70A.205.715.

## PART 3

## Updates to the Washington Good Samaritan Act

**Sec. 301.** RCW 69.80.031 and 1994 c 299 s 36 are each amended to read as follows:

(1) This section may be cited as the "good samaritan food donation act."

(2) ~~((As used in this section))~~ The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Apparently fit grocery product" means a grocery product that meets ~~((all quality and))~~ safety and safety-related labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, passage of a date on a date label other than a safety or safety-related labeling of a date, or other conditions.

(b) "Apparently wholesome food" means food that meets ~~((all quality and))~~ safety and safety-related labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, passage of a date on a date label other than a safety or safety-related labeling of a date, or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means a raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(e) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(f) "Grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(g) "Gross negligence" means voluntary and conscious conduct by a person with knowledge, at the time of the conduct, that the conduct is likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(i) Is operating for religious, charitable, or educational purposes; and

(ii) Does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon,

trustee, councilmember, or other elected or appointed individual responsible for the governance of the entity.

(k) "Qualified direct donor" means any person required to obtain a food establishment permit under chapter 246-215 WAC, as it existed as of January 1, 2022, including a retail grocer, wholesaler, agricultural producer, restaurant, caterer, school food authority, or institution of higher education as defined in RCW 28B.10.016.

(1)(i) "Safety and safety-related labeling" means a marking intended to communicate information to a consumer related to a food product's safety. "Safety and safety-related labeling" includes any marking that federal or state law requires to be affixed to a food product including, but not limited to, markings placed on infant formula consistent with 21 C.F.R. Sec. 107.20, as that regulation existed as of January 1, 2021.

(ii) "Safety and safety-related labeling" does not include a pull date required to be placed on perishable packaged food under RCW 15.130.300 or a "best by," "best if used by," "use by," or "sell by" date or similarly phrased date intended to communicate information to a consumer regarding the freshness or quality of a food product.

(3)(a) A person or gleaner is not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this subsection does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

(b) A qualified direct donor may donate food directly to end recipients for consumption. A qualified direct donor is not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the qualified direct donor donates in good faith to a needy individual. The donation of nonperishable food that is fit for human consumption, but that has exceeded the labeled shelf-life date recommended by the manufacturer, is an activity covered by the exclusion from civil or criminal liability under this section.

(c) The donation of perishable food that is fit for human consumption, but that has exceeded the labeled shelf-life date recommended by the manufacturer, is an activity covered by the exclusion from civil or criminal liability under this section if the person that distributes the food to the end recipient makes a good faith evaluation that the food to be donated is wholesome.

(4) A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals is not subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this subsection does not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(5) If some or all of the donated food and grocery products do not meet ~~((all quality and))~~ safety and safety-related labeling standards imposed by federal, state, and local laws and regulations, the person or gleaner who donates the food and grocery products is not subject to civil or criminal liability in accordance

with this section if the nonprofit organization or other end recipient that receives the donated food or grocery products:

(a) Is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(b) Agrees to recondition the donated food or grocery products to comply with all the ~~((quality and))~~ safety and safety-related labeling standards prior to distribution; and

(c) Is knowledgeable of the standards to properly recondition the donated food or grocery product.

(6) This section may not be construed to create liability.

#### PART 4

#### Washington Center for Sustainable Food Management

NEW SECTION. **Sec. 401.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Center" means the Washington center for sustainable food management.

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

(3) "Organic material" has the same definition as provided in RCW 70A.205.015.

(4) "Plan" means the use food well Washington plan developed under RCW 70A.205.715.

NEW SECTION. **Sec. 402.** (1) The Washington center for sustainable food management is established within the department, to begin operations by January 1, 2024.

(2) The purpose of the center is to help coordinate statewide food waste reduction.

(3) The center may perform the following activities:

(a) Coordinate the implementation of the plan;

(b) Draft plan updates and measure progress towards actions, strategies, and the statewide goals established in section 101 of this act and RCW 70A.205.715(1);

(c) Maintain a website with current food waste reduction information and guidance for food service establishments, consumers, food processors, hunger relief organizations, and other sources of food waste;

(d) Provide staff support to multistate food waste reduction initiatives in which the state is participating;

(e) Maintain the consistency of the plan and other food waste reduction activities with the work of the Washington state conservation commission's food policy forum;

(f) Facilitate and coordinate public-private and nonprofit partnerships focused on food waste reduction, including through voluntary working groups;

(g) Collaborate with federal, state, and local government partners on food waste reduction initiatives;

(h) Develop and maintain maps or lists of locations of the food systems of Washington that identify food flows, where waste occurs, and opportunities to prevent food waste;

(i)(i) Collect and maintain data on food waste and wasted food in a manner that is generally consistent with the methods of collecting and maintaining such

data used by federal agencies or in other jurisdictions, or both, to the greatest extent practicable;

(ii) Develop measurement methodologies and tools to uniformly track food donation data, food waste prevention data, and associated climate impacts resultant from food waste reduction efforts;

(j) Research and develop emerging organic materials and food waste reduction markets;

(k)(i) Develop and maintain statewide food waste reduction and food waste contamination reduction campaigns, in consultation with other state agencies and other stakeholders, including the development of waste prevention and food waste recovery promotional materials for distribution. These promotional materials may include online information, newsletters, bulletins, or handouts that inform food service establishment operators about the protections from civil and criminal liability under federal law and under RCW 69.80.031 when donating food; and

(ii) Develop guidance to support the distribution of promotional materials, including distribution by:

(A) Local health officers, at no cost to regulated food service establishments, including as part of normal, routine inspections of food service establishments; and

(B) State agencies, including the department of health and the department of agriculture, in conjunction with their statutory roles and responsibilities in regulating, monitoring, and supporting safe food supply chains and systems;

(l) Distribute and monitor grants dedicated to food waste prevention, rescue, and recovery; and

(m) Research and provide education, outreach, and technical assistance to local governments in support of the adoption of solid waste ordinances or policies that establish a financial disincentive for the generation of organic waste and for the ultimate disposal of organic materials in landfills.

(4) The department may enter into an interagency agreement with the department of health, the department of agriculture, or other state agencies as necessary to fulfill the responsibilities of the center.

(5) The department may adopt any rules necessary to implement this chapter including, but not limited to, measures for the center's performance.

**NEW SECTION. Sec. 403.** A new section is added to chapter 70A.205 RCW to read as follows:

(1) In order to obtain data as necessary to support the goals of the Washington center for sustainable food management created in section 402 of this act and to achieve the goals of RCW 70A.205.715(1), the department may establish a voluntary reporting protocol for the receipt of reports by businesses that donate food under RCW 69.80.031 and recipients of the donated food, and may encourage the use of this voluntary reporting protocol by the businesses and recipients. The department may also request that a donating business or recipient of donated food provide information to the department regarding the volumes, types, and timing of food managed by the donating facility or business, and food waste and wasted food generated by the donating facility or business. To the extent practicable, the department must seek to obtain information under this section in a manner compatible with any information reported to the department of agriculture under RCW 43.23.290, and in a manner that minimizes the

reporting and information-provision burdens of donating businesses and recipients.

(2) For the purposes of this subsection, "food waste" and "wasted food" have the same meaning as defined in RCW 70A.205.715.

**Sec. 404.** RCW 69.80.040 and 1983 c 241 s 4 are each amended to read as follows:

The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. The department must coordinate with the department of ecology to ensure that the information and referral service required under this section is implemented in a manner consistent with the activities of sections 402 and 403 of this act.

**NEW SECTION. Sec. 405.** (1) By January 1, 2025, and in consultation with the office of the attorney general, the department must research and adopt several model ordinances for optional use by counties and cities that provide for model mechanisms for commercial solid waste collection and disposal that are designed, in part, to establish a financial disincentive or other disincentives for the generation of organic waste and for the ultimate disposal of organic materials in landfills. The model ordinances must be designed to provide options that might be preferred by jurisdictions of different sizes and consider other key criteria applicable to local solid waste management circumstances.

(2)(a) The department must review the model ordinances created in this section under the provisions of chapter 43.21C RCW.

(b) A county or city that adopts a model ordinance created by the department under this section and that has been reviewed by the department under the provisions of chapter 43.21C RCW is not required to review the ordinance under the provisions of chapter 43.21C RCW.

(3) No city, town, or county is required to adopt the model ordinances created in this section.

**NEW SECTION. Sec. 406.** A new section is added to chapter 43.21C RCW to read as follows:

Amendments to regulations and other nonproject actions taken by a city or county to adopt or implement the model ordinance created by the department under section 405 of this act is not subject to the requirements of this chapter.

## PART 5

### Funding and Incentives for Methane Emissions Reduction Activities Associated with Organic Materials Management

**Sec. 501.** RCW 89.08.615 and 2020 c 351 s 3 are each amended to read as follows:

(1) The commission shall develop a sustainable farms and fields grant program in consultation with the department of agriculture, Washington State University, and the United States department of agriculture natural resources conservation service.

(2) As funding allows, the commission shall distribute funds, as appropriate, to conservation districts and other public entities to help implement the projects approved by the commission.



(3) No more than (~~fifteen~~) 15 percent of the funds may be used by the commission to develop, or to consult or contract with private or public entities, such as universities or conservation districts, to develop:

(a) An educational public awareness campaign and outreach about the sustainable farm and field program; or

(b) The grant program, including the production of analytical tools, measurement estimation and verification methods, cost-benefit measurements, and public reporting methods.

(4) No more than five percent of the funds may be used by the commission to cover the administrative costs of the program.

(5) No more than (~~twenty~~) 20 percent of the funds may be awarded to any single grant applicant.

(6) Allowable uses of grant funds include:

(a) Annual payments to enrolled participants for successfully delivered carbon storage or reduction;

(b) Up-front payments for contracted carbon storage;

(c) Down payments on equipment;

(d) Purchases of equipment;

(e) Purchase of seed, seedlings, spores, animal feed, and amendments;

(f) Services to landowners, such as the development of site-specific conservation plans to increase soil organic levels or to increase usage of precision agricultural practices, or design and implementation of best management practices to reduce livestock emissions; (~~and~~)

(g) The purchase of compost spreading equipment, or financial assistance to farmers to purchase compost spreading equipment, for the annual use for at least three years of volumes of compost determined by the commission to be significant from materials composted at a site that is not owned or operated by the farmer;

(h) Scientific studies to evaluate and quantify the greenhouse gas emissions avoided as a result of using crop residues as a biofuel feedstock or to identify management practices that increase the greenhouse gas emissions avoided as a result of using crop residues as a biofuel feedstock;

(i) Efforts to support the farm use of anaerobic digester digestate, including scientific studies, education and outreach to farmers, and the purchase or lease of digestate spreading equipment; and

(j) Other equipment purchases or financial assistance deemed appropriate by the commission to fulfill the intent of RCW 89.08.610 through 89.08.635.

(7) Grant applications are eligible for costs associated with technical assistance.

(8) Conservation districts and other public entities may apply for a single grant from the commission that serves multiple farmers.

(9) Grant applicants may apply to share equipment purchased with grant funds. Applicants for equipment purchase grants issued under this grant program may be farm, ranch, or aquaculture operations coordinating as individual businesses or as formal cooperative ventures serving farm, ranch, or aquaculture operations. Conservation districts, separately or jointly, may also apply for grant funds to operate an equipment sharing program.

(10) No contract for carbon storage or changes to management practices may exceed (~~twenty-five~~) 25 years. Grant contracts that include up-front

payments for future benefits must be conditioned to include penalties for default due to negligence on the part of the recipient.

(11) The commission shall attempt to achieve a geographically fair distribution of funds across a broad group of crop types, soil management practices, and farm sizes.

(12) Any applications involving state lands leased from the department of natural resources must include the department's approval.

**NEW SECTION. Sec. 502.** A new section is added to chapter 15.04 RCW to read as follows:

(1)(a) Subject to the availability of amounts appropriated for this specific purpose, the department must establish and implement a compost reimbursement program to reimburse farming operations in the state for purchasing and using compost products that were not generated by the farming operation, including transportation, spreading equipment, labor, fuel, and maintenance costs associated with spreading equipment. The grant reimbursements under the program begin July 1, 2023.

(b) For the purposes of this program, "farming operation" means: A commercial agricultural, silvicultural, or aquacultural facility or pursuit, including the care and production of livestock and livestock products, poultry and poultry products, apiary products, and plant and animal production for nonfood uses; the planting, cultivating, harvesting, and processing of crops; and the farming or ranching of any plant or animal species in a controlled salt, brackish, or freshwater environment.

(2) To be eligible to participate in the reimbursement program, a farming operation must complete an eligibility review with the department prior to transporting or applying any compost products for which reimbursement is sought under this section. The purpose of the review is for the department to ensure that the proposed transport and application of compost products is consistent with the department's agricultural pest control rules established under chapter 17.24 RCW. A farming operation must also verify that it will allow soil sampling to be conducted by the department upon request before compost application and until at least 10 years after the last grant funding is used by the farming operation, as necessary to establish a baseline of soil quality and carbon storage and for subsequent department evaluations to assist the department's reporting requirements under subsection (8) of this section.

(3) The department must create a form for eligible farming operations to apply for cost reimbursement for costs from purchasing and using compost from facilities with solid waste handling permits, including transportation, equipment, spreading, and labor costs. All applications for cost reimbursement must be submitted on the form along with invoices, receipts, or other documentation acceptable to the department of the costs of purchasing and using compost products for which the applicant is requesting reimbursement, as well as a brief description of what each purchased item will be used for. The department may request that an applicant provide information to verify the source, size, sale weight, or amount of compost products purchased and the cost of transportation, equipment, spreading, and labor. The applicant must also declare that it is not seeking reimbursement for purchase or labor costs for:

(a) Its own compost products; or

(b) Compost products that it has transferred, or intends to transfer, to another individual or entity, whether or not for compensation.

(4) A farming operation may submit only one application per fiscal year in which the program is in effect for purchases made and usage costs incurred during the fiscal year that begins on July 1st and ends on June 30th. Applications for reimbursement must be filed before the end of the fiscal year in which purchases were made and usage costs incurred.

(5) The department must distribute reimbursement funds, subject to the following limitations:

(a) A farming operation is not eligible to receive reimbursement if the farming operation's application was not found eligible for reimbursement by the department under subsection (2) of this section prior to the transport or use of compost;

(b) A farming operation is not eligible to receive reimbursement for more than 50 percent of the costs it incurs each fiscal year for the purchase and use of compost products, including transportation, equipment, spreading, and labor costs;

(c) A farming operation is not eligible to receive more than \$10,000 per fiscal year;

(d) A farming operation is not eligible to receive reimbursement for its own compost products or compost products that it has transferred, or intends to transfer, to another individual or entity, whether or not for compensation; and

(e) A farming operation is not eligible to receive reimbursement for compost products that were not purchased from a facility with a solid waste handling permit.

(6) The applicant shall indemnify and hold harmless the state and its officers, agents, and employees from all claims arising out of or resulting from the compost products purchased that are subject to the compost reimbursement program under this section.

(7) There is established within the department a compost reimbursement program manager position. The compost reimbursement program manager must possess knowledge and expertise in the area of program management necessary to carry out the duties of the position, which are to:

(a) Facilitate the division and distribution of available costs for reimbursement; and

(b) Manage the day-to-day coordination of the compost reimbursement program.

(8) In compliance with RCW 43.01.036, the department must submit an annual report to the appropriate committees of the legislature by January 15th of each year of the program in which grants have been issued or completed. The report must include:

(a) The amount of compost for which reimbursement was sought under the program;

(b) The qualitative or quantitative effects of the program on soil quality and carbon storage; and

(c) A periodically updated evaluation of the benefits and costs to the state of expanding or furthering the strategies promoted in the program.

**Sec. 503.** RCW 43.155.020 and 2017 3rd sp.s. c 10 s 2 are each amended to read as follows:

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

- (1) "Board" means the public works board created in RCW 43.155.030.
- (2) "Capital facility plan" means a capital facility plan required by the growth management act under chapter 36.70A RCW or, for local governments not fully planning under the growth management act, a plan required by the public works board.
- (3) "Department" means the department of commerce.
- (4) "Financing guarantees" means the pledge of money in the public works assistance account, or money to be received by the public works assistance account, to the repayment of all or a portion of the principal of or interest on obligations issued by local governments to finance public works projects.
- (5) "Local governments" means cities, towns, counties, special purpose districts, and any other municipal corporations or quasi-municipal corporations in the state excluding school districts and port districts.
- (6) "Public works project" means a project of a local government for the planning, acquisition, construction, repair, reconstruction, replacement, rehabilitation, or improvement of streets and roads, bridges, water systems, or storm and sanitary sewage systems, lead remediation of drinking water systems, and solid waste facilities, including recycling facilities and composting and other organic materials management facilities. A planning project may include the compilation of biological, hydrological, or other data on a county, drainage basin, or region necessary to develop a base of information for a capital facility plan.
- (7) "Solid waste or recycling project" means remedial actions necessary to bring abandoned or closed landfills into compliance with regulatory requirements and the repair, restoration, and replacement of existing solid waste transfer, recycling facilities, and landfill projects limited to the opening of landfill cells that are in existing and permitted landfills.
- (8) "Technical assistance" means training and other services provided to local governments to: (a) Help such local governments plan, apply, and qualify for loans, grants, and financing guarantees from the board, and (b) help local governments improve their ability to plan for, finance, acquire, construct, repair, replace, rehabilitate, and maintain public facilities.
- (9) "Value planning" means a uniform approach to assist in decision making through systematic evaluation of potential alternatives to solving an identified problem.

## PART 6

### Organic Materials Management Facility Siting

**Sec. 601.** RCW 36.70.330 and 1985 c 126 s 3 are each amended to read as follows:

The comprehensive plan shall consist of a map or maps, and descriptive text covering objectives, principles and standards used to develop it, and shall include each of the following elements:

- (1) A land use element which designates the proposed general distribution and general location and extent of the uses of land for agriculture, housing, commerce, industry, recreation, education, public buildings and lands, and other categories of public and private use of land, including a statement of the standards of population density and building intensity recommended for the

various areas in the jurisdiction and estimates of future population growth in the area covered by the comprehensive plan, all correlated with the land use element of the comprehensive plan. The land use element shall also provide for protection of the quality and quantity of groundwater used for public water supplies and shall review drainage, flooding, and stormwater runoff in the area and nearby jurisdictions and provide guidance for corrective actions to mitigate or cleanse those discharges that pollute Puget Sound or waters entering Puget Sound. Development regulations to implement comprehensive plans under this chapter that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas identified in RCW 70A.205.040(3)(a)(i) to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified under RCW 70A.205.040(3)(a)(ii);

(2) A circulation element consisting of the general location, alignment and extent of major thoroughfares, major transportation routes, trunk utility lines, and major terminal facilities, all of which shall be correlated with the land use element of the comprehensive plan;

(3) Any supporting maps, diagrams, charts, descriptive material and reports necessary to explain and supplement the above elements.

NEW SECTION. Sec. 602. A new section is added to chapter 36.70A RCW to read as follows:

Development regulations to implement comprehensive plans under this chapter that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas identified in RCW 70A.205.040(3)(a)(i) to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified under RCW 70A.205.040(3)(a)(ii).

NEW SECTION. Sec. 603. A new section is added to chapter 35.63 RCW to read as follows:

For cities not planning under RCW 36.70A.040, development regulations to implement comprehensive plans under RCW 35.63.100 that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas identified by the county in which the city is located under RCW 70A.205.040(3)(a)(i) to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified under RCW 70A.205.040(3)(a)(ii).

NEW SECTION. Sec. 604. A new section is added to chapter 35A.63 RCW to read as follows:

For cities not planning under RCW 36.70A.040, development regulations to implement comprehensive plans required under RCW 35A.63.060 that are newly developed, updated, or amended after January 1, 2025, must allow for the siting of organic materials management facilities in the areas identified by the county in which the city is located under RCW 70A.205.040(3)(a)(i) to the extent necessary to provide for the establishment of the organic materials management volumetric capacity identified under RCW 70A.205.040(3)(a)(ii).

## PART 7

**Organic Materials Procurement**

**NEW SECTION. Sec. 701.** A new section is added to chapter 43.19A RCW to read as follows:

(1) By January 1, 2023, the following cities or counties shall adopt a compost procurement ordinance to implement RCW 43.19A.120:

(a) Each city or county with a population greater than 25,000 residents as measured by the office of financial management using the most recent population data available; and

(b) Each city or county in which organic material collection services are provided under chapter 70A.205 RCW.

(2) A city or county that newly exceeds a population of 25,000 residents after January 1, 2023, as measured by the office of financial management, must adopt an ordinance under this subsection no later than 12 months after the office of financial management's determination that the local government's population has exceeded 25,000.

(3) In developing a compost procurement ordinance, each city and county shall plan for the use of compost in the following categories:

(a) Landscaping projects;

(b) Construction and postconstruction soil amendments;

(c) Applications to prevent erosion, filter stormwater runoff, promote vegetation growth, or improve the stability and longevity of roadways; and

(d) Low-impact development and green infrastructure to filter pollutants or keep water on-site, or both.

(4) Each city or county that adopts an ordinance under subsection (1) or (2) of this section must develop strategies to inform residents about the value of compost and how the jurisdiction uses compost in its operations in the jurisdiction's comprehensive solid waste management plan pursuant to RCW 70A.205.045.

(5) By December 31, 2024, and each December 31st of even-numbered years thereafter, each city or county that adopts an ordinance under subsection (1) or (2) of this section must submit a report covering the previous year's compost procurement activities to the department of ecology that contains the following information:

(a) The total tons of organic material diverted throughout the year;

(b) The volume and cost of compost purchased throughout the year; and

(c) The source or sources of the compost.

(6) Cities and counties that are required to adopt an ordinance under subsection (1) or (2) of this section shall give priority to purchasing compost products from companies that produce compost products locally, are certified by a nationally recognized organization, and produce compost products that are derived from municipal solid waste compost programs and meet quality standards comparable to standards adopted by the department of transportation or adopted by rule by the department of ecology.

(7) Cities and counties may enter into collective purchasing agreements if doing so is more cost-effective or efficient.

(8) Nothing in this section requires a compost processor to:

(a) Enter into a purchasing agreement with a city or county;

(b) Sell finished compost to meet this requirement; or

(c) Accept or process food waste or compostable products.

**Sec. 702.** RCW 39.30.040 and 2013 c 24 s 1 are each amended to read as follows:

(1) Whenever a unit of local government is required to make purchases from the lowest bidder or from the supplier offering the lowest price for the items desired to be purchased, the unit of local government may, at its option when awarding a purchase contract, take into consideration tax revenue it would receive from purchasing the supplies, materials, or equipment from a supplier located within its boundaries. The unit of local government must award the purchase contract to the lowest bidder after such tax revenue has been considered. However, any local government may allow for preferential purchase of products made from recycled materials or products that may be recycled or reused. Any local government may allow for preferential purchase of compost to meet the requirements of RCW 43.19A.120. Any unit of local government which considers tax revenue it would receive from the imposition of taxes upon a supplier located within its boundaries must also consider tax revenue it would receive from taxes it imposes upon a supplier located outside its boundaries.

(2) A unit of local government may award a contract to a bidder submitting the lowest bid before taxes are applied. The unit of local government must provide notice of its intent to award a contract based on this method prior to bids being submitted. For the purposes of this subsection (2), "taxes" means only those taxes that are included in "tax revenue" as defined in this section.

(3) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Tax revenue" means sales taxes that units of local government impose upon the sale of supplies, materials, or equipment from the supplier to units of local government, and business and occupation taxes that units of local government impose upon the supplier that are measured by the gross receipts of the supplier from the sale.

(b) "Unit of local government" means any county, city, town, metropolitan municipal corporation, public transit benefit area, county transportation authority, or other municipal or quasi-municipal corporation authorized to impose sales and use taxes or business and occupation taxes.

**NEW SECTION. Sec. 703.** A new section is added to chapter 43.19A RCW to read as follows:

A contract by a local government or state agency must require the use of compost products to the maximum extent economically feasible to meet the requirements established in RCW 43.19A.120.

## PART 8

### Product Degradability Labeling

**Sec. 801.** RCW 70A.455.010 and 2019 c 265 s 1 are each amended to read as follows:

(1) The legislature finds and declares that it is the public policy of the state that:

(a) Environmental marketing claims for plastic products, whether implicit or implied, should adhere to uniform and recognized standards for "compostability" and "biodegradability," since misleading, confusing, and deceptive labeling can negatively impact local composting programs and

compost processors. Plastic products marketed as being "compostable" should be readily and easily identifiable as meeting these standards;

(b) Legitimate and responsible packaging and plastic product manufacturers are already properly labeling their compostable products, but many manufacturers are not. Not all compost facilities and their associated processing technologies accept or are required to accept compostable packaging as feedstocks. However, implementing a standardized system and test methods may create the ability for them to take these products in the future.

(2) Therefore, it is the intent of the legislature to authorize the ~~((state's attorney general and local governments))~~ department of ecology, cities, and counties to pursue false or misleading environmental claims and "greenwashing" for plastic products claiming to be "compostable" or "biodegradable" when in fact they are not.

**Sec. 802.** RCW 70A.455.020 and 2019 c 265 s 2 are each amended to read as follows:

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

(1) "ASTM" means the American society for testing and materials.

(2) "Biodegradable mulch film" means film plastic used as a technical tool in commercial farming applications that biodegrades in soil after being used, and:

(a) The film product fulfills plant growth and regulated metals requirements of ASTM D6400; and

(b)(i) Meets the requirements of Vincotte's "OK Biodegradable Soil" certification scheme, as that certification existed as of January 1, 2019;

(ii) At ambient temperatures and in soil, shows at least ~~((ninety))~~ 90 percent biodegradation absolute or relative to microcrystalline cellulose in less than two years' time, tested according to ISO 17556 or ASTM 5988 standard test methods, as those test methods existed as of January 1, 2019; or

(iii) Meets the requirements of EN 17033 "plastics-biodegradable mulch films for use in agriculture and horticulture" as it existed on January 1, 2019.

(3) "Federal trade commission guides" means the United States federal trade commission's guides for the use of environmental marketing claims (Part 260, commencing at section 260.1), compostability claims, including section 260.8, and degradation claims (subchapter B of chapter I of Title 16 of the Code of Federal Regulations), as those guides existed as of January 1, 2019.

(4) "Film product" means a bag, sack, wrap, or other sheet film product.

(5) "Food service product" ~~((means a product including, but not limited to, containers, plates, bowls, cups, lids, meat trays, straws, deli rounds, cocktail picks, splash sticks, condiment packaging, clam shells and other hinged or lidded containers, sandwich wrap, utensils, sachets, portion cups, and other food service products that are intended for one time use and used for food or drink offered for sale or use))~~ has the same meaning as defined in RCW 70A.245.010.

(6) ~~(("Manufacturer" means a person, firm, association, partnership, or corporation that produces a product.~~

~~(7))~~ "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.



~~((8))~~ (7) "Plastic food packaging and food service products" means food packaging and food service products that is composed of:

(a) Plastic; or

(b) Fiber or paper with a plastic coating, window, component, or additive.

~~((9))~~ (8) "Plastic product" means a product made of plastic, whether alone or in combination with another material including, but not limited to, paperboard. A plastic product includes, but is not limited to, any of the following:

(a) A product or part of a product that is used, bought, or leased for use by a person for any purpose;

(b) A package or a packaging component including, but not limited to, packaging peanuts;

(c) A film product; or

(d) Plastic food packaging and food service products.

~~((10))~~ (9) "Standard specification" means either:

(a) ASTM D6400 - standard specification labeling of plastics designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019; or

(b) ASTM D6868 - standard specification for labeling of end items that incorporate plastics and polymers as coatings or additives with paper and other substrates designed to be aerobically composted in municipal or industrial facilities, as it existed as of January 1, 2019.

~~((11)(a))~~ "Supplier" means a person, firm, association, partnership, company, or corporation that sells, offers for sale, offers for promotional purposes, or takes title to a product.

~~(b)~~ "Supplier" does not include a person, firm, association, partnership, company, or corporation that sells products to end users as a retailer.

~~(12))~~ (10) "Utensil" means a product designed to be used by a consumer to facilitate the consumption of food or beverages, including knives, forks, spoons, cocktail picks, chopsticks, splash sticks, and stirrers.

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

(12) "Producer" means the following person responsible for compliance under this chapter for a product sold, offered for sale, or distributed in or into this state:

(a) If the product is sold under the manufacturer's own brand or lacks identification of a brand, the producer is the person who manufactures the product;

(b) If the product is manufactured by a person other than the brand owner, the producer is the person that is the licensee of a brand or trademark under which a product is used in a commercial enterprise, sold, offered for sale, or distributed in or into this state, whether or not the trademark is registered in this state, unless the manufacturer or brand owner of the product has agreed to accept responsibility under this chapter; or

(c) If there is no person described in (a) and (b) of this subsection over whom the state can constitutionally exercise jurisdiction, the producer is the person who imports or distributes the product in or into the state.

**Sec. 803.** RCW 70A.455.040 and 2019 c 265 s 4 are each amended to read as follows:

(1)~~((a))~~ A product labeled as "compostable" that is sold, offered for sale, or distributed for use in Washington by a ~~((supplier or manufacturer))~~ producer must:

~~((i))~~ (a) Meet ASTM standard specification D6400;

~~((ii))~~ (b) Meet ASTM standard specification D6868; or

~~((iii))~~ (c) Be comprised of wood, which includes renewable wood, or fiber-based substrate only;

~~((b))~~ (2) A product described in ~~((a)(i) or (ii) of this))~~ subsection (1)(a) or (b) of this section must:

~~((i))~~ (a) Meet labeling requirements established under the United States federal trade commission's guides; and

~~((ii))~~ (b) Feature labeling that:

~~((A))~~ (i) Meets industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities;

~~((B))~~ (ii) Uses a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification; ~~(and~~

~~((C))~~ (iii) Displays the word "compostable," where possible, indicating the product has been tested by a recognized third-party independent body and meets the ASTM standard specification; and

(iv) Uses green, beige, or brown labeling, color striping, or other green, beige, or brown symbols, colors, tinting, marks, or design patterns that help differentiate compostable items from noncompostable items.

~~((2) A compostable product described in subsection (1)(a)(i) or (ii) of this section must be considered compliant with the requirements of this section if it:~~

~~(a) Has green or brown labeling;~~

~~(b) Is labeled as compostable; and~~

~~(c) Uses distinctive color schemes, green or brown color striping, or other adopted symbols, colors, marks, or design patterns that help differentiate compostable items from noncompostable materials.))~~

**Sec. 804.** RCW 70A.455.050 and 2019 c 265 s 5 are each amended to read as follows:

(1) A ~~((manufacturer or supplier))~~ producer of a film bag that meets ASTM standard specification D6400 and is distributed or sold by retailers must ensure that the film bag is readily and easily identifiable from other film bags in a manner that is consistent with the federal trade commission guides.

(2) For purposes of this section, "readily and easily identifiable" products must meet the following requirements:

(a) Be labeled with a certification logo indicating the bag meets the ASTM D6400 standard specification if the bag has been certified as meeting that standard by a recognized third-party independent verification body;

(b) Be labeled in accordance with one of the following:

(i) The bag is tinted or made of a uniform color of green, beige, or brown and labeled with the word "compostable" on one side of the bag and the label must be at least one inch in height; or

(ii) Be labeled with the word "compostable" on both sides of the bag and the label must be one of the following:

(A) Green, beige, or brown color lettering at least one inch in height; or

(B) Within a contrasting green, beige, or brown color band of at least one inch in height on both sides of the bag with color contrasting lettering of at least one-half inch in height; and

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities.

(3) If a bag is smaller than (~~fourteen~~) 14 inches by (~~fourteen~~) 14 inches, the lettering and stripe required under subsection (2)(b)(ii) of this section must be in proportion to the size of the bag.

(4) A film bag that meets ASTM standard specification D6400 that is sold or distributed in this state may not display a chasing arrow resin identification code or recycling type of symbol in any form.

(5) A (~~manufacturer or supplier~~) producer is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides.

**Sec. 805.** RCW 70A.455.060 and 2020 c 20 s 1446 are each amended to read as follows:

(1)(a) A (~~manufacturer or supplier~~) producer of plastic food service products or film products that meet ASTM standard specification D6400 or ASTM standard specification D6868 must ensure that the items are readily and easily identifiable from other plastic food service products or plastic film products in a manner that is consistent with the federal trade commission guides.

(b) Film bags are exempt from the requirements of this section, and are instead subject to the requirements of RCW 70A.455.050.

(2) For the purposes of this section, "readily and easily identifiable" products must:

(a) Be labeled with a logo indicating the product has been certified by a recognized third-party independent verification body as meeting the ASTM standard specification;

(b) Be labeled with the word "compostable," where possible, indicating the food packaging or film product has been tested by a recognized third-party independent body and meets the ASTM standard specification; (~~and~~)

(c) Meet industry standards for being distinguishable upon quick inspection in both public sorting areas and in processing facilities;

(d) If the product is a plastic food service product or food contact film product, be at least partially colored or partially tinted green, beige, or brown, or have a green, beige, or brown stripe or band at least .25 inches wide; and

(e) If the product is a nonfood contact film product, be at least partially colored or partially tinted green or have a green stripe or band at least .25 inches wide and display the word "compostable".

(3) (~~A compostable product described in subsection (1) of this section must be considered compliant with the requirements of this section if it:~~

(a) ~~Has green or brown labeling;~~

(b) ~~Is labeled as compostable; and~~

(c) ~~Uses distinctive color schemes, green or brown color striping, or other adopted symbols, colors, marks, or design patterns that help differentiate compostable items from noncompostable materials.~~

(4) ~~It is encouraged that each product described in subsection (1) of this section~~

~~(a) Display~~) display labeling language via printing, embossing, or compostable adhesive stickers using, when possible, either the colors green, beige, or brown that contrast with background product color for easy identification(~~;~~ ~~or~~

~~(b) Be tinted green or brown~~)).

~~((5))~~ (4) Graphic elements are encouraged to increase legibility of the word "compostable" and overall product distinction that may include text boxes, stripes, bands, or a green, beige, or brown tint of the product.

~~((6))~~ (5) A ~~((manufacturer or supplier))~~ producer is required to comply with this section only to the extent that the labeling requirements do not conflict with the federal trade commission guides.

**Sec. 806.** RCW 70A.455.070 and 2020 c 20 s 1447 are each amended to read as follows:

~~(1) A ((manufacturer or supplier of film products or food service products))~~ producer of plastic film bags sold, offered for sale, or distributed for use in Washington that does not meet the applicable ASTM standard specifications provided in RCW 70A.455.050 ((and 70A.455.060)) is:

~~((1))~~ (a) Prohibited from using tinting, color schemes, labeling, ~~((and))~~ or terms that are required of products that meet the applicable ASTM standard specifications under RCW 70A.455.050 ~~((and 70A.455.060))~~;

~~((2))~~ (b) Discouraged from using ~~((coloration,))~~ labeling, images, and terms that may reasonably be anticipated to confuse consumers into believing that noncompostable ~~((bags and food service packaging))~~ products are compostable; and

~~((3))~~ (c) Encouraged to use ~~((coloration,))~~ labeling, images, and terms to help consumers identify noncompostable bags ~~((and food service packaging))~~ as either: ~~((a))~~ (i) Suitable for recycling; or ~~((b))~~ (ii) necessary to dispose as waste.

(2) A producer of food service products, or plastic film products other than plastic film bags subject to subsection (1) of this section, sold, offered for sale, or distributed for use in Washington that does not meet the applicable ASTM standard specifications provided in RCW 70A.455.060 is:

(a) Prohibited from using labeling, or terms that are required of products that meet the applicable ASTM standard specifications under RCW 70A.455.060;

(b) Discouraged from using labeling, images, and terms that may reasonably be anticipated to confuse consumers into believing that noncompostable products are compostable; and

(c) Encouraged to use tinting, coloration, labeling, images, and terms to help consumers identify film products and food service packaging as either: (i) Suitable for recycling; or (ii) necessary to dispose as waste.

**Sec. 807.** RCW 70A.455.080 and 2019 c 265 s 8 are each amended to read as follows:

(1) Upon the request by a person, including the department, a ~~((manufacturer or supplier))~~ producer shall submit to that person or the department, within ~~((ninety))~~ 90 days of the request, nonconfidential business information and documentation demonstrating compliance with this chapter, in a format that is easy to understand and scientifically accurate.

(2) Upon request by a commercial compost processing facility, ~~((manufacturers))~~ producers of compostable products are encouraged to provide the facility with information regarding the technical aspects of a commercial composting environment, such as heat or moisture, in which the ~~((manufacturer's))~~ producer's product has been field tested and found to degrade.

**Sec. 808.** RCW 70A.455.090 and 2020 c 20 s 1448 are each amended to read as follows:

(1)~~(a)~~ The ~~((state, acting through the attorney general,))~~ department and cities and counties have concurrent authority to enforce this chapter and to issue and collect civil penalties for a violation of this chapter, subject to the conditions in this section and RCW 70A.455.100. An enforcing government entity may impose a civil penalty in the amount of up to ~~((two thousand dollars))~~ \$2,000 for the first violation of this chapter, up to ~~((five thousand dollars))~~ \$5,000 for the second violation of this chapter, and up to ~~((ten thousand dollars))~~ \$10,000 for the third and any subsequent violation of this chapter. If a ~~((manufacturer or supplier))~~ producer has paid a prior penalty for the same violation to a different government entity with enforcement authority under this subsection, the penalty imposed by a government entity is reduced by the amount of the payment.

(b) The enforcement of this chapter must be based primarily on complaints filed with the department and cities and counties. The department must establish a forum for the filing of complaints. Cities, counties, or any person may file complaints with the department using the forum, and cities and counties may review complaints filed with the department via the forum. The forum established by the department may include a complaint form on the department's website, a telephone hotline, or a public outreach strategy relying upon electronic social media to receive complaints that allege violations. The department, in collaboration with the cities and counties, must provide education and outreach activities to inform retail establishments, consumers, and producers about the requirements of this chapter.

(2) ~~((Any civil penalties collected pursuant to this section must be paid to the office of the city attorney, city prosecutor, district attorney, or attorney general, whichever office brought the action. Penalties collected by the attorney general on behalf of the state must be deposited in the compostable products revolving account created in RCW 70A.455.110))~~ Penalties issued by the department are appealable to the pollution control hearings board established in chapter 43.21B RCW.

(3) The remedies provided by this section are not exclusive and are in addition to the remedies that may be available pursuant to chapter 19.86 RCW or other consumer protection laws, if applicable.

(4) In addition to penalties recovered under this section, the enforcing ~~((government entity))~~ city or county may recover reasonable enforcement costs and attorneys' fees from the liable ~~((manufacturer or supplier))~~ producer.

**Sec. 809.** RCW 70A.455.100 and 2020 c 20 s 1449 are each amended to read as follows:

~~((Manufacturers and suppliers))~~ (1) Producers who violate the requirements of this chapter are subject to civil penalties described in RCW 70A.455.090. A specific violation is deemed to have occurred upon the sale of noncompliant product by stock-keeping unit number or unique item number. The repeated sale

of the same noncompliant product by stock-keeping unit number or unique item number is considered a single violation. ~~((A city, county, or the state))~~

(2)(a) A city or county enforcing a requirement of this chapter must send a written notice and a copy of the requirements to a noncompliant ~~((manufacturer or supplier))~~ producer of an alleged violation, who will have ~~((ninety))~~ 90 days to become compliant. ~~((A city, county, or the state may assess a first penalty if the manufacturer or supplier has not met the requirements ninety days following the date the notification was sent. A city, county, or the state))~~

(b) A city or county enforcing a requirement of this chapter may assess a first penalty if the producer has not met the requirements 90 days following the date the notification was sent. A city or county may impose second, third, and subsequent penalties on a ~~((manufacturer or supplier))~~ producer that remains noncompliant with the requirements of this chapter for every month of noncompliance.

(3) The department may only impose penalties under this chapter consistent with the standards established in RCW 43.21B.300.

NEW SECTION. Sec. 810. A new section is added to chapter 70A.455 RCW to read as follows:

(1) The department may adopt rules as necessary for the purpose of implementing, administering, and enforcing this chapter.

(2) Producers of a product subject to RCW 70A.455.040, 70A.455.050, or 70A.455.060 must submit, under penalty of perjury, a declaration that the product meets the standards established under those sections of this chapter for the product. This declaration must be submitted to the department:

(a) By January 1, 2024, for a product that is or will be sold or distributed into Washington beginning January 1, 2024;

(b) Prior to the sale or distribution of a product newly sold or distributed into Washington after January 1, 2024; and

(c) Prior to the sale or distribution of a product whose method of compliance with the standards established in RCW 70A.455.040, 70A.455.050, or 70A.455.060 is materially changed from the method of compliance used at the last declaration submission under this section.

(3) The department must begin enforcing the requirements of this chapter by July 1, 2024.

Sec. 811. RCW 70A.455.030 and 2019 c 265 s 3 are each amended to read as follows:

(1) Except as provided in this chapter, no ~~((manufacturer or supplier))~~ producer may sell, offer for sale, or distribute for use in this state a plastic product that is labeled with the term "biodegradable," "degradable," "decomposable," "oxo-degradable," or any similar form of those terms, or in any way imply that the plastic product will break down, fragment, biodegrade, or decompose in a landfill or other environment.

(2) This section does not apply to biodegradable mulch film that meets the required testing and has the appropriate third-party certifications.

Sec. 812. RCW 43.21B.110 and 2021 c 316 s 41 and 2021 c 313 s 16 are each reenacted and amended to read as follows:

(1) The hearings board shall only have jurisdiction to hear and decide appeals from the following decisions of the department, the director, local

conservation districts, the air pollution control boards or authorities as established pursuant to chapter 70A.15 RCW, local health departments, the department of natural resources, the department of fish and wildlife, the parks and recreation commission, and authorized public entities described in chapter 79.100 RCW:

(a) Civil penalties imposed pursuant to RCW 18.104.155, 70A.15.3160, 70A.300.090, 70A.20.050, 70A.530.040, 70A.350.070, 70A.515.060, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, 76.09.170, 77.55.440, 78.44.250, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102.

(b) Orders issued pursuant to RCW 18.104.043, 18.104.060, 43.27A.190, 70A.15.2520, 70A.15.3010, 70A.300.120, 70A.350.070, 70A.245.020, 70A.65.200, 86.16.020, 88.46.070, 90.14.130, 90.46.250, 90.48.120, and 90.56.330.

(c) Except as provided in RCW 90.03.210(2), the issuance, modification, or termination of any permit, certificate, or license by the department or any air authority in the exercise of its jurisdiction, including the issuance or termination of a waste disposal permit, the denial of an application for a waste disposal permit, the modification of the conditions or the terms of a waste disposal permit, or a decision to approve or deny an application for a solid waste permit exemption under RCW 70A.205.260.

(d) Decisions of local health departments regarding the grant or denial of solid waste permits pursuant to chapter 70A.205 RCW.

(e) Decisions of local health departments regarding the issuance and enforcement of permits to use or dispose of biosolids under RCW 70A.226.090.

(f) Decisions of the department regarding waste-derived fertilizer or micronutrient fertilizer under RCW 15.54.820, and decisions of the department regarding waste-derived soil amendments under RCW 70A.205.145.

(g) Decisions of local conservation districts related to the denial of approval or denial of certification of a dairy nutrient management plan; conditions contained in a plan; application of any dairy nutrient management practices, standards, methods, and technologies to a particular dairy farm; and failure to adhere to the plan review and approval timelines in RCW 90.64.026.

(h) Any other decision by the department or an air authority which pursuant to law must be decided as an adjudicative proceeding under chapter 34.05 RCW.

(i) Decisions of the department of natural resources, the department of fish and wildlife, and the department that are reviewable under chapter 76.09 RCW, and the department of natural resources' appeals of county, city, or town objections under RCW 76.09.050(7).

(j) Forest health hazard orders issued by the commissioner of public lands under RCW 76.06.180.

(k) Decisions of the department of fish and wildlife to issue, deny, condition, or modify a hydraulic project approval permit under chapter 77.55 RCW, to issue a stop work order, to issue a notice to comply, to issue a civil penalty, or to issue a notice of intent to disapprove applications.

(l) Decisions of the department of natural resources that are reviewable under RCW 78.44.270.

(m) Decisions of an authorized public entity under RCW 79.100.010 to take temporary possession or custody of a vessel or to contest the amount of

reimbursement owed that are reviewable by the hearings board under RCW 79.100.120.

(n) Decisions of the department of ecology that are appealable under RCW 70A.245.020 to set recycled minimum postconsumer content for covered products or to temporarily exclude types of covered products in plastic containers from minimum postconsumer recycled content requirements.

(o) Orders by the department of ecology under RCW 70A.455.080.

(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 70A.15.3010, 70A.15.3070, 70A.15.3080, 70A.15.3090, 70A.15.3100, 70A.15.3110, and 90.44.180.

(c) Appeals of decisions by the department under RCW 90.03.110 and 90.44.220.

(d) Hearings conducted by the department to adopt, modify, or repeal rules.

(3) Review of rules and regulations adopted by the hearings board shall be subject to review in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW.

**Sec. 813.** RCW 43.21B.300 and 2021 c 316 s 42 and 2021 c 313 s 17 are each reenacted and amended to read as follows:

(1) Any civil penalty provided in RCW 18.104.155, 70A.15.3160, 70A.205.280, 70A.300.090, 70A.20.050, 70A.245.040, 70A.245.050, 70A.245.070, 70A.245.080, 70A.65.200, 70A.455.090, 88.46.090, 90.03.600, 90.46.270, 90.48.144, 90.56.310, 90.56.330, and 90.64.102 and chapter 70A.355 RCW shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the department or the local air authority, describing the violation with reasonable particularity. For penalties issued by local air authorities, within (~~(thirty)~~) 30 days after the notice is received, the person incurring the penalty may apply in writing to the authority for the remission or mitigation of the penalty. Upon receipt of the application, the authority may remit or mitigate the penalty upon whatever terms the authority in its discretion deems proper. The authority may ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper and shall remit or mitigate the penalty only upon a demonstration of extraordinary circumstances such as the presence of information or factors not considered in setting the original penalty.

(2) Any penalty imposed under this section may be appealed to the pollution control hearings board in accordance with this chapter if the appeal is filed with the hearings board and served on the department or authority (~~(thirty)~~) 30 days after the date of receipt by the person penalized of the notice imposing the penalty or (~~(thirty)~~) 30 days after the date of receipt of the notice of disposition by a local air authority of the application for relief from penalty.

(3) A penalty shall become due and payable on the later of:

(a) Thirty days after receipt of the notice imposing the penalty;

(b) Thirty days after receipt of the notice of disposition by a local air authority on application for relief from penalty, if such an application is made; or

(c) Thirty days after receipt of the notice of decision of the hearings board if the penalty is appealed.



(4) If the amount of any penalty is not paid to the department within ~~((thirty))~~ 30 days after it becomes due and payable, the attorney general, upon request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or of any county in which the violator does business, to recover the penalty. If the amount of the penalty is not paid to the authority within ~~((thirty))~~ 30 days after it becomes due and payable, the authority may bring an action to recover the penalty in the superior court of the county of the authority's main office or of any county in which the violator does business. In these actions, the procedures and rules of evidence shall be the same as in an ordinary civil action.

(5) All penalties recovered shall be paid into the state treasury and credited to the general fund except those penalties imposed pursuant to RCW 18.104.155, which shall be credited to the reclamation account as provided in RCW 18.104.155(7), RCW 70A.15.3160, the disposition of which shall be governed by that provision, RCW 70A.245.040 and 70A.245.050, which shall be credited to the recycling enhancement account created in RCW 70A.245.100, RCW 70A.300.090, which shall be credited to the model toxics control operating account created in RCW 70A.305.180, RCW 70A.65.200, which shall be credited to the climate investment account created in RCW 70A.65.250, RCW 90.56.330, which shall be credited to the coastal protection fund created by RCW 90.48.390, and RCW 70A.355.070, which shall be credited to the underground storage tank account created by RCW 70A.355.090.

## PART 9

### Miscellaneous

NEW SECTION. Sec. 901. Sections 401, 402, and 405 of this act constitute a new chapter in Title 70A RCW.

NEW SECTION. Sec. 902. Nothing in this act changes or limits the authority of the Washington utilities and transportation commission to regulate the collection of solid waste, including curbside collection of residential recyclable materials, nor does this section change or limit the authority of a city or town to provide the service itself or by contract under RCW 81.77.020.

NEW SECTION. Sec. 903. The following acts or parts of acts are each repealed:

(1) RCW 70A.455.110 (Compostable products revolving account) and 2020 c 20 s 1450 & 2019 c 265 s 11; and

(2) RCW 70A.455.900 (Effective date—2019 c 265) and 2019 c 265 s 13.

NEW SECTION. Sec. 904. 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. 905. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 8, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

## CHAPTER 181

[Engrossed Second Substitute Senate Bill 5842]

## GREENHOUSE GAS EMISSIONS—CAP AND INVEST PROGRAM—MODIFICATION

AN ACT Relating to state laws that address climate change; amending RCW 70A.65.070, 70A.65.100, 70A.65.200, 70A.65.020, 70A.65.150, 70A.65.160, 70A.65.230, 70A.15.2200, 70A.65.010, 70A.65.140, 70A.65.170, 70A.65.030, 70A.65.040, and 70A.02.110; and adding a new section to chapter 70A.65 RCW.

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

**Sec. 1.** RCW 70A.65.070 and 2021 c 316 s 9 are each amended to read as follows:

(1)(a) The department shall commence the program by January 1, 2023, by determining an emissions baseline establishing the proportionate share that the total greenhouse gas emissions of covered entities for the first compliance period bears to the total anthropogenic greenhouse gas emissions in the state during 2015 through 2019, based on data reported to the department under RCW 70A.15.2200 or provided as required by this chapter, as well as other relevant data. By October 1, 2022, the department shall adopt annual allowance budgets for the first compliance period of the program, calendar years 2023 through 2026, to be distributed from January 1, 2023, through December 31, 2026.

(b) By October 1, 2026, the department shall add to its emissions baseline by incorporating the proportionate share that the total greenhouse gas emissions of new covered entities in the second compliance period bear to the total anthropogenic greenhouse gas emissions in the state during ~~((2023))~~ 2015 through ~~((2025))~~ 2019. In determining the addition to the baseline, the department may exclude a year from the determination if the department identifies that year to have been an outlier due to a state of emergency. The department shall adopt annual allowance budgets for the second compliance period of the program, calendar years 2027 through 2030, that will be distributed from January 1, 2027, through December 31, 2030.

(c) By October 1, 2028, the department shall adopt by rule the annual allowance budgets for calendar years 2031 through 2040.

(2) The annual allowance budgets must be set to achieve the share of reductions by covered entities necessary to achieve the 2030, 2040, and 2050 statewide emissions limits established in RCW 70A.45.020, based on data reported to the department under chapter 70A.15 RCW or provided as required by this chapter. Annual allowance budgets must be set such that the use of offsets as compliance instruments, consistent with RCW 70A.65.170, does not prevent the achievement of the emissions limits established in RCW 70A.45.020. In so setting annual allowance budgets, the department must reduce the annual allowance budget relative to the limits in an amount equivalent to offset use, or in accordance with a similar methodology adopted by the department. The department must adopt annual allowance budgets for the program on a calendar year basis that provide for progressively equivalent reductions year over year. An allowance distributed under the program, either directly by the department under RCW 70A.65.110 through 70A.65.130 or ~~((though [through]))~~ through auctions under RCW 70A.65.100, does not expire and may be held or banked consistent with RCW 70A.65.100(6) and 70A.65.150(1).

(3) The department must complete ~~((an))~~ evaluations by December 31, 2027, and by December 31, 2035, of the performance of the program, including its performance in reducing greenhouse gases. If the evaluation shows that adjustments to the annual allowance budgets are necessary for covered entities to achieve their proportionate share of the 2030 and 2040 emission reduction limits identified in RCW 70A.45.020, as applicable, the department shall adjust the annual allowance budgets accordingly. The department must complete additional evaluations of the performance of the program by December 31, 2040, and by December 31, 2045, and make any necessary adjustments in the annual allowance budgets to ensure that covered entities achieve their proportionate share of the 2050 emission reduction limit identified in RCW 70A.45.020. Nothing in this subsection precludes the department from making additional adjustments to annual allowance budgets as necessary to ensure successful achievement of the proportionate emission reduction limits by covered entities. The department shall determine and make public the circumstances, metrics, and processes that would initiate the public consideration of additional allowance budget adjustments to ensure successful achievement of the proportionate emission reduction limits.

(4) Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2015 through 2019 is deemed sufficient for the purpose of adopting annual allowance budgets and serving as the baseline by which covered entities demonstrate compliance under the first compliance period of the program. Data reported to the department under RCW 70A.15.2200 or provided as required by this chapter for 2023 through 2025 is deemed sufficient for adopting annual allowance budgets and serving as the baseline by which covered entities demonstrate compliance under the second compliance period of the program.

(5) The legislature intends to promote a growing and sustainable economy and to avoid leakage of emissions from manufacturing to other jurisdictions. Therefore, the legislature finds that implementation of this section is contingent upon the enactment of RCW 70A.65.110.

**NEW SECTION. Sec. 2.** A new section is added to chapter 70A.65 RCW to read as follows:

(1) A covered or opt-in entity has a compliance obligation for its emissions during each four-year compliance period, with the first compliance period commencing January 1, 2023. The department shall by rule require that covered or opt-in entities annually transfer a percentage of compliance instruments, but must fully satisfy their compliance obligation, for each compliance period.

(2) Compliance occurs through the transfer of the required compliance instruments or price ceiling units, on or before the transfer date, from the holding account to the compliance account of the covered or opt-in entity as described in RCW 70A.65.080.

(3)(a) A covered entity may substitute the submission of compliance instruments with price ceiling units.

(b) A covered or opt-in entity submitting insufficient compliance instruments to meet its compliance obligation is subject to a penalty as provided in RCW 70A.65.200.

(4) Older vintage allowances must be retired before newer vintage allowances.

(5) Upon receipt by the department of all compliance instruments transferred by a covered entity or opt-in entity to meet its compliance obligation, the department shall retire the allowances or offset credits.

**Sec. 3.** RCW 70A.65.100 and 2021 c 316 s 12 are each amended to read as follows:

(1) Except as provided in RCW 70A.65.110, 70A.65.120, and 70A.65.130, the department shall distribute allowances through auctions as provided in this section and in rules adopted by the department to implement these sections. An allowance is not a property right.

(2)(a) The department shall hold a maximum of four auctions annually, plus any necessary reserve auctions. An auction may include allowances from the annual allowance budget of the current year and allowances from the annual allowance budgets from prior years that remain to be distributed. The department must transmit to the environmental justice council an auction notice at least 60 days prior to each auction, as well as a summary results report and a postauction public proceeds report within 60 days after each auction. The department must communicate the results of the previous calendar year's auctions to the environmental justice council on an annual basis beginning in 2024.

(b) The department must make future vintage allowances available through parallel auctions at least twice annually in addition to the auctions through which current vintage allowances are exclusively offered under (a) of this subsection.

(3) The department shall engage a qualified, independent contractor to run the auctions. The department shall also engage a qualified financial services administrator to hold the bid guarantees, evaluate bid guarantees, and inform the department of the value of bid guarantees once the bids are accepted.

(4) Auctions are open to covered entities, opt-in entities, and general market participants that are registered entities in good standing. The department shall adopt by rule the requirements for a registered entity to register and participate in a given auction.

(a) Registered entities intending to participate in an auction must submit an application to participate at least 30 days prior to the auction. The application must include the documentation required for review and approval by the department. A registered entity is eligible to participate only after receiving a notice of approval by the department.

(b) Each registered entity that elects to participate in the auction must have a different representative. Only a representative with an approved auction account is authorized to access the auction platform to submit an application or confirm the intent to bid for the registered entity, submit bids on behalf of the registered entity during the bidding window, or to download reports specific to the auction.

(5) The department may require a bid guarantee, payable to the financial services administrator, in an amount greater than or equal to the sum of the maximum value of the bids to be submitted by the registered entity.

(6) To protect the integrity of the auctions, a registered entity or group of registered entities with a direct corporate association are subject to auction purchase and holding limits. The department may impose additional limits if it deems necessary to protect the integrity and functioning of the auctions:

(a) A covered entity or an opt-in entity may not buy more than 10 percent of the allowances offered during a single auction;

(b) A general market participant may not buy more than four percent of the allowances offered during a single auction and may not in aggregate own more than 10 percent of total allowances to be issued in a calendar year;

(c) No registered entity may buy more than the entity's bid guarantee; and

(d) No registered entity may buy allowances that would exceed the entity's holding limit at the time of the auction.

(7)(a) For fiscal year 2023, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$127,341,000 must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(b) For fiscal year 2024, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$356,697,000 must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(c) For fiscal year 2025, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$366,558,000 must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(d) For fiscal years 2026 through 2037, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) \$359,117,000 per year must first be deposited into the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(e) The deposits into the carbon emissions reduction account pursuant to (a) through (d) of this subsection must not exceed \$5,200,000,000 over the first 16 fiscal years and any remaining auction proceeds must be deposited into the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(f) For fiscal year 2038 and each year thereafter, upon completion and verification of the auction results, the financial services administrator shall notify winning bidders and transfer the auction proceeds to the state treasurer for deposit as follows: (i) 50 percent of the auction proceeds to the carbon emissions reduction account created in RCW 70A.65.240; and (ii) the remaining auction proceeds to the climate investment account created in RCW 70A.65.250 and the air quality and health disparities improvement account created in RCW 70A.65.280.

(8) The department shall adopt by rule provisions to guard against bidder collusion and minimize the potential for market manipulation. A registered entity may not release or disclose any bidding information including: Intent to participate or refrain from participation; auction approval status; intent to bid; bidding strategy; bid price or bid quantity; or information on the bid guarantee provided to the financial services administrator. The department may cancel or restrict a previously approved auction participation application or reject a new application if the department determines that a registered entity has:

(a) Provided false or misleading facts;

(b) Withheld material information that could influence a decision by the department;

(c) Violated any part of the auction rules;

(d) Violated registration requirements; or

(e) Violated any of the rules regarding the conduct of the auction.

(9) Records containing the following information are confidential and are exempt from public disclosure in their entirety:

(a) Bidding information as identified in subsection (8) of this section;

(b) Information contained in the secure, online electronic tracking system established by the department pursuant to RCW 70A.65.090(6);

(c) Financial, proprietary, and other market sensitive information as determined by the department that is submitted to the department pursuant to this chapter;

(d) Financial, proprietary, and other market sensitive information as determined by the department that is submitted to the independent contractor or the financial services administrator engaged by the department pursuant to subsection (3) of this section; and

(e) Financial, proprietary, and other market sensitive information as determined by the department that is submitted to a jurisdiction with which the department has entered into a linkage agreement pursuant to RCW 70A.65.210, and which is shared with the department, the independent contractor, or the financial services administrator pursuant to a linkage agreement.

(10) Any cancellation or restriction approved by the department under subsection (8) of this section may be permanent or for a specified number of auctions and the cancellation or restriction imposed is not exclusive and is in addition to the remedies that may be available pursuant to chapter 19.86 RCW or other state or federal laws, if applicable.

~~((+H))~~ (11) The department shall design allowance auctions so as to allow, to the maximum extent practicable, linking with external greenhouse gas emissions trading programs in other jurisdictions and to facilitate the transfer of allowances when the state's program has entered into a linkage agreement with other external greenhouse gas emissions trading programs. The department may conduct auctions jointly with linked jurisdictions.

~~((+H))~~ (12) In setting the number of allowances offered at each auction, the department shall consider the allowances in the marketplace due to the marketing of allowances issued as required under RCW 70A.65.110, 70A.65.120, and 70A.65.130 in the department's determination of the number of allowances to be offered at auction. The department shall offer only such number of allowances at each auction as will enhance the likelihood of achieving the goals of RCW 70A.45.020.

**Sec. 4.** RCW 70A.65.200 and 2021 c 316 s 23 are each amended to read as follows:

(1) All covered and opt-in entities are required to submit compliance instruments in a timely manner to meet the entities' compliance obligations and shall comply with all requirements for monitoring, reporting, holding, and transferring emission allowances and other provisions of this chapter.

(2) If a covered or opt-in entity does not submit sufficient compliance instruments to meet its compliance obligation by the specified transfer dates, a penalty of four allowances for every one compliance instrument that is missing must be submitted to the department within six months. When a covered entity or opt-in entity reasonably believes that it will be unable to meet a compliance obligation, the entity shall immediately notify the department. Upon receiving notification, the department shall issue an order requiring the entity to submit the penalty allowances.

(3) If a covered entity or opt-in entity fails to submit penalty allowances as required by subsection (2) of this section, the department must issue an order or issue a penalty of up to \$10,000 per day per violation, or both, for failure to submit penalty allowances as required by subsection (2) of the section. The order may include a plan and schedule for coming into compliance.

(4) The department may issue a penalty of up to \$50,000 per day per violation for violations of RCW 70A.65.100(8) (a) through (e).

(5) Except as provided in subsections (3) and (4) of this section, any person that violates the terms of this chapter or an order issued under this chapter incurs a penalty of up to \$10,000 per day per violation for each day that the person does not comply. All penalties under subsections (3) and (4) of this section and this subsection must be deposited into the climate investment account created in RCW 70A.65.250.

(6) Orders and penalties issued under this chapter are appealable to the pollution control hearings board under chapter 43.21B RCW.

(7) For the first compliance period, the department may reduce the amount of the penalty by adjusting the monetary amount or the number of penalty allowances described in subsections (2) and (3) of this section.

(8) An electric utility or natural gas utility must notify its retail customers and the environmental justice council in published form within three months of paying a monetary penalty under this section.

(9)(a) No city, town, county, township, or other subdivision or municipal corporation of the state may implement a charge or tax based exclusively upon the quantity of greenhouse gas emissions.

(b) No state agency may adopt or enforce a ~~((program that regulates greenhouse gas emissions from a stationary source except as provided in this chapter))~~ greenhouse gas pricing or market-based emissions cap and reduce program for stationary sources, or adopt or enforce emission limitations on greenhouse gas emissions from stationary sources except as:

(i) Provided in this chapter;

(ii) Authorized or directed by a state statute in effect as of July 1, 2022; or

(iii) Required to implement a federal statute, rule, or program.

(c) This chapter preempts the provisions of chapter 173-442 WAC, and the department shall repeal chapter 173-442 WAC.

(10)(a) By December 1, 2023, the office of financial management must submit a report to the appropriate committees of the legislature that summarizes two categories of state laws other than this chapter:

(i) Laws that regulate greenhouse gas emissions from stationary sources, and the greenhouse gas emission reductions attributable to each chapter, relative to a baseline in which this chapter and all other state laws that regulate greenhouse gas emissions are presumed to remain in effect; and

(ii) Laws whose implementation may effectuate reductions in greenhouse gas emissions from stationary sources.

(b) The state laws that the office of financial management may address in completing the report required in this subsection include, but are not limited to:

(i) Chapter 19.27A RCW;

(ii) Chapter 19.280 RCW;

(iii) Chapter 19.405 RCW;

(iv) Chapter 36.165 RCW;

(v) Chapter 43.21F RCW;

(vi) Chapter 70.30 RCW;

(vii) Chapter 70A.15 RCW;

(viii) Chapter 70A.45 RCW;

(ix) Chapter 70A.60 RCW;

(x) Chapter 70A.535 RCW;

(xi) Chapter 80.04 RCW;

(xii) Chapter 80.28 RCW;

(xiii) Chapter 80.70 RCW;

(xiv) Chapter 80.80 RCW; and

(xv) Chapter 81.88 RCW.

(c) The office of financial management may contract for all or part of the work product required under this subsection.

**Sec. 5.** RCW 70A.65.020 and 2021 c 316 s 3 are each amended to read as follows:

(1) To ensure that the program created in RCW 70A.65.060 through 70A.65.210 achieves reductions in criteria pollutants as well as greenhouse gas emissions in overburdened communities highly impacted by air pollution, the department must:

(a) Identify overburdened communities, which may be accomplished through the department's process to identify overburdened communities under chapter ~~((314, Laws of 2021))~~ 70A.02 RCW;

(b) Deploy an air monitoring network in overburdened communities to collect sufficient air quality data for the 2023 review and subsequent reviews of criteria pollutant reductions conducted under subsection (2) of this section; and

(c)(i) Within the identified overburdened communities, analyze and determine which sources are the greatest contributors of criteria pollutants and develop a high priority list of significant emitters.

(ii) Prior to listing any entity as a high priority emitter, the department must notify that entity and share the data used to rank that entity as a high priority emitter, and provide a period of not less than 60 days for the covered entity to submit more recent data or other information relevant to the designation of that entity as a high priority emitter.



(2)(a) Beginning in 2023, and every two years thereafter, the department must conduct a review to determine levels of criteria pollutants, as well as greenhouse gas emissions, in the overburdened communities identified under subsection (1) of this section. This review must also include an evaluation of initial and subsequent health impacts related to criteria pollution in overburdened communities. The department may conduct this evaluation jointly with the department of health.

(b) Once this review determines the levels of criteria pollutants in an identified overburdened community, then the department, in consultation with local air pollution control authorities, must:

(i) Establish air quality targets to achieve air quality consistent with whichever is more protective for human health:

(A) National ambient air quality standards established by the United States environmental protection agency; or

(B) The air quality experienced in neighboring communities that are not identified as overburdened;

(ii) Identify the stationary and mobile sources that are the greatest contributors of those emissions that are either increasing or not decreasing;

(iii) Achieve the reduction targets through adoption of emission control strategies or other methods;

(iv) Adopt, along with local air pollution control authorities, stricter air quality standards, emission standards, or emissions limitations on criteria pollutants, consistent with the authority of the department provided under RCW 70A.15.3000, and may consider alternative mitigation actions that would reduce criteria pollution by similar amounts; and

(v) After adoption of the stricter air quality standards, emission standards, or emissions limitations on criteria pollutants under (b)(iv) of this subsection, issue an enforceable order or the local air authority must issue an enforceable order, as authorized under RCW 70A.15.1100, as necessary to comply with the stricter standards or limitations and the requirements of this section. The department or local air authority must initiate the process, including provision of notice to all relevant affected permittees or registered sources and to the public, to adopt and implement an enforceable order required under this subsection within six months of the adoption of standards or limitations under (b)(iv) of this subsection.

(c) Actions imposed under this section may not impose requirements on a permitted stationary source that are disproportionate to the permitted stationary source's contribution to air pollution compared to other permitted stationary sources and other sources of criteria pollutants in the overburdened community.

(3) An eligible facility sited after July 25, 2021, that receives allowances under RCW 70A.65.110 must mitigate increases in ~~((its emissions of))~~ particulate matter in overburdened communities due to its emissions.

(4)(a) The department must create and adopt a supplement to the department's community engagement plan developed pursuant to chapter ~~((314, Laws of 2021))~~ 70A.02 RCW. The supplement must describe how the department will engage with overburdened communities and vulnerable populations in:

(i) Identifying emitters in overburdened communities; and

(ii) Monitoring and evaluating criteria pollutant emissions in those areas.

(b) The community engagement plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation.

**Sec. 6.** RCW 70A.65.150 and 2021 c 316 s 17 are each amended to read as follows:

(1) To help minimize allowance price volatility in the auction, the department shall adopt by rule an auction floor price and a schedule for the floor price to increase by a predetermined amount every year. The department may not sell allowances at bids lower than the auction floor price. The department's rules must specify holding limits that determine the maximum number of allowances that may be held for use or trade by a registered entity at any one time. The department shall also establish ~~((an auction ceiling))~~ a reserve auction floor price to limit extraordinary prices and to determine when to offer allowances through the allowance price containment reserve auctions authorized under this section.

(2) For calendar years 2023 through 2026, the department must place no less than two percent of the total number of allowances available from the allowance budgets for those years in an allowance price containment reserve. The reserve must be designed as a mechanism to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

(3)(a) The department shall adopt rules for holding auctions of allowances from the price containment reserve when the settlement prices in the preceding auction ~~((approach))~~ exceed the adopted ~~((auction ceiling))~~ reserve auction floor price. The auction must be separate from auctions of other allowances.

(b) Allowances must also be distributed from the allowance price containment reserve by auction when new covered and opt-in entities enter the program and allowances in the emissions containment reserve under RCW 70A.65.140~~(5)~~ are exhausted.

(4) Only covered and opt-in entities may participate in the auction of allowances from the allowance price containment reserve.

(5) The process for reserve auctions is the same as the process provided in RCW 70A.65.100 and the proceeds from reserve auctions must be treated the same.

(6) The department shall by rule:

(a) Set the reserve auction floor price in advance of the reserve auction. The department may choose to establish multiple price tiers for the allowances from the reserve;

(b) Establish the requirements and schedule for the allowance price containment reserve auctions; and

(c) Establish the amount of allowances to be placed in the allowance price containment reserve after the first compliance period ending in 2026.

**Sec. 7.** RCW 70A.65.160 and 2021 c 316 s 18 are each amended to read as follows:

(1) The department shall establish a price ceiling to provide cost protection for ~~((facilities))~~ covered entities obligated to comply with this chapter. The ceiling must be set at a level sufficient to facilitate investments to achieve further emission reductions beyond those enabled by the price ceiling, with the intent that investments accelerate the state's achievement of greenhouse gas limits

established under RCW 70A.45.020. The price ceiling must increase annually in proportion to the ~~((price floor))~~ reserve auction floor price established in RCW 70A.65.150(1).

(2) In the event that no allowances remain in the allowance price containment reserve, the department must issue the number of price ceiling units for sale sufficient to provide cost protection for ~~((facilities))~~ covered entities as established under subsection (1) of this section. Purchases must be limited to entities that do not have sufficient eligible compliance instruments in their holding and compliance accounts for the ~~((next))~~ current compliance period and these entities may only purchase what they need to meet their compliance obligation for the current compliance period. Price ceiling units may not be sold or transferred and must be retired for compliance in the current compliance period. A price ceiling unit is not a property right.

(3) ~~((Funds raised in connection with the sale of price ceiling units))~~ The price ceiling unit emission reduction investment account is created in the state treasury. All receipts from the sale of price ceiling units must be deposited in the account. Moneys in the account may only be spent after appropriation. Moneys in the account must be expended to achieve emissions reductions on at least a metric ton for metric ton basis that are real, permanent, quantifiable, verifiable, enforceable by the state, and in addition to any greenhouse gas emission reduction otherwise required by law or regulation and any other greenhouse gas emission reduction that otherwise would occur.

**Sec. 8.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to read as follows:

(1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, and the air quality and health disparities improvement account created in RCW 70A.65.280, achieve the following:

(a) A minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under chapter ~~((314, Laws of 2021))~~ 70A.02 RCW; and

(b) In addition to the requirements of (a) of this subsection, a minimum of not less than 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe. An investment that meets the requirements of both this subsection (1)(b) and (a) of this subsection may count toward the minimum percentage targets for both subsections.

(2) The expenditure of moneys under this chapter must be consistent with applicable federal, state, and local laws, and treaty rights including, but not limited to, prohibitions on uses of funds imposed by the state Constitution.

(3) For the purposes of this section, "benefits" means investments or activities that:

(a) Reduce vulnerable population characteristics, environmental burdens, or associated risks that contribute significantly to the cumulative impact designation of ~~((highly impacted))~~ overburdened communities;

(b) Meaningfully protect an overburdened community from, or support community response to, the impacts of air pollution or climate change; or

(c) Meet a community need identified by vulnerable members of the overburdened community that is consistent with the intent of this chapter.

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to RCW 70A.65.040.

(5) No expenditures may be made from the carbon emissions reduction account created in RCW 70A.65.240, the climate investment account created in RCW 70A.65.250, or the air quality and health disparities improvement account created in RCW 70A.65.280 if, by April 1, 2023, the legislature has not considered and enacted request legislation brought forth by the department under RCW 70A.65.060 that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.

**Sec. 9.** RCW 70A.15.2200 and 2021 c 316 s 33 are each amended to read as follows:

(1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration or reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. In the case of emissions of greenhouse gases as defined in RCW 70A.45.010 the department shall adopt rules requiring reporting of those emissions. The department or board may require that such registration or reporting be accompanied by a fee, and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration or reporting program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering or other reliable analysis for accuracy and currentness, of information provided by sources

pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration and reporting with any other board or the department, except that emissions of greenhouse gases as defined in RCW 70A.45.010 must be reported as required under subsection (5) of this section.

All registration program and reporting fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ~~((ten million))~~ 10,000,000 bushels of grain annually.

(4) For the purposes of subsection (3) of this section:

(a) A "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade for which a license is required and includes, but is not limited to, such a licensed facility that also conducts cleaning operations for grain;

(b) A "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW; and

(c) "Grain" means a grain or a pulse.

(5)(a) The department shall adopt rules requiring persons to report emissions of greenhouse gases as defined in RCW 70A.45.010 where those emissions from a single facility, or from electricity or fossil fuels sold in Washington by a single supplier or local distribution company, meet or exceed ~~((ten thousand))~~ 10,000 metric tons of carbon dioxide equivalent annually. The rules adopted by the department must support implementation of the program created in RCW 70A.65.060. In addition, the rules must require that:

(i) Emissions of greenhouse gases resulting from the combustion of fossil fuels be reported separately from emissions of greenhouse gases resulting from the combustion of biomass; and

(ii) Each annual report must include emissions data for the preceding calendar year and must be submitted to the department by March 31st of the year

in which the report is due, except for an electric power entity, which must submit its report by June 1st of the year in which the report is due.

(b)(i) The department may by rule include additional gases to the definition of "greenhouse gas" in RCW 70A.45.010 only if the gas has been designated as a greenhouse gas by the United States congress, by the United States environmental protection agency, or included in external greenhouse gas emission trading programs with which Washington has pursuant to RCW 70A.65.210. Prior to including additional gases to the definition of "greenhouse gas" in RCW 70A.45.010, the department shall notify the appropriate committees of the legislature.

(ii) The department may by rule exempt persons who are required to report greenhouse gas emissions to the United States environmental protection agency and who emit less than ~~((ten thousand))~~ 10,000 metric tons carbon dioxide equivalent annually.

(iii) The department must establish a methodology for persons who are not required to report under this section to voluntarily report their greenhouse gas emissions.

(c)(i) The department shall review and if necessary update its rules whenever:

(A) The United States environmental protection agency adopts final amendments to 40 C.F.R. Part 98 to ensure consistency with federal reporting requirements for emissions of greenhouse gases; or

(B) Needed to ensure consistency with emissions reporting requirements for jurisdictions with which Washington has entered a linkage agreement.

(ii) The department shall not amend its rules in a manner that conflicts with this section.

(d) The department shall share any reporting information reported to it with the local air authority in which the person reporting under the rules adopted by the department operates.

(e) The fee provisions in subsection (2) of this section apply to reporting of emissions of greenhouse gases. Persons required to report under (a) of this subsection who fail to report or pay the fee required in subsection (2) of this section are subject to enforcement penalties under this chapter. The department shall enforce the reporting rule requirements. When a person that holds a compliance obligation under RCW 70A.65.080 fails to submit an emissions data report or fails to obtain a positive emissions data verification statement in accordance with (g)(ii) of this subsection, the department may assign an emissions level for that person.

(f) The energy facility site evaluation council shall, simultaneously with the department, adopt rules that impose greenhouse gas reporting requirements in site certifications on owners or operators of a facility permitted by the energy facility site evaluation council. The greenhouse gas reporting requirements imposed by the energy facility site evaluation council must be the same as the greenhouse gas reporting requirements imposed by the department. The department shall share any information reported to it from facilities permitted by the energy facility site evaluation council with the council, including notice of a facility that has failed to report as required. The energy facility site evaluation council shall contract with the department to monitor the reporting requirements adopted under this section.

(g)(i) The department must establish by rule the methods of verifying the accuracy of emissions reports.

(ii) Verification requirements apply at a minimum to persons required to report under (a) of this subsection with emissions that equal or exceed 25,000 metric tons of carbon dioxide equivalent emissions, including carbon dioxide from biomass-derived fuels, or to persons who have a compliance obligation under RCW 70A.65.080 in any year of the current compliance period. The department may adopt rules to accept verification reports from another jurisdiction with a linkage agreement pursuant to RCW 70A.65.180 in cases where the department deems that the methods or procedures are substantively similar.

(h)(i) The definitions in RCW 70A.45.010 apply throughout this subsection (5) unless the context clearly requires otherwise.

(ii) For the purpose of this subsection (5), the term "supplier" includes: (A) Suppliers that produce, import, or deliver, or any combination of producing, importing, or delivering, a quantity of fuel products in Washington that, if completely combusted, oxidized, or used in other processes, would result in the release of greenhouse gases in Washington equivalent to or higher than the threshold established under (a) of this subsection; and (B) suppliers of carbon dioxide that produce, import, or deliver a quantity of carbon dioxide in Washington that, if released, would result in emissions equivalent to or higher than the threshold established under (a) of this subsection.

(iii) For the purpose of this subsection (5), the term "person" includes: (A) An owner or operator of a facility; (B) a supplier; or (C) an electric power entity.

(iv) For the purpose of this subsection (5), the term "facility" includes facilities that directly emit greenhouse gases in Washington equivalent to the threshold established under (a) of this subsection with at least one source category listed in the United States environmental protection agency's mandatory greenhouse gas reporting regulation, 40 C.F.R. Part 98 Subparts C through II and RR through UU, as adopted on April 25, 2011.

(v) For the purpose of this subsection (5), the term "electric power entity" includes any of the following that supply electric power in Washington with associated emissions of greenhouse gases equal to or above the threshold established under (a) of this subsection: (A) Electricity importers and exporters; (B) retail providers, including multijurisdictional retail providers; and (C) first jurisdictional deliverers, as defined in RCW 70A.65.010, not otherwise included here.

**Sec. 10.** RCW 70A.65.010 and 2021 c 316 s 2 are each amended to read as follows:

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

(1) "Allowance" means an authorization to emit up to one metric ton of carbon dioxide equivalent.

(2) "Allowance price containment reserve" means an account maintained by the department with allowances available for sale through separate reserve auctions at predefined prices to assist in containing compliance costs for covered and opt-in entities in the event of unanticipated high costs for compliance instruments.

(3) "Annual allowance budget" means the total number of greenhouse gas allowances allocated for auction and distribution for one calendar year by the department.

(4) "Asset controlling supplier" means any entity that owns or operates interconnected electricity generating facilities or serves as an exclusive marketer for these facilities even though it does not own them, and has been designated by the department and received a department-published emissions factor for the wholesale electricity procured from its system. The department shall use a methodology consistent with the methodology used by an external greenhouse gas emissions trading program that shares the regional electricity transmission system. Electricity from an asset controlling supplier is considered a specified source of electricity.

(5) "Auction" means the process of selling greenhouse gas allowances by offering them up for bid, taking bids, and then distributing the allowances to winning bidders.

(6) "Auction floor price" means a price for allowances below which bids at auction are not eligible to be accepted.

(7) "Auction purchase limit" means the limit on the number of allowances one registered entity or a group of affiliated registered entities may purchase from the share of allowances sold at an auction.

(8) "Balancing authority" means the responsible entity that integrates resource plans ahead of time, maintains load-interchange-generation balance within a balancing authority area, and supports interconnection frequency in real time.

(9) "Balancing authority area" means the collection of generation, transmission, and load within the metered boundaries of a balancing authority. A balancing authority maintains load-resource balance within this area.

(10) "Best available technology" means a technology or technologies that will achieve the greatest reduction in greenhouse gas emissions, taking into account the fuels, processes, and equipment used by facilities to produce goods of comparable type, quantity, and quality. Best available technology must be technically feasible, commercially available, economically viable, not create excessive environmental impacts, and be compliant with all applicable laws while not changing the characteristics of the good being manufactured.

(11) "Biomass" means nonfossilized and biodegradable organic material originating from plants, animals, and microorganisms, including products, by-products, residues, and waste from agriculture, forestry, and related industries as well as the nonfossilized and biodegradable organic fractions of municipal wastewater and industrial waste, including gases and liquids recovered from the decomposition of nonfossilized and biodegradable organic material.

(12) "Biomass-derived fuels," "biomass fuels," or "biofuels" means fuels derived from biomass that have at least 40 percent lower greenhouse gas emissions based on a full life-cycle analysis when compared to petroleum fuels for which biofuels are capable as serving as a substitute.

(13) "Carbon dioxide equivalents" means a measure used to compare the emissions from various greenhouse gases based on their global warming potential.

(14) "Carbon dioxide removal" means deliberate human activities removing carbon dioxide from the atmosphere and durably storing it in geological,



terrestrial, or ocean reservoirs, or in products. "Carbon dioxide removal" includes existing and potential anthropogenic enhancement of biological or geochemical sinks and including, but not limited to, carbon mineralization and direct air capture and storage.

(15) "Climate commitment" means the process and mechanisms to ensure a coordinated and strategic approach to advancing climate resilience and environmental justice and achieving an equitable and inclusive transition to a carbon neutral economy.

(16) "Climate resilience" is the ongoing process of anticipating, preparing for, and adapting to changes in climate and minimizing negative impacts to our natural systems, infrastructure, and communities. For natural systems, increasing climate resilience involves restoring and increasing the health, function, and integrity of our ecosystems and improving their ability to absorb and recover from climate-affected disturbances. For communities, increasing climate resilience means enhancing their ability to understand, prevent, adapt, and recover from climate impacts to people and infrastructure.

(17) "Closed facility" means a facility at which the current owner or operator has elected to permanently stop production and will no longer be an emissions source.

(18) "Compliance instrument" means an allowance or offset credit issued by the department or by an external greenhouse gas emissions trading program to which Washington has linked its greenhouse gas emissions cap and invest program. One compliance instrument is equal to one metric ton of carbon dioxide equivalent.

(19) "Compliance obligation" means the requirement to submit to the department the number of compliance instruments equivalent to a covered or opt-in entity's covered emissions during the compliance period.

(20) "Compliance period" means the four-year period for which the compliance obligation is calculated for covered entities.

(21) "Cost burden" means the impact on rates or charges to customers of electric utilities in Washington state for the incremental cost of electricity service to serve load due to the compliance cost for greenhouse gas emissions caused by the program. Cost burden includes administrative costs from the utility's participation in the program.

(22) "Covered emissions" means the emissions for which a covered entity has a compliance obligation under RCW 70A.65.080.

(23) "Covered entity" means a person that is designated by the department as subject to RCW 70A.65.060 through 70A.65.210.

(24) "Cumulative environmental health impact" has the same meaning as provided in RCW 70A.02.010.

(25) "Curtailed facility" means a facility at which the owner or operator has temporarily suspended production but for which the owner or operator maintains operating permits and retains the option to resume production if conditions become amenable.

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

(27) "Electricity importer" means:

(a) For electricity that is scheduled with a NERC e-tag to a final point of delivery into a balancing authority area located entirely within the state of Washington, the electricity importer is identified on the NERC e-tag as the

purchasing-selling entity on the last segment of the tag's physical path with the point of receipt located outside the state of Washington and the point of delivery located inside the state of Washington;

(b) For facilities physically located outside the state of Washington with the first point of interconnection to a balancing authority area located entirely within the state of Washington when the electricity is not scheduled on a NERC e-tag, the electricity importer is the facility operator or owner;

(c) For electricity imported through a centralized market, the electricity importer will be defined by rule consistent with the rules required under RCW 70A.65.080(1)(c);

(d) For electricity from facilities allocated to serve retail electricity customers of a multijurisdictional electric company, the electricity importer is the multijurisdictional electric company;

(e) If the importer identified under (a) of this subsection is a federal power marketing administration over which the state of Washington does not have jurisdiction, and the federal power marketing administration has not voluntarily elected to comply with the program, then the electricity importer is the next purchasing-selling entity in the physical path on the NERC e-tag, or if no additional purchasing-selling entity over which the state of Washington has jurisdiction, then the electricity importer is the electric utility that operates the Washington transmission or distribution system, or the generation balancing authority;

(f) For electricity that is imported into the state by a federal power marketing administration and sold to a public body or cooperative customer or direct service industrial customer located in Washington pursuant to section 5(b) or (d) of the Pacific Northwest electric power planning and conservation act of 1980, P.L. 96-501, the electricity importer is the federal marketing administration;

(g) If the importer identified under (f) of this subsection has not voluntarily elected to comply with the program, then the electricity importer is the public body or cooperative customer or direct service industrial customer; or

(h) For electricity from facilities allocated to a consumer-owned utility inside the state of Washington from a multijurisdictional consumer-owned utility, the electricity importer is the consumer-owned utility inside the state of Washington.

(28) "Emissions containment reserve allowance" means a conditional allowance that is withheld from sale at an auction by the department or its agent to secure additional emissions reductions in the event prices fall below the emissions containment reserve trigger price.

(29) "Emissions containment reserve trigger price" means the price below which allowances will be withheld from sale by the department or its agent at an auction, as determined by the department by rule.

(30) "Emissions threshold" means the greenhouse gas emission level at or above which a person has a compliance obligation.

(31) "Environmental benefits" has the same meaning as defined in RCW 70A.02.010.

(32) "Environmental harm" has the same meaning as defined in RCW 70A.02.010.

(33) "Environmental impacts" has the same meaning as defined in RCW 70A.02.010.

(34) "Environmental justice" has the same meaning as defined in RCW 70A.02.010.

(35) "Environmental justice assessment" has the same meaning as identified in RCW 70A.02.060.

(36) "External greenhouse gas emissions trading program" means a government program, other than Washington's program created in this chapter, that restricts greenhouse gas emissions from sources outside of Washington and that allows emissions trading.

(37) "Facility" means any physical property, plant, building, structure, source, or stationary equipment located on one or more contiguous or adjacent properties in actual physical contact or separated solely by a public roadway or other public right-of-way and under common ownership or common control, that emits or may emit any greenhouse gas.

(38) "First jurisdictional deliverer" means the owner or operator of an electric generating facility in Washington or an electricity importer.

(39) "General market participant" means a registered entity that is not identified as a covered entity or an opt-in entity that is registered in the program registry and intends to purchase, hold, sell, or voluntarily retire compliance instruments.

(40) "Greenhouse gas" has the same meaning as in RCW 70A.45.010.

(41) "Holding limit" means the maximum number of allowances that may be held for use or trade by a registered entity at any one time.

(42) "Imported electricity" means electricity generated outside the state of Washington with a final point of delivery within the state.

(a) "Imported electricity" includes electricity from an organized market, such as the energy imbalance market.

(b) "Imported electricity" includes imports from linked jurisdictions, but such imports shall be construed as having no emissions.

(c) Electricity from a system that is marketed by a federal power marketing administration shall be construed as "imported electricity," not electricity generated in the state of Washington.

(d) "Imported electricity" does not include electricity imports of unspecified electricity that are netted by exports of unspecified electricity to any jurisdiction not covered by a linked program by the same entity within the same hour.

(e) For a multijurisdictional electric company, "imported electricity" means electricity, other than from in-state facilities, that contributes to a common system power pool. Where a multijurisdictional electric company has a cost allocation methodology approved by the utilities and transportation commission, the allocation of specific facilities to Washington's retail load will be in accordance with that methodology.

(f) For a multijurisdictional consumer-owned utility, "imported electricity" includes electricity from facilities that contribute to a common system power pool that are allocated to a consumer-owned utility inside the state of Washington pursuant to a methodology approved by the governing board of the consumer-owned utility.

(43) "Leakage" means a reduction in emissions of greenhouse gases within the state that is offset by a directly attributable increase in greenhouse gas

emissions outside the state and outside the geography of another jurisdiction with a linkage agreement with Washington.

(44) "Limits" means the greenhouse gas emissions reductions required by RCW 70A.45.020.

(45) "Linkage" means a bilateral or multilateral decision under a linkage agreement between greenhouse gas market programs to accept compliance instruments issued by a participating jurisdiction to meet the obligations of regulated entities in a partner jurisdiction and to otherwise coordinate activities to facilitate operation of a joint market.

(46) "Linkage agreement" means a nonbinding agreement that connects two or more greenhouse gas market programs and articulates a mutual understanding of how the participating jurisdictions will work together to facilitate a connected greenhouse gas market.

(47) "Linked jurisdiction" means a jurisdiction with which Washington has entered into a linkage agreement.

(48) "Multijurisdictional consumer-owned utility" means a consumer-owned utility that provides electricity to member owners in Washington and in one or more other states in a contiguous service territory or from a common power system.

(49) "Multijurisdictional electric company" means an investor-owned utility that provides electricity to customers in Washington and in one or more other states in a contiguous service territory or from a common power system.

(50) "NERC e-tag" means North American electric reliability corporation (NERC) energy tag representing transactions on the North American bulk electricity market scheduled to flow between or across balancing authority areas.

(51) "Offset credit" means a tradable compliance instrument that represents an emissions reduction or emissions removal of one metric ton of carbon dioxide equivalent.

(52) "Offset project" means a project that reduces or removes greenhouse gases that are not covered emissions under this chapter.

(53) "Offset protocols" means a set of procedures and standards to quantify greenhouse gas reductions or greenhouse gas removals achieved by an offset project.

(54) "Overburdened community" means a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts or risks due to exposure to environmental pollutants or contaminants through multiple pathways, which may result in significant disparate adverse health outcomes or effects.

(a) "Overburdened community" includes, but is not limited to:

(i) Highly impacted communities as defined in RCW 19.405.020;

(ii) Communities located in census tracts that are fully or partially on "Indian country" as defined in 18 U.S.C. Sec. 1151; and

(iii) Populations, including Native Americans or immigrant populations, who may be exposed to environmental contaminants and pollutants outside of the geographic area in which they reside based on the populations' use of traditional or cultural foods and practices, such as the use of resources, access to which is protected under treaty rights in ceded areas, when those exposures in conjunction with other exposures may result in disproportionately greater risks, including risks of certain cancers or other adverse health effects and outcomes.

(b) Overburdened communities identified by the department may include the same communities as those identified by the department through its process for identifying overburdened communities under RCW 70A.02.010.

(55) "Person" has the same meaning as defined in RCW 70A.15.2200(5)(h)(iii).

(56) "Point of delivery" means a point on the electricity transmission or distribution system where a deliverer makes electricity available to a receiver, or available to serve load. This point may be an interconnection with another system or a substation where the transmission provider's transmission and distribution systems are connected to another system, or a distribution substation where electricity is imported into the state over a multijurisdictional retail provider's distribution system.

(57) "Price ceiling unit" means the units issued at a fixed price by the department for the purpose of limiting price increases and funding further investments in greenhouse gas reductions.

(58) "Program" means the greenhouse gas emissions cap and invest program created by and implemented pursuant to this chapter.

(59) "Program registry" means the data system in which covered entities, opt-in entities, and general market participants are registered and in which compliance instruments are recorded and tracked.

(60) "Registered entity" means a covered entity, opt-in entity, or general market participant that has completed the process for registration in the program registry.

(61) "Resilience" means the ability to prepare, mitigate and plan for, withstand, recover from, and more successfully adapt to adverse events and changing conditions, and reorganize in an equitable manner that results in a new and better condition.

(62) "Retire" means to permanently remove a compliance instrument such that the compliance instrument may never be sold, traded, or otherwise used again.

(63) "Specified source of electricity" or "specified source" means a facility, unit, or asset controlling supplier that is permitted to be claimed as the source of electricity delivered. The reporting entity must have either full or partial ownership in the facility or a written power contract to procure electricity generated by that facility or unit or from an asset controlling supplier at the time of entry into the transaction to procure electricity.

(64) "Supplier" means a supplier of fuel in Washington state as defined in RCW 70A.15.2200(5)(h)(ii).

(65) "Tribal lands" has the same meaning as defined in RCW 70A.02.010.

(66) "Unspecified source of electricity" or "unspecified source" means a source of electricity that is not a specified source at the time of entry into the transaction to procure electricity.

(67) "Voluntary renewable reserve account" means a holding account maintained by the department from which allowances may be retired for voluntary renewable electricity generation, which is directly delivered to the state and has not and will not be sold or used to meet any other mandatory requirements in the state or any other jurisdiction, on behalf of voluntary renewable energy purchasers or end users.

(68) "Vulnerable populations" has the same meaning as defined in RCW 70A.02.010.

**Sec. 11.** RCW 70A.65.140 and 2021 c 316 s 16 are each amended to read as follows:

(1) To help ensure that the price of allowances remains sufficient to incentivize reductions in greenhouse gas emissions, the department must establish an emissions containment reserve and set an emissions containment reserve trigger price by rule. The price must be set at a reasonable amount above the auction floor price and equal to the level established in jurisdictions with which the department has entered into a linkage agreement. ~~((In the event that))~~ If a jurisdiction with which the department ~~((has entered))~~ might enter into a linkage agreement has no emissions containment trigger price, the department ~~((shall))~~ may suspend the trigger price under this subsection. The purpose of withholding allowances in the emissions containment reserve is to secure additional emissions reductions.

(2) In the event that the emissions containment reserve trigger price is met during an auction, the department must automatically withhold allowances as needed. The department must convert and transfer any allowances that have been withheld from auction into the emissions containment reserve account.

(3) Emissions containment reserve allowances may only be withheld from an auction if the demand for allowances would result in an auction clearing price that is less than the emissions containment reserve trigger price prior to the withholding from the auction of any emissions containment reserve allowances.

(4) The department shall transfer allowances to the emissions containment reserve in the following situations:

(a) No less than two percent of the total number of allowances available from the allowance budgets for calendar years 2023 through 2026;

(b) When allowances are unsold in auctions under RCW 70A.65.100;

(c) When facilities curtail or close consistent with RCW 70A.65.110(6); or

(d) When facilities fall below the emissions threshold. The amount of allowances withdrawn from the program budget must be proportionate to the amount of emissions such a facility was previously using.

(5)(a) Allowances must be distributed from the emissions containment reserve by auction when new covered and opt-in entities enter the program.

(b) Allowances equal to the greenhouse gas emissions resulting from a new or expanded emissions-intensive, trade-exposed facility with emissions in excess of 25,000 metric tons per year during the first applicable compliance period will be provided to the facility from the reserve created in this section and must be retired by the facility. In subsequent compliance periods, the facility will be subject to the regulatory cap and related requirements under this chapter.

**Sec. 12.** RCW 70A.65.170 and 2021 c 316 s 19 are each amended to read as follows:

(1) The department shall adopt by rule the protocols for establishing offset projects and securing offset credits that may be used to meet a portion of a covered or opt-in entity's compliance obligation under this chapter ~~((316, Laws of 2021))~~. The protocols adopted by the department under this section must align with the policies of the state established under RCW 70A.45.090 and 70A.45.100.

(2) Offset projects must:

(a) Provide direct environmental benefits to the state or be located in a jurisdiction with which Washington has entered into a linkage agreement;

(b) Result in greenhouse gas reductions or removals that:

(i) Are real, permanent, quantifiable, verifiable, and enforceable; and

(ii) Are in addition to greenhouse gas emission reductions or removals otherwise required by law and other greenhouse gas emission reductions or removals that would otherwise occur; and

(c) Have been certified by a recognized registry (~~(after July 25, 2021, or within two years prior to July 25, 2021)~~).

(3)(a) A total of no more than five percent of a covered or opt-in entity's compliance obligation during the first compliance period may be met by transferring offset credits. During these years, at least 50 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state.

(b) A total of no more than four percent of a covered or opt-in entity's compliance obligation during the second compliance period may be met by transferring offset credits. During these years, at least 75 percent of a covered or opt-in entity's compliance obligation satisfied by offset credits must be sourced from offset projects that provide direct environmental benefits in the state. The department may reduce the 75 percent requirement if it determines there is not sufficient offset supply in the state to meet offset demand during the second compliance period.

(c) The limits in (a) and (b) of this subsection may be modified by rule as adopted by the department when appropriate to ensure achievement of the proportionate share of statewide emissions limits established in RCW 70A.45.020 and to provide for alignment with other jurisdictions to which the state has linked.

(d) The limits in (a) and (b) of this subsection may be reduced for a specific covered or opt-in entity if the department determines, in consultation with the environmental justice council, that the covered or opt-in entity has or is likely to:

(i) Contribute substantively to cumulative air pollution burden in an overburdened community as determined by criteria established by the department, in consultation with the environmental justice council; or

(ii) Violate any permits required by any federal, state, or local air pollution control agency where the violation may result in an increase in emissions.

(e) An offset project on federally recognized tribal land does not count against the offset credit limits described in (a) and (b) of this subsection.

(i) No more than three percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the first compliance period.

(ii) No more than two percent of a covered or opt-in entity's compliance obligation may be met by transferring offset credits from projects on federally recognized tribal land during the second compliance period.

(4) In adopting protocols governing offset projects and covered and opt-in entities' use of offset credits, the department shall:

(a) Take into consideration standards, rules, or protocols for offset projects and offset credits established by other states, provinces, and countries with programs comparable to the program established in this chapter;

(b) Encourage opportunities for the development of offset projects in this state by adopting offset protocols that may include, but need not be limited to, protocols that make use of aggregation or other mechanisms to reduce transaction costs related to the development of offset projects and that support the development of carbon dioxide removal projects;

(c) Adopt a process for monitoring and invalidating offset credits as necessary to ensure the credit reflects emission reductions or removals that continue to meet the standards required by subsection (1) of this section. If an offset credit is invalidated, the covered or opt-in entity must, within six months of the invalidation, transfer replacement credits or allowances to meet its compliance obligation. Failure to transfer the required credits or allowances is a violation subject to penalties as provided in RCW 70A.65.200; and

(d) Make use of aggregation or other mechanisms, including cost-effective inventory and monitoring provisions, to increase the development of offset and carbon removal projects by landowners across the broadest possible variety of types and sizes of lands, including lands owned by small forestland owners.

(5) Any offset credits used (~~(may not)~~) must:

(a) Not be in addition to or allow for an increase in the emissions limits established under RCW 70A.45.020, as reflected in the annual allowance budgets developed under RCW 70A.65.070;

(b) Have been issued for reporting periods wholly after July 25, 2021, or within two years prior to July 25, 2021; and

(c) Be consistent with offset protocols adopted by the department.

(6) The offset credit must be registered and tracked as a compliance instrument.

(7) Beginning in 2031, the limits established in subsection (3)(b) and (c)(ii) of this section apply unless modified by rule as adopted by the department after a public consultation process.

**Sec. 13.** RCW 70A.65.030 and 2021 c 316 s 4 are each amended to read as follows:

(1) Each year or biennium, as appropriate, when allocating funds from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, or the air quality and health disparities improvement account created in RCW 70A.65.280, or administering grants or programs funded by the accounts, agencies shall conduct an environmental justice assessment consistent with the requirements of RCW 70A.02.060 and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by the community that is consistent with the intent of this chapter or RCW 70A.02.010.

(2) The allocation of funding under subsection (1) of this section must adhere to the following principles, additional to the requirements of RCW 70A.02.080: (a) Benefits and programs should be directed to areas and targeted



to vulnerable populations and overburdened communities to reduce statewide disparities; (b) investments and benefits should be made roughly proportional to the health disparities that a specific community experiences, with a goal of eliminating the disparities; (c) investments and programs should focus on creating environmental benefits, including eliminating health burdens, creating community and population resilience, and raising the quality of life of those in the community; and (d) efforts should be made to balance investments and benefits across the state and within counties, local jurisdictions, and unincorporated areas as appropriate to reduce disparities by location and to ensure efforts contribute to a reduction in disparities that exist based on race or ethnicity, socioeconomic status, or other factors.

(3) State agencies allocating funds or administering grants or programs from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, the climate investment account created in RCW 70A.65.250, or the air quality and health disparities improvement account created in RCW 70A.65.280, must:

(a) Report annually to the environmental justice council created in RCW 70A.02.110 regarding progress toward meeting environmental justice and environmental health goals;

(b) Consider recommendations by the environmental justice council; and

(c)(i) If the agency is not a covered agency subject to the requirements of chapter (~~(314, Laws of 2021)~~) 70A.02 RCW, create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in allocating funds or administering grants or programs from the climate investment account.

(ii) The plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation.

**Sec. 14.** RCW 70A.65.040 and 2021 c 316 s 5 are each amended to read as follows:

(1) The environmental justice council created in RCW 70A.02.110 must provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in RCW 70A.65.060 through 70A.65.210, and the programs funded from the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, and (~~(from)~~) the climate investment account created in RCW 70A.65.250.

(2) In addition to the duties and authorities granted in chapter 70A.02 RCW to the environmental justice council, the environmental justice council must:

(a) Provide recommendations to the legislature, agencies, and the governor in the development of:

(i) The program established in RCW 70A.65.060 through 70A.65.210 including, but not limited to, linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries under RCW 70A.65.110, and administration of allowances under the program; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account created in RCW 70A.65.250 for the purpose of

providing environmental benefits and reducing environmental health disparities within overburdened communities;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities;

(c) Recommend procedures and criteria for evaluating programs, activities, or projects;

(d) Recommend copollutant emissions reduction goals in overburdened communities;

(e) Evaluate the level of funding provided to assist vulnerable populations, low-income individuals, and impacted workers and the funding of projects and activities located within or benefiting overburdened communities;

(f) Recommend environmental justice and environmental health goals for programs, activities, and projects funded from the climate investment account, and review agency annual reports on outcomes and progress toward meeting these goals;

(g) Provide recommendations to implementing agencies for meaningful consultation with vulnerable populations, including community engagement plans under RCW 70A.65.020 and 70A.65.030; and

(h) Recommend how to support public participation through capacity grants for participation.

(3) For the purpose of performing the duties under subsection (2) of this section, two additional tribal members are added to the council.

**Sec. 15.** RCW 70A.02.110 and 2021 c 314 s 20 are each amended to read as follows:

(1) The environmental justice council is established to advise covered agencies on incorporating environmental justice into agency activities.

(2) The council consists of 14 members, except as provided in RCW 70A.65.040(3), appointed by the governor. The councilmembers must be persons who are well-informed regarding and committed to the principles of environmental justice and who, to the greatest extent practicable, represent diversity in race, ethnicity, age, and gender, urban and rural areas, and different regions of the state. The members of the council shall elect two members to serve as cochairs for two-year terms. The council must include:

(a) Seven community representatives, including one youth representative, the nominations of which are based upon applied and demonstrated work and focus on environmental justice or a related field, such as racial or economic justice, and accountability to vulnerable populations and overburdened communities;

(i) The youth representative must be between the ages of 18 and 25 at the time of appointment;

(ii) The youth representative serves a two-year term. All other community representatives serve four-year terms, with six representatives initially being appointed to four-year terms and five being initially appointed to two-year terms, after which they will be appointed to four-year terms;

(b) Two members representing tribal communities, one from eastern Washington and one from western Washington, appointed by the governor, plus two tribal members as specified in RCW 70A.65.040. The governor shall solicit and consider nominees from each of the federally recognized tribes in

Washington state. The governor shall collaborate with federally recognized tribes on the selection of tribal representatives. The tribal representatives serve four-year terms. One representative must be initially appointed for a four-year term. The other representative must be initially appointed for a two-year term, after which, that representative must be appointed for a four-year term;

(c) Two representatives who are environmental justice practitioners or academics to serve as environmental justice experts, the nominations of which are based upon applied and demonstrated work and focus on environmental justice;

(d)(i) One representative of a business that is regulated by a covered agency and whose ordinary business conditions are significantly affected by the actions of at least one other covered agency; and

(ii) One representative who is a member or officer of a union representing workers in the building and construction trades; and

(e) One representative at large, the nomination of which is based upon applied and demonstrated work and focus on environmental justice.

(3) Covered agencies shall serve as nonvoting, ex officio liaisons to the council. Each covered agency must identify an executive team level staff person to participate on behalf of the agency.

(4) Nongovernmental members of the council must be compensated and reimbursed in accordance with RCW 43.03.050, 43.03.060, and 43.03.220.

(5) The department of health must:

(a) Hire a manager who is responsible for overseeing all staffing and administrative duties in support of the council; and

(b) Provide all administrative and staff support for the council.

(6) In collaboration with the office of equity, the office of financial management, the council, and covered agencies, the department of health must:

(a) Establish standards for the collection, analysis, and reporting of disaggregated data as it pertains to tracking population level outcomes of communities;

(b) Create statewide and agency-specific process and outcome measures to show performance:

(i) Using outcome-based methodology to determine the effectiveness of agency programs and services on reducing environmental disparities; and

(ii) Taking into consideration community feedback from the council on whether the performance measures established accurately measure the effectiveness of covered agency programs and services in the communities served; and

(c) Create an online performance dashboard to publish performance measures and outcomes as referenced in RCW 70A.02.090 for the state and each covered agency.

(7) The department of health must coordinate with the consolidated technology services agency to address cybersecurity and data protection for all data collected by the department.

(8)(a) With input and assistance from the council, the department of health must establish an interagency work group to assist covered agencies in incorporating environmental justice into agency decision making. The work group must include staff from each covered agency directed to implement environmental justice provisions under this chapter and may include members

from the council. The department of health shall provide assistance to the interagency work group by:

(i) Facilitating information sharing among covered agencies on environmental justice issues and between agencies and the council;

(ii) Developing and providing assessment tools for covered agencies to use in the development and evaluation of agency programs, services, policies, and budgets;

(iii) Providing technical assistance and compiling and creating resources for covered agencies to use; and

(iv) Training covered agency staff on effectively using data and tools for environmental justice assessments.

(b) The duties of the interagency work group include:

(i) Providing technical assistance to support agency compliance with the implementation of environmental justice into their strategic plans, environmental justice obligations for budgeting and funding criteria and decisions, environmental justice assessments, and community engagement plans;

(ii) Assisting the council in developing a suggested schedule and timeline for sequencing the types of: (A) Funding and expenditure decisions subject to rules; and (B) criteria incorporating environmental justice principles;

(iii) Identifying other policies, priorities, and projects for the council's review and guidance development;

(iv) Identifying goals and metrics that the council may use to assess agency performance in meeting the requirements of chapter 314, Laws of 2021 for purposes of communicating progress to the public, the governor, and the legislature; and

(v) Developing the guidance under subsection (9)(c) of this section in coordination with the council.

(9) The council has the following powers and duties:

(a) To provide a forum for the public to:

(i) Provide written or oral testimony on their environmental justice concerns;

(ii) Assist the council in understanding environmental justice priorities across the state in order to develop council recommendations to agencies for issues to prioritize; and

(iii) Identify which agencies to contact with their specific environmental justice concerns and questions;

(b)(i) The council shall work in an iterative fashion with the interagency work group to develop guidance for environmental justice implementation into covered agency strategic plans pursuant to RCW 70A.02.040, environmental justice assessments pursuant to RCW 70A.02.060, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050;

(ii) The council and interagency work group shall regularly update its guidance;

(c) In consultation with the interagency work group, the council:

(i) Shall provide guidance to covered agencies on developing environmental justice assessments pursuant to RCW 70A.02.060 for significant agency actions;

(ii) Shall make recommendations to covered agencies on which agency actions may cause environmental harm or may affect the equitable distribution of environmental benefits to an overburdened community or a vulnerable population and therefore should be considered significant agency actions that require an environmental justice assessment under RCW 70A.02.060;

(iii) Shall make recommendations to covered agencies:

(A) On the identification and prioritization of overburdened communities under this chapter; and

(B) Related to the use by covered agencies of the environmental and health disparities map in agency efforts to identify and prioritize overburdened communities;

(iv) May make recommendations to a covered agency on the timing and sequencing of a covered agencies' efforts to implement RCW 70A.02.040 through 70A.02.080; and

(v) May make recommendations to the governor and the legislature regarding ways to improve agency compliance with the requirements of this chapter;

(d) By December 1, 2023, and biennially thereafter, and with consideration of the information shared on September 1st each year in covered agencies' annual updates to the council required under RCW 70A.02.090, the council must:

(i) Evaluate the progress of each agency in applying council guidance, and update guidance as needed; and

(ii) Communicate each covered agency's progress to the public, the governor, and the legislature. This communication is not required to be a report and may take the form of a presentation or other format that communicates the progress of the state and its agencies in meeting the state's environmental justice goals in compliance with chapter 314, Laws of 2021, and summarizing the work of the council pursuant to (a) through (d) of this subsection, and subsection (11) of this section; and

(e) To fulfill the responsibilities established for the council in RCW 70A.65.040.

(10) By November 30, 2023, and in compliance with RCW 43.01.036, the council must submit a report to the governor and the appropriate committees of the house of representatives and the senate on:

(a) The council's recommendations to covered agencies on the identification of significant agency actions requiring an environmental justice assessment under subsection (9)(c)(ii) of this section;

(b) The summary of covered agency progress reports provided to the council under RCW 70A.02.090(1), including the status of agency plans for performing environmental justice assessments required by RCW 70A.02.060; and

(c) Guidance for environmental justice implementation into covered agency strategic plans, environmental justice assessments, budgeting and funding criteria, and community engagement plans under subsection (9)(c)(i) of this section.

(11) The council may:

(a) Review incorporation of environmental justice implementation plans into covered agency strategic plans pursuant to RCW 70A.02.040,

environmental justice assessments pursuant to RCW 70A.02.060, budgeting and funding criteria for making budgeting and funding decisions pursuant to RCW 70A.02.080, and community engagement plans pursuant to RCW 70A.02.050;

(b) Make recommendations for amendments to this chapter or other legislation to promote and achieve the environmental justice goals of the state;

(c) Review existing laws and make recommendations for amendments that will further environmental justice;

(d) Recommend to specific agencies that they create environmental justice-focused, agency-requested legislation;

(e) Provide requested assistance to state agencies other than covered agencies that wish to incorporate environmental justice principles into agency activities; and

(f) Recommend funding strategies and allocations to build capacity in vulnerable populations and overburdened communities to address environmental justice.

(12) The role of the council is purely advisory and council decisions are not binding on an agency, individual, or organization.

(13) The department of health must convene the first meeting of the council by January 1, 2022.

(14) All council meetings are subject to the open public meetings requirements of chapter 42.30 RCW and a public comment period must be provided at every meeting of the council.

Passed by the Senate March 7, 2022.

Passed by the House March 2, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

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## CHAPTER 182

[Engrossed Substitute Senate Bill 5974]

### TRANSPORTATION RESOURCES—VARIOUS PROVISIONS

AN ACT Relating to transportation resources; amending RCW 70A.65.240, 70A.65.030, 70A.65.040, 82.42.020, 46.17.200, 46.17.120, 46.17.400, 46.52.130, 46.17.015, 46.17.025, 46.20.200, 46.68.041, 46.70.180, 82.32.385, 82.08.993, 82.12.817, 82.08.9999, 82.12.9999, 82.04.4496, 82.16.0496, 82.08.816, 82.12.816, 82.70.040, 82.70.050, 82.21.030, 43.84.092, 43.84.092, 82.47.020, 36.73.065, 82.14.0455, 70A.535.010, 70A.535.030, 70A.535.040, 70A.535.050, 70A.535.120, 46.63.170, 46.63.170, 70A.65.230, 46.68.480, 46.68.060, 46.68.396, 47.01.480, 81.104.160, and 47.66.120; amending 2020 c 224 s 3 (uncodified); reenacting and amending RCW 46.20.202 and 43.155.050; adding new sections to chapter 46.68 RCW; adding a new section to chapter 70A.535 RCW; adding new sections to chapter 47.66 RCW; adding new sections to chapter 47.04 RCW; adding a new section to chapter 47.24 RCW; adding new sections to chapter 47.60 RCW; adding a new section to chapter 47.56 RCW; adding a new section to chapter 47.06A RCW; adding a new chapter to Title 43 RCW; creating new sections; repealing RCW 70A.535.020; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature intends that \$500,000,000 of the amounts in the 16-year move ahead WA investment program must enhance stormwater runoff treatment from existing roads and infrastructure with an emphasis on green infrastructure retrofits. Projects must be prioritized based on

benefits to salmon recovery and ecosystem health, reducing toxic pollution, addressing health disparities, and cost effectiveness. The department of transportation must submit progress reports on its efforts to reduce the toxicity of stormwater runoff from existing infrastructure, recommendations for addressing barriers to innovative solutions, and anticipated demand for funding each biennium.

## Part I

### Climate Commitment Act Allocations

**Sec. 101.** RCW 70A.65.240 and 2021 c 316 s 27 are each amended to read as follows:

(1) The carbon emissions reduction account is created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account are intended to affect reductions in transportation sector carbon emissions through a variety of carbon reducing investments. These can include, but are not limited to: Transportation alternatives to single occupancy passenger vehicles; reductions in single occupancy passenger vehicle miles traveled; reductions in per mile emissions in vehicles, including through the funding of alternative fuel infrastructure and incentive programs; and emission reduction programs for freight transportation, including motor vehicles and rail, as well as for ferries and other maritime and port activities. Expenditures from the account may only be made for transportation carbon emission reducing purposes and may not be made for highway purposes authorized under the 18th Amendment of the Washington state Constitution, other than specified in this section, and shall be made in accordance with subsection (2) of this section. It is the legislature's intent that expenditures from the account used to reduce carbon emissions be made with the goal of achieving equity for communities that historically have been omitted or adversely impacted by past transportation policies and practices.

(2) Appropriations in an omnibus transportation appropriations act from the carbon emissions reduction account shall be made exclusively to fund the following activities:

- (a) Active transportation;
- (b) Transit programs and projects;
- (c) Alternative fuel and electrification;
- (d) Ferries; and
- (e) Rail.

**NEW SECTION. Sec. 102.** A new section is added to chapter 46.68 RCW to read as follows:

(1) The climate active transportation account is hereby 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 following active transportation grant programs: Safe routes to schools, school-based bike program, bicycle and pedestrian grant program, complete streets grants program, and connecting communities grant program, as well as pedestrian and bicycle or other active transportation projects identified in an omnibus transportation appropriations act as move ahead WA projects.

(2) Beginning July 1, 2023, the state treasurer shall annually transfer 24 percent of the revenues accruing annually to the carbon emissions reduction

account created in RCW 70A.65.240 to the climate active transportation account.

**NEW SECTION. Sec. 103.** A new section is added to chapter 46.68 RCW to read as follows:

(1) The climate transit programs account is hereby 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 following transit grant programs: Transit support grant program, tribal transit mobility grants, transit coordination grants, special needs transit grants, bus and bus facility grant program, green transit grants, and transportation demand management grants, as well as transit projects identified in an omnibus transportation appropriations act as move ahead WA projects.

(2) Beginning July 1, 2023, the state treasurer shall annually transfer 56 percent of the revenues accruing annually to the carbon emissions reduction account created in RCW 70A.65.240 to the climate transit programs account.

**Sec. 104.** RCW 70A.65.030 and 2021 c 316 s 4 are each amended to read as follows:

(1) Each year or biennium, as appropriate, when allocating funds from the carbon emissions reduction account created in RCW 70A.65.240, the climate investment account created in RCW 70A.65.250, ~~(or)~~ the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in section 103 of this act, or the climate active transportation account created in section 102 of this act, or administering grants or programs funded by the accounts, agencies shall conduct an environmental justice assessment consistent with the requirements of RCW 70A.02.060 and establish a minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities through: (a) The direct reduction of environmental burdens in overburdened communities; (b) the reduction of disproportionate, cumulative risk from environmental burdens, including those associated with climate change; (c) the support of community led project development, planning, and participation costs; or (d) meeting a community need identified by the community that is consistent with the intent of this chapter or RCW 70A.02.010.

(2) The allocation of funding under subsection (1) of this section must adhere to the following principles, additional to the requirements of RCW 70A.02.080: (a) Benefits and programs should be directed to areas and targeted to vulnerable populations and overburdened communities to reduce statewide disparities; (b) investments and benefits should be made roughly proportional to the health disparities that a specific community experiences, with a goal of eliminating the disparities; (c) investments and programs should focus on creating environmental benefits, including eliminating health burdens, creating community and population resilience, and raising the quality of life of those in the community; and (d) efforts should be made to balance investments and benefits across the state and within counties, local jurisdictions, and unincorporated areas as appropriate to reduce disparities by location and to ensure efforts contribute to a reduction in disparities that exist based on race or ethnicity, socioeconomic status, or other factors.



(3) State agencies allocating funds or administering grants or programs from the carbon emissions reduction account created in RCW 70A.65.240, the climate investment account created in RCW 70A.65.250, ~~((or))~~ the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in section 103 of this act, or the climate active transportation account created in section 102 of this act, must:

(a) Report annually to the environmental justice council created in RCW 70A.02.110 regarding progress toward meeting environmental justice and environmental health goals;

(b) Consider recommendations by the environmental justice council; and

(c)(i) If the agency is not a covered agency subject to the requirements of chapter 314, Laws of 2021, create and adopt a community engagement plan to describe how it will engage with overburdened communities and vulnerable populations in allocating funds or administering grants or programs from the climate investment account.

(ii) The plan must include methods for outreach and communication with those who face barriers, language or otherwise, to participation.

**Sec. 105.** RCW 70A.65.040 and 2021 c 316 s 5 are each amended to read as follows:

(1) The environmental justice council created in RCW 70A.02.110 must provide recommendations to the legislature, agencies, and the governor in the development and implementation of the program established in RCW 70A.65.060 through 70A.65.210, and the programs funded from the carbon emissions reduction account created in RCW 70A.65.240 ~~((and from))~~, the climate investment account created in RCW 70A.65.250, the climate transit programs account created in section 103 of this act, and the climate active transportation account created in section 102 of this act.

(2) In addition to the duties and authorities granted in chapter 70A.02 RCW to the environmental justice council, the environmental justice council must:

(a) Provide recommendations to the legislature, agencies, and the governor in the development of:

(i) The program established in RCW 70A.65.060 through 70A.65.210 including, but not limited to, linkage with other jurisdictions, protocols for establishing offset projects and securing offset credits, designation of emissions-intensive and trade-exposed industries under RCW 70A.65.110, and administration of allowances under the program; and

(ii) Investment plans and funding proposals for the programs funded from the climate investment account created in RCW 70A.65.250 for the purpose of providing environmental benefits and reducing environmental health disparities within overburdened communities;

(b) Provide a forum to analyze policies adopted under this chapter to determine if the policies lead to improvements within overburdened communities;

(c) Recommend procedures and criteria for evaluating programs, activities, or projects;

(d) Recommend copollutant emissions reduction goals in overburdened communities;

(e) Evaluate the level of funding provided to assist vulnerable populations, low-income individuals, and impacted workers and the funding of projects and activities located within or benefiting overburdened communities;

(f) Recommend environmental justice and environmental health goals for programs, activities, and projects funded from the climate investment account, and review agency annual reports on outcomes and progress toward meeting these goals;

(g) Provide recommendations to implementing agencies for meaningful consultation with vulnerable populations, including community engagement plans under RCW 70A.65.020 and 70A.65.030; and

(h) Recommend how to support public participation through capacity grants for participation.

(3) For the purpose of performing the duties under subsection (2) of this section, two additional tribal members are added to the council.

**Part II**

**Aircraft Fuel Tax, Stolen Vehicle Check, Dealer**

**Temporary Permit, Enhanced Driver's License and Identocard, Driver's Abstract, License Plate, Documentary Service, and Other Driver and Vehicle Fees**

**Sec. 201.** RCW 82.42.020 and 2013 c 225 s 302 are each amended to read as follows:

There is levied upon every distributor of aircraft fuel, an excise tax at the rate of ~~((eleven))~~ 18 cents on each gallon of aircraft fuel sold, delivered, or used in this state. There must be collected from every user of aircraft fuel either the use tax imposed by RCW 82.12.020 or the retail sales tax imposed by RCW 82.08.020. The taxes imposed by this chapter must be collected and paid to the state but once in respect to any aircraft fuel.

**Sec. 202.** RCW 46.17.200 and 2014 c 80 s 4 are each amended to read as follows:

(1) In addition to all other fees and taxes required by law, the department, county auditor or other agent, or subagent appointed by the director shall charge:

(a) The following license plate fees for each license plate, unless the owner or type of vehicle is exempt from payment:

FEE TYPE	FEE	DISTRIBUTION
Original issue	<del>(( \$ 10.00 ))</del> <u>\$50.00</u>	RCW 46.68.070
Reflectivity	\$ 2.00	RCW 46.68.070
Replacement	<del>(( \$ 10.00 ))</del> <u>\$30.00</u>	RCW 46.68.070
Original issue, motorcycle	<del>(( \$ 4.00 ))</del> <u>\$20.00</u>	RCW 46.68.070
Replacement, motorcycle	<del>(( \$ 4.00 ))</del> <u>\$12.00</u>	RCW 46.68.070
Original issue, moped	\$ 1.50	RCW 46.68.070

(b) A license plate retention fee, as required under RCW 46.16A.200(9)(a), of ~~((twenty dollars))~~ \$20 if the owner wishes to retain the current license plate number upon license plate replacement, unless the owner or type of vehicle is exempt from payment. The ~~((twenty dollar))~~ \$20 fee must be deposited in the multimodal transportation account created in RCW 47.66.070.

(c) A ~~((ten dollar))~~ \$10 license plate transfer fee, as required under RCW 46.16A.200(8)(a), when transferring standard issue license plates from one vehicle to another, unless the owner or type of vehicle is exempt from payment. The ~~((ten dollar))~~ \$10 license plate transfer fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(d) Former prisoner of war license plates, as described in RCW 46.18.235, may be transferred to a replacement vehicle upon payment of a ~~((five dollar))~~ \$5 license plate fee, in addition to any other fee required by law.

(2) The department may, upon request, provide license plates that have been used and returned to the department to individuals for nonvehicular use. The department may charge a fee of up to ~~((five dollars))~~ \$5 per license plate to cover costs or recovery for postage and handling. The department may waive the fee for license plates used in educational projects and may, by rule, provide standards for the fee waiver and restrictions on the number of license plates provided to any one person. The fee must be deposited in the motor vehicle fund created in RCW 46.68.070.

(3) \$40 of the original issue license plate fee imposed under subsection (1)(a) of this section and \$16 of the original issue motorcycle license plate fee imposed under subsection (1)(a) of this section must be deposited in the move ahead WA account created in section 401 of this act.

(4) \$20 of the replacement license plate fee imposed under subsection (1)(a) of this section and \$8 of the replacement motorcycle license plate fee imposed under subsection (1)(a) of this section must be deposited in the move ahead WA account created in section 401 of this act.

**Sec. 203.** RCW 46.17.120 and 2020 c 239 s 1 are each amended to read as follows:

(1) Before accepting an application for a certificate of title for a vehicle previously registered in any other state or country, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay a fee of ~~((fifteen dollars))~~ \$50. ~~((The fifteen dollar fee))~~

(a) \$15 of the fee required by this section must be distributed under RCW 46.68.020.

(b) \$35 of the fee required by this section must be deposited in the move ahead WA account created in section 401 of this act.

(2) Beginning July 1, 2026, before accepting an application for a certificate of title for a vehicle previously registered in any other state or country, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay, in addition to the fee specified in subsection (1) of this section, a fee of \$25 which must be deposited in the move ahead WA account created in section 401 of this act.

(3) An applicant is exempt from the ~~((fifteen dollar fee))~~ fees specified in this section if the applicant previously registered the vehicle in Washington state and maintained ownership of the vehicle while registered in another state or country.

**Sec. 204.** RCW 46.17.400 and 2011 c 171 s 62 are each amended to read as follows:

(1) Before accepting an application for one of the following permits, the department, county auditor or other agent, or subagent appointed by the director shall require the applicant to pay the following permit fee by permit type in addition to any other fee or tax required by law:

PERMIT TYPE	FEE	AUTHORITY	DISTRIBUTION
(a) Dealer temporary	<del>(\$ 15.00)</del> \$40.00	RCW 46.16A.300	RCW 46.68.030
(b) Department temporary	\$ .50	RCW 46.16A.305	RCW 46.68.450
(c) Farm vehicle trip	\$ 6.25	RCW 46.16A.330	RCW 46.68.035
(d) Nonresident military	\$ 10.00	RCW 46.16A.340	RCW 46.68.070
(e) Nonresident temporary snowmobile	\$ 5.00	RCW 46.10.450	RCW 46.68.350
(f) Special fuel trip	\$ 30.00	RCW 82.38.100	RCW 46.68.460
(g) Temporary ORV use	\$ 7.00	RCW 46.09.430	RCW 46.68.045
(h) Vehicle trip	\$ 25.00	RCW 46.16A.320	RCW 46.68.455

(2) Permit fees as provided in subsection (1) of this section are in addition to the filing fee required under RCW 46.17.005, except an additional filing fee may not be charged for:

- (a) Dealer temporary permits;
- (b) Special fuel trip permits; and
- (c) Vehicle trip permits.

(3) ~~((Five dollars))~~ \$5 of the ~~((fifteen dollar))~~ \$40 dealer temporary permit fee provided in subsection (1)(a) of this section must be credited to the payment of vehicle license fees at the time application for registration is made. \$25 of the \$40 dealer temporary permit fee provided in subsection (1)(a) of this section must be deposited in the move ahead WA account created in section 401 of this act. The remainder must be deposited to the state patrol highway account created in RCW 46.68.030.

**Sec. 205.** RCW 46.20.202 and 2021 c 317 s 21 and 2021 c 158 s 9 are each reenacted and amended to read as follows:

(1) The department may enter into a memorandum of understanding with any federal agency for the purposes of facilitating the crossing of the border between the state of Washington and the Canadian province of British Columbia.

(2) The department may enter into an agreement with the Canadian province of British Columbia for the purposes of implementing a border-crossing initiative.

(3)(a) The department may issue an enhanced driver's license or identocard for the purposes of crossing the border between the state of Washington and the Canadian province of British Columbia to an applicant who provides the department with proof of: United States citizenship, identity, and state residency. The department shall continue to offer a standard driver's license and identocard.

If the department chooses to issue an enhanced driver's license, the department must allow each applicant to choose between a standard driver's license or identicard, or an enhanced driver's license or identicard.

(b) The department shall implement a one-to-many biometric matching system for the enhanced driver's license or identicard. An applicant for an enhanced driver's license or identicard shall submit a biometric identifier as designated by the department. The biometric identifier must be used solely for the purpose of verifying the identity of the holders and for any purpose set out in RCW 46.20.037. Applicants are required to sign a declaration acknowledging their understanding of the one-to-many biometric match.

(c) The enhanced driver's license or identicard must include reasonable security measures to protect the privacy of Washington state residents, including reasonable safeguards to protect against unauthorized disclosure of data about Washington state residents. If the enhanced driver's license or identicard includes a radio frequency identification chip, or similar technology, the department shall ensure that the technology is encrypted or otherwise secure from unauthorized data access.

(d) The requirements of this subsection are in addition to the requirements otherwise imposed on applicants for a driver's license or identicard. The department shall adopt such rules as necessary to meet the requirements of this subsection. From time to time the department shall review technological innovations related to the security of identity cards and amend the rules related to enhanced driver's licenses and identicards as the director deems consistent with this section and appropriate to protect the privacy of Washington state residents.

(e) Notwithstanding RCW 46.20.118, the department may make images associated with enhanced drivers' licenses or identicards from the negative file available to United States customs and border agents for the purposes of verifying identity.

(4) Beginning (~~on July 23, 2017~~) October 1, 2022, the fee for an enhanced driver's license or enhanced identicard is (~~(thirty two dollars)~~) \$56, which is in addition to the fees for any regular driver's license or identicard. If the enhanced driver's license or enhanced identicard is issued, renewed, or extended for a period other than eight years, the fee for each class is (~~(four dollars)~~) \$7 for each year that the enhanced driver's license or enhanced identicard is issued, renewed, or extended.

(5)(a) The first \$4 per year of issuance, to a maximum of \$32 of the enhanced driver's license and enhanced identicard fee under this section must be deposited into the highway safety fund unless prior to July 1, 2023, the actions described in (a)(i) or ((b)) (ii) of this subsection occur, in which case the portion of the revenue that is the result of the fee increased in section 209, chapter 44, Laws of 2015 3rd sp. sess. must be distributed to the connecting Washington account created under RCW 46.68.395.

~~((a))~~ (i) Any state agency files a notice of rule making under chapter 34.05 RCW, absent explicit legislative authorization enacted subsequent to July 1, 2015, for a rule regarding a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

~~((b))~~ (ii) Any state agency otherwise enacts, adopts, orders, or in any way implements a fuel standard based upon or defined by the carbon intensity of fuel,

including a low carbon fuel standard or clean fuel standard, without explicit legislative authorization enacted subsequent to July 1, 2015.

~~((e))~~ (iii) Nothing in this subsection acknowledges, establishes, or creates legal authority for the department of ecology or any other state agency to enact, adopt, order, or in any way implement a fuel standard based upon or defined by the carbon intensity of fuel, including a low carbon fuel standard or clean fuel standard.

(b) \$24 of the enhanced driver's license and enhanced identicard fee under this section must be deposited into the move ahead WA flexible account created in section 402 of this act. If the enhanced driver's license or enhanced identicard is issued, renewed, or extended for a period other than eight years, the amount deposited into the move ahead WA flexible account created in section 402 of this act is \$3 for each year that the enhanced driver's license or enhanced identicard is issued, renewed, or extended.

**Sec. 206.** RCW 46.52.130 and 2021 c 93 s 8 are each amended to read as follows:

Upon a proper request, the department may only furnish information contained in an abstract of a person's driving record as permitted under this section.

(1) **Contents of abstract of driving record.** An abstract of a person's driving record, whenever possible, must include:

(a) An enumeration of motor vehicle accidents in which the person was driving, including:

(i) The total number of vehicles involved;

(ii) Whether the vehicles were legally parked or moving;

(iii) Whether the vehicles were occupied at the time of the accident; and

(iv) Whether the accident resulted in a fatality;

(b) Any reported convictions, forfeitures of bail, or findings that an infraction was committed based upon a violation of any motor vehicle law;

(c) The status of the person's driving privilege in this state; and

(d) Any reports of failure to appear in response to a traffic citation or failure to respond to a notice of infraction served upon the named individual by an arresting officer.

(2) **Release of abstract of driving record.** Unless otherwise required in this section, the release of an abstract does not require a signed statement by the subject of the abstract. An abstract of a person's driving record may be furnished to the following persons or entities:

(a) **Named individuals.** (i) An abstract of the full driving record maintained by the department may be furnished to the individual named in the abstract.

(ii) Nothing in this section prevents a court from providing a copy of the driver's abstract to the individual named in the abstract or that named individual's attorney, provided that the named individual has a pending or open infraction or criminal case in that court. A pending case includes criminal cases that have not reached a disposition by plea, stipulation, trial, or amended charge. An open infraction or criminal case includes cases on probation, payment agreement or subject to, or in collections. Courts may charge a reasonable fee for the production and copying of the abstract for the individual.

(b) **Employers or prospective employers.** (i) An abstract of the full driving record maintained by the department may be furnished to an employer or

prospective employer or agents acting on behalf of an employer or prospective employer of the named individual for purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer.

(ii) The department may provide employers or their agents a three-year insurance carrier driving record of existing employees only for the purposes of sharing the driving record with its insurance carrier for underwriting. Employers may not provide the employees' full driving records to its insurance carrier.

(iii) An abstract of the full driving record maintained by the department may be furnished to an employer or prospective employer or the agent(s) acting on behalf of an employer or prospective employer of the named individual for purposes unrelated to driving by the individual when a driving record is required by federal or state law, or the employee or prospective employee will be handling heavy equipment or machinery.

(iv) Release of an abstract of the driving record of an employee or prospective employee requires a statement signed by: (A) The employee or prospective employee that authorizes the release of the record; and (B) the employer attesting that the information is necessary for employment purposes related to driving by the individual as a condition of employment or otherwise at the direction of the employer. If the employer or prospective employer authorizes agents to obtain this information on their behalf, this must be noted in the statement. The statement must also note that any information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee may not be used by the employer or prospective employer, or an agent authorized to obtain this information on their behalf, unless required by federal regulation or law. The employer or prospective employer must afford the employee or prospective employee an opportunity to demonstrate that an adjudication contained in the abstract is subject to a court order sealing the juvenile record.

(v) Upon request of the person named in the abstract provided under this subsection, and upon that same person furnishing copies of court records ruling that the person was not at fault in a motor vehicle accident, the department must indicate on any abstract provided under this subsection that the person was not at fault in the motor vehicle accident.

(vi) No employer or prospective employer, nor any agents of an employer or prospective employer, may use information contained in the abstract related to an adjudication that is subject to a court order sealing the juvenile record of an employee or prospective employee for any purpose unless required by federal regulation or law. The employee or prospective employee must furnish a copy of the court order sealing the juvenile record to the employer or prospective employer, or the agents of the employer or prospective employer, as may be required to ensure the application of this subsection.

(c) **Volunteer organizations.** (i) An abstract of the full driving record maintained by the department may be furnished to a volunteer organization or an agent for a volunteer organization for which the named individual has submitted an application for a position that would require driving by the individual at the direction of the volunteer organization.

(ii) Release of an abstract of the driving record of a prospective volunteer requires a statement signed by: (A) The prospective volunteer that authorizes the

release of the record; and (B) the volunteer organization attesting that the information is necessary for purposes related to driving by the individual at the direction of the volunteer organization. If the volunteer organization authorizes an agent to obtain this information on their behalf, this must be noted in the statement.

(d) **Transit authorities.** An abstract of the full driving record maintained by the department may be furnished to an employee or agents of a transit authority checking prospective or existing volunteer vanpool drivers for insurance and risk management needs.

(e) **Insurance carriers.** (i) An abstract of the driving record maintained by the department covering the period of not more than the last three years may be furnished to an insurance company or its agents:

(A) That has motor vehicle or life insurance in effect covering the named individual;

(B) To which the named individual has applied; or

(C) That has insurance in effect covering the employer or a prospective employer of the named individual.

(ii) The abstract provided to the insurance company must:

(A) Not contain any information related to actions committed by law enforcement officers or firefighters, as both terms are defined in RCW 41.26.030, or by Washington state patrol officers, while driving official vehicles in the performance of their occupational duty, or by registered tow truck operators as defined in RCW 46.55.010 in the performance of their occupational duties while at the scene of a roadside impound or recovery so long as they are not issued a citation. This does not apply to any situation where the vehicle was used in the commission of a misdemeanor or felony;

(B) Include convictions under RCW 46.61.5249 and 46.61.525, except that the abstract must report the convictions only as negligent driving without reference to whether they are for first or second degree negligent driving; and

(C) Exclude any deferred prosecution under RCW 10.05.060, except that if a person is removed from a deferred prosecution under RCW 10.05.090, the abstract must show the deferred prosecution as well as the removal.

(iii) Any policy of insurance may not be canceled, nonrenewed, denied, or have the rate increased on the basis of information regarding an accident included in the abstract of a driving record, unless the policyholder was determined to be at fault.

(iv) Any insurance company or its agents, for underwriting purposes relating to the operation of commercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of motor vehicles while not engaged in such employment. Any insurance company or its agents, for underwriting purposes relating to the operation of noncommercial motor vehicles, may not use any information contained in the abstract relative to any person's operation of commercial motor vehicles. For the purposes of this subsection, "commercial motor vehicle" has the same meaning as in RCW 46.25.010(6).

(f) **Alcohol/drug assessment or treatment agencies.** An abstract of the driving record maintained by the department covering the period of not more than the last five years may be furnished to an alcohol/drug assessment or treatment agency approved by the department of health to which the named



individual has applied or been assigned for evaluation or treatment, for purposes of assisting employees in making a determination as to what level of treatment, if any, is appropriate, except that the abstract must:

(i) Also include records of alcohol-related offenses, as defined in RCW 46.01.260(2), covering a period of not more than the last ten years; and

(ii) Indicate whether an alcohol-related offense was originally charged as a violation of either RCW 46.61.502 or 46.61.504.

(g) **Attorneys—City attorneys, county prosecuting attorneys, and named individual's attorney of record.** An abstract of the full driving record maintained by the department, including whether a recorded violation is an alcohol-related offense, as defined in RCW 46.01.260(2), that was originally charged as a violation of either RCW 46.61.502 or 46.61.504, may be furnished to city attorneys, county prosecuting attorneys, or the named individual's attorney of record. City attorneys, county prosecuting attorneys, or the named individual's attorney of record may provide the driving record to alcohol/drug assessment or treatment agencies approved by the department of social and health services to which the named individual has applied or been assigned for evaluation or treatment.

(h) **State colleges, universities, or agencies, or units of local government.** An abstract of the full driving record maintained by the department may be furnished to (i) state colleges, universities, or agencies for employment and risk management purposes or (ii) units of local government authorized to self-insure under RCW 48.62.031, or their agents, for employment and risk management purposes. "Unit of local government" includes an insurance pool established under RCW 48.62.031.

(i) **Superintendent of public instruction.** (i) An abstract of the full driving record maintained by the department may be furnished to the superintendent of public instruction for review of public school bus driver records. The superintendent or superintendent's designee may discuss information on the driving record with an authorized representative of the employing school district for employment and risk management purposes.

(ii) The superintendent of public instruction is exempt from paying the fees related to the reviewing of records and the fee required in subsection (5) of this section.

(j) **State and federal agencies.** An abstract of the driving record maintained by the department may be furnished to state and federal agencies, or their agents, in carrying out its functions.

(k) **Transportation network companies.** An abstract of the full driving record maintained by the department may be furnished to a transportation network company or its agents acting on its behalf of the named individual for purposes related to driving by the individual as a condition of being a contracted driver.

(l) **Research.** (i) The department may furnish driving record data to state agencies and bona fide scientific research organizations. The department may require review and approval by an institutional review board. For the purposes of this subsection, "research" means a planned and systematic sociological, psychological, epidemiological, biomedical, or other scientific investigation carried out by a state agency, or by a scientific research professional associated with a bona fide scientific research organization with an objective to contribute

to scientific knowledge, the solution of social and health problems, or the evaluation of public benefit and service programs. This definition excludes methods of record analysis and data collection that are subjective, do not permit replication, and are not designed to yield reliable and valid results.

(ii) The state agency, or a scientific research professional associated with a bona fide scientific research organization, are exempt from paying the fees related to the reviewing of records and the fee required in subsection (5) of this section. However, the department may charge a cost-recovery fee for the actual cost of providing the data.

(3) **Reviewing of driving records.** (a) In addition to the methods described herein, the director may enter into a contractual agreement for the purpose of reviewing the driving records of existing employees for changes to the record during specified periods of time. The department shall establish a fee for this service, which must be deposited in the highway safety fund. The fee for this service must be set at a level that does not result in a net revenue loss to the state. Any information provided under this subsection must be treated in the same manner and is subject to the same restrictions as driving record abstracts.

(b) The department may provide reviewing services to the following entities:

- (i) Employers for existing employees, or their agents;
- (ii) Transit authorities for current vanpool drivers, or their agents;
- (iii) Insurance carriers for current policyholders, or their agents;
- (iv) State colleges, universities, or agencies, or units of local government, or their agents;
- (v) The office of the superintendent of public instruction for school bus drivers statewide; and

(vi) Transportation network companies, or their agents.

(4) **Release to third parties prohibited.** (a) Any person or entity receiving an abstract of a person's driving record under subsection (2)(b) through (l) of this section shall use the abstract exclusively for his, her, or its own purposes or as otherwise expressly permitted under this section, and shall not divulge any information contained in the abstract to a third party.

(b) The following release of records to third parties are hereby authorized:

(i) Employers may divulge driving records to regulatory bodies, as defined by the department by rule, such as the United States department of transportation and the federal motor carrier safety administration.

(ii) Employers may divulge a three-year driving record to their insurance carrier for underwriting purposes.

(iii) Employers may divulge driving records to contracted motor carrier consultants for the purposes of ensuring driver compliance and risk management.

(5) ~~((Fee.))~~ **Fees.** (a) The director shall collect a ~~((thirteen dollar))~~ \$15 fee for each abstract of a person's driving record furnished by the department. After depositing \$2 of the driver's abstract fee in the move ahead WA flexible account created in section 402 of this act, the remainder shall be distributed as follows:

(i) Fifty percent ~~((of the fee))~~ must be deposited in the highway safety fund ~~((;))~~; and ~~((fifty))~~

(ii) Fifty percent ~~((of the fee))~~ must be deposited according to RCW 46.68.038.

(b) Beginning July 1, 2029, the director shall collect an additional \$2 fee for each abstract of a person's driving record furnished by the department. The \$2 additional driver's abstract fee must be deposited in the move ahead WA flexible account created in section 402 of this act.

(c) City attorneys and county prosecuting attorneys are exempt from paying the fees specified in (a) and (b) of this subsection for an abstract of a person's driving record furnished by the department for use in criminal proceedings.

(6) **Violation.** (a) Any negligent violation of this section is a gross misdemeanor.

(b) Any intentional violation of this section is a class C felony.

(7) Effective July 1, 2019, the contents of a driving abstract pursuant to this section shall not include any information related to sealed juvenile records unless that information is required by federal law or regulation.

**Sec. 207.** RCW 46.17.015 and 2010 c 161 s 502 are each amended to read as follows:

(1) A person who applies for a vehicle registration or for any other right to operate a vehicle on the highways of this state shall pay a (~~(twenty-five)~~) 25 cent license plate technology fee in addition to any other fees and taxes required by law. The license plate technology fee must be distributed under RCW 46.68.370.

(2) A vehicle registered under RCW 46.16A.455 or 46.17.330 is not subject to the license plate technology fee, except for a vehicle registered under RCW 46.16A.455(3).

(3) The revenue from the license plate technology fee imposed on vehicles registered under RCW 46.16A.455(3) must be deposited in the move ahead WA account created in section 401 of this act.

**Sec. 208.** RCW 46.17.025 and 2010 c 161 s 503 are each amended to read as follows:

(1) A person who applies for a vehicle registration or for any other right to operate a vehicle on the highways of this state shall pay a (~~(fifty)~~) 50 cent license service fee in addition to any other fees and taxes required by law. The license service fee must be distributed under RCW 46.68.220.

(2) A vehicle registered under RCW 46.16A.455 or 46.17.330 is not subject to the license service fee, except for a vehicle registered under RCW 46.16A.455(3).

(3) The revenue from the license service fee imposed on vehicles registered under RCW 46.16A.455(3) must be deposited in the move ahead WA account created in section 401 of this act.

**Sec. 209.** RCW 46.20.200 and 2012 c 80 s 10 are each amended to read as follows:

(1) If an instruction permit, identicard, or a driver's license is lost or destroyed, the person to whom it was issued may obtain a duplicate of it upon furnishing proof of such fact satisfactory to the department and payment of a fee of (~~(twenty dollars)~~) \$20 to the department.

(2) A replacement permit, identicard, or driver's license may be obtained to change or correct material information upon payment of a fee of (~~(ten dollars)~~) \$20 and surrender of the permit, identicard, or driver's license being replaced.

**Sec. 210.** RCW 46.68.041 and 2020 c 330 s 18 are each amended to read as follows:

(1) Except as provided in ~~((subsection))~~ subsections (2) and (3) of this section, the department ~~((shall))~~ must forward all funds accruing under the provisions of chapter 46.20 RCW together with a proper identifying, detailed report to the state treasurer who ~~((shall))~~ must deposit such moneys to the credit of the highway safety fund.

(2) Fifty-six percent of each fee collected by the department under RCW 46.20.311 (1)(e)(ii), (2)(b)(ii), and (3)(b) ~~((shall))~~ must be deposited in the impaired driving safety account.

(3) Fifty percent of the revenue from the fees imposed under RCW 46.20.200(2) must be deposited in the move ahead WA flexible account created in section 402 of this act.

**Sec. 211.** RCW 46.70.180 and 2017 c 41 s 1 are each amended to read as follows:

Each of the following acts or practices is unlawful:

(1) To cause or permit to be advertised, printed, displayed, published, distributed, broadcasted, televised, or disseminated in any manner whatsoever, any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to the following:

(a) That no down payment is required in connection with the sale of a vehicle when a down payment is in fact required, or that a vehicle may be purchased for a smaller down payment than is actually required;

(b) That a certain percentage of the sale price of a vehicle may be financed when such financing is not offered in a single document evidencing the entire security transaction;

(c) That a certain percentage is the amount of the service charge to be charged for financing, without stating whether this percentage charge is a monthly amount or an amount to be charged per year;

(d) That a new vehicle will be sold for a certain amount above or below cost without computing cost as the exact amount of the factory invoice on the specific vehicle to be sold;

(e) That a vehicle will be sold upon a monthly payment of a certain amount, without including in the statement the number of payments of that same amount which are required to liquidate the unpaid purchase price.

(2)(a)(i) To incorporate within the terms of any purchase and sale or lease agreement any statement or representation with regard to the sale, lease, or financing of a vehicle which is false, deceptive, or misleading, including but not limited to terms that include as an added cost to the selling price or capitalized cost of a vehicle an amount for licensing or transfer of title of that vehicle which is not actually due to the state, unless such amount has in fact been paid by the dealer prior to such sale.

(ii) However, an amount not to exceed ~~((one hundred fifty dollars))~~ \$200 per vehicle sale or lease may be charged by a dealer to recover administrative costs for collecting motor vehicle excise taxes, licensing and registration fees and other agency fees, verifying and clearing titles, transferring titles, perfecting, releasing, or satisfying liens or other security interests, and other administrative and documentary services rendered by a dealer in connection with the sale or lease of a vehicle and in carrying out the requirements of this chapter or any other provisions of state law.

(b) A dealer may charge the documentary service fee in (a) of this subsection under the following conditions:

(i) The documentary service fee is disclosed in writing to a prospective purchaser or lessee before the execution of a purchase and sale or lease agreement;

(ii) The dealer discloses to the purchaser or lessee in writing that the documentary service fee is a negotiable fee. The disclosure must be written in a typeface that is at least as large as the typeface used in the standard text of the document that contains the disclosure and that is bold faced, capitalized, underlined, or otherwise set out from the surrounding material so as to be conspicuous. The dealer shall not represent to the purchaser or lessee that the fee or charge is required by the state to be paid by either the dealer or prospective purchaser or lessee;

(iii) The documentary service fee is separately designated from the selling price or capitalized cost of the vehicle and from any other taxes, fees, or charges; and

(iv) Dealers disclose in any advertisement that a documentary service fee in an amount up to (~~one hundred fifty dollars~~) \$200 may be added to the sale price or the capitalized cost.

For the purposes of this subsection (2), the term "documentary service fee" means the optional amount charged by a dealer to provide the services specified in (a) of this subsection.

(3) To set up, promote, or aid in the promotion of a plan by which vehicles are to be sold or leased to a person for a consideration and upon further consideration that the purchaser or lessee agrees to secure one or more persons to participate in the plan by respectively making a similar purchase and in turn agreeing to secure one or more persons likewise to join in said plan, each purchaser or lessee being given the right to secure money, credits, goods, or something of value, depending upon the number of persons joining the plan.

(4) To commit, allow, or ratify any act of "bushing" which is defined as follows: Entering into a written contract, written purchase order or agreement, retail installment sales agreement, note and security agreement, or written lease agreement, hereinafter collectively referred to as contract or lease, signed by the prospective buyer or lessee of a vehicle, which:

(a) Is subject to any conditions or the dealer's or his or her authorized representative's future acceptance, and the dealer fails or refuses within the "bushing" period, which is four calendar days, exclusive of Saturday, Sunday, or legal holiday, and prior to any further negotiations with said buyer or lessee to inform the buyer or lessee either: (i) That the dealer unconditionally accepts the contract or lease, having satisfied, removed, or waived all conditions to acceptance or performance, including, but not limited to, financing, assignment, or lease approval; or (ii) that the dealer rejects the contract or lease, thereby automatically voiding the contract or lease, as long as such voiding does not negate commercially reasonable contract or lease provisions pertaining to the return of the subject vehicle and any physical damage, excessive mileage after the demand for return of the vehicle, and attorneys' fees authorized by law, and tenders the refund of any initial payment or security made or given by the buyer or lessee, including, but not limited to, any down payment, and tenders return of the trade-in vehicle, key, other trade-in, or certificate of title to a trade-in. Tender

may be conditioned on return of the subject vehicle if previously delivered to the buyer or lessee.

The provisions of this subsection (4)(a) do not impair, prejudice, or abrogate the rights of a dealer to assert a claim against the buyer or lessee for misrepresentation or breach of contract and to exercise all remedies available at law or in equity, including those under chapter 62A.9A RCW, if the dealer, bank, or other lender or leasing company discovers that approval of the contract or financing or approval of the lease was based upon material misrepresentations made by the buyer or lessee, including, but not limited to, misrepresentations regarding income, employment, or debt of the buyer or lessee, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation. A dealer shall not be in violation of this subsection (4)(a) if the buyer or lessee made a material misrepresentation to the dealer, as long as the dealer, or his or her staff, has not, with knowledge of the material misrepresentation, aided, assisted, encouraged, or participated, directly or indirectly, in the misrepresentation.

A dealer may inform a buyer or lessee under this subsection (4)(a) regarding the unconditional acceptance or rejection of the contract, lease, or financing by sending an email message to the buyer's or lessee's supplied email address, by phone call, by leaving a voice message or sending a text message to a phone number provided by the buyer or lessee, by in-person oral communication, by mailing a letter by first-class mail if the buyer or lessee expresses a preference for a letter or declines to provide an email address and a phone number capable of receiving a free text message, or by another means agreed to by the buyer or lessee or approved by the department, effective upon the execution, mailing, or sending of the communication and before expiration of the "bushing" period;

(b) Permits the dealer to renegotiate a dollar amount specified as trade-in allowance on a vehicle delivered or to be delivered by the buyer or lessee as part of the purchase price or lease, for any reason except:

(i) Failure to disclose that the vehicle's certificate of title has been branded for any reason, including, but not limited to, status as a rebuilt vehicle as provided in RCW 46.12.540 and 46.12.560; or

(ii) Substantial physical damage or latent mechanical defect occurring before the dealer took possession of the vehicle and which could not have been reasonably discoverable at the time of the taking of the order, offer, or contract; or

(iii) Excessive additional miles or a discrepancy in the mileage. "Excessive additional miles" means the addition of (~~five hundred~~) 500 miles or more, as reflected on the vehicle's odometer, between the time the vehicle was first valued by the dealer for purposes of determining its trade-in value and the time of actual delivery of the vehicle to the dealer. "A discrepancy in the mileage" means (A) a discrepancy between the mileage reflected on the vehicle's odometer and the stated mileage on the signed odometer statement; or (B) a discrepancy between the mileage stated on the signed odometer statement and the actual mileage on the vehicle; or

(c) Fails to comply with the obligation of any written warranty or guarantee given by the dealer requiring the furnishing of services or repairs within a reasonable time.

(5) To commit any offense relating to odometers, as such offenses are defined in RCW 46.37.540, 46.37.550, 46.37.560, and 46.37.570. A violation of this subsection is a class C felony punishable under chapter 9A.20 RCW.

(6) For any vehicle dealer or vehicle salesperson to refuse to furnish, upon request of a prospective purchaser or lessee, for vehicles previously registered to a business or governmental entity, the name and address of the business or governmental entity.

(7) To commit any other offense under RCW 46.37.423, 46.37.424, or 46.37.425.

(8) To commit any offense relating to a dealer's temporary license permit, including but not limited to failure to properly complete each such permit, or the issuance of more than one such permit on any one vehicle. However, a dealer may issue a second temporary permit on a vehicle if the following conditions are met:

(a) The lienholder fails to deliver the vehicle title to the dealer within the required time period;

(b) The dealer has satisfied the lien; and

(c) The dealer has proof that payment of the lien was made within two calendar days, exclusive of Saturday, Sunday, or a legal holiday, after the sales contract has been executed by all parties and all conditions and contingencies in the sales contract have been met or otherwise satisfied.

(9) For a dealer, salesperson, or mobile home manufacturer, having taken an instrument or cash "on deposit" from a purchaser or lessee prior to the delivery of the bargained-for vehicle, to commingle the "on deposit" funds with assets of the dealer, salesperson, or mobile home manufacturer instead of holding the "on deposit" funds as trustee in a separate trust account until the purchaser or lessee has taken delivery of the bargained-for vehicle. Delivery of a manufactured home shall be deemed to occur in accordance with RCW 46.70.135(5). Failure, immediately upon receipt, to endorse "on deposit" instruments to such a trust account, or to set aside "on deposit" cash for deposit in such trust account, and failure to deposit such instruments or cash in such trust account by the close of banking hours on the day following receipt thereof, shall be evidence of intent to commit this unlawful practice: PROVIDED, HOWEVER, That a motor vehicle dealer may keep a separate trust account which equals his or her customary total customer deposits for vehicles for future delivery. For purposes of this section, "on deposit" funds received from a purchaser of a manufactured home means those funds that a seller requires a purchaser to advance before ordering the manufactured home, but does not include any loan proceeds or moneys that might have been paid on an installment contract.

(10) For a dealer or manufacturer to fail to comply with the obligations of any written warranty or guarantee given by the dealer or manufacturer requiring the furnishing of goods and services or repairs within a reasonable period of time, or to fail to furnish to a purchaser or lessee, all parts which attach to the manufactured unit including but not limited to the undercarriage, and all items specified in the terms of a sales or lease agreement signed by the seller and buyer or lessee.

(11) For a vehicle dealer to pay to or receive from any person, firm, partnership, association, or corporation acting, either directly or through a subsidiary, as a buyer's agent for consumers, any compensation, fee, purchase

moneys or funds that have been deposited into or withdrawn out of any account controlled or used by any buyer's agent, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle.

(12) For a buyer's agent, acting directly or through a subsidiary, to pay to or to receive from any motor vehicle dealer any compensation, fee, gratuity, or reward in connection with the purchase, sale, or lease of a new motor vehicle. In addition, it is unlawful for any buyer's agent to engage in any of the following acts on behalf of or in the name of the consumer:

(a) Receiving or paying any purchase moneys or funds into or out of any account controlled or used by any buyer's agent;

(b) Signing any vehicle purchase orders, sales contracts, leases, odometer statements, or title documents, or having the name of the buyer's agent appear on the vehicle purchase order, sales contract, lease, or title; or

(c) Signing any other documentation relating to the purchase, sale, lease, or transfer of any new motor vehicle.

It is unlawful for a buyer's agent to use a power of attorney obtained from the consumer to accomplish or effect the purchase, sale, lease, or transfer of ownership documents of any new motor vehicle by any means which would otherwise be prohibited under (a) through (c) of this subsection. However, the buyer's agent may use a power of attorney for physical delivery of motor vehicle license plates to the consumer.

Further, it is unlawful for a buyer's agent to engage in any false, deceptive, or misleading advertising, disseminated in any manner whatsoever, including but not limited to making any claim or statement that the buyer's agent offers, obtains, or guarantees the lowest price on any motor vehicle or words to similar effect.

(13) For a buyer's agent to arrange for or to negotiate the purchase, or both, of a new motor vehicle through an out-of-state dealer without disclosing in writing to the customer that the new vehicle would not be subject to chapter 19.118 RCW. This subsection also applies to leased vehicles. In addition, it is unlawful for any buyer's agent to fail to have a written agreement with the customer that: (a) Sets forth the terms of the parties' agreement; (b) discloses to the customer the total amount of any fees or other compensation being paid by the customer to the buyer's agent for the agent's services; and (c) further discloses whether the fee or any portion of the fee is refundable.

(14) Being a manufacturer, other than a motorcycle manufacturer governed by chapter 46.93 RCW, to:

(a) Coerce or attempt to coerce any vehicle dealer to order or accept delivery of any vehicle or vehicles, parts or accessories, or any other commodities which have not been voluntarily ordered by the vehicle dealer: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute coercion;

(b) Cancel or fail to renew the franchise or selling agreement of any vehicle dealer doing business in this state without fairly compensating the dealer at a fair going business value for his or her capital investment which shall include but not be limited to tools, equipment, and parts inventory possessed by the dealer on the day he or she is notified of such cancellation or termination and which are still within the dealer's possession on the day the cancellation or termination is effective, if: (i) The capital investment has been entered into with reasonable and



prudent business judgment for the purpose of fulfilling the franchise; and (ii) the cancellation or nonrenewal was not done in good faith. Good faith is defined as the duty of each party to any franchise to act in a fair and equitable manner towards each other, so as to guarantee one party freedom from coercion, intimidation, or threats of coercion or intimidation from the other party: PROVIDED, That recommendation, endorsement, exposition, persuasion, urging, or argument are not deemed to constitute a lack of good faith;

(c) Encourage, aid, abet, or teach a vehicle dealer to sell or lease vehicles through any false, deceptive, or misleading sales or financing practices including but not limited to those practices declared unlawful in this section;

(d) Coerce or attempt to coerce a vehicle dealer to engage in any practice forbidden in this section by either threats of actual cancellation or failure to renew the dealer's franchise agreement;

(e) Refuse to deliver any vehicle publicly advertised for immediate delivery to any duly licensed vehicle dealer having a franchise or contractual agreement for the retail sale or lease of new and unused vehicles sold or distributed by such manufacturer within sixty days after such dealer's order has been received in writing unless caused by inability to deliver because of shortage or curtailment of material, labor, transportation, or utility services, or by any labor or production difficulty, or by any cause beyond the reasonable control of the manufacturer;

(f) To provide under the terms of any warranty that a purchaser or lessee of any new or unused vehicle that has been sold or leased, distributed for sale or lease, or transferred into this state for resale or lease by the vehicle manufacturer may only make any warranty claim on any item included as an integral part of the vehicle against the manufacturer of that item.

Nothing in this section may be construed to impair the obligations of a contract or to prevent a manufacturer, distributor, representative, or any other person, whether or not licensed under this chapter, from requiring performance of a written contract entered into with any licensee hereunder, nor does the requirement of such performance constitute a violation of any of the provisions of this section if any such contract or the terms thereof requiring performance, have been freely entered into and executed between the contracting parties. This paragraph and subsection (14)(b) of this section do not apply to new motor vehicle manufacturers governed by chapter 46.96 RCW.

(15) Unlawful transfer of an ownership interest in a motor vehicle as defined in RCW 19.116.050.

(16) To knowingly and intentionally engage in collusion with a registered owner of a vehicle to repossess and return or resell the vehicle to the registered owner in an attempt to avoid a suspended license impound under chapter 46.55 RCW. However, compliance with chapter 62A.9A RCW in repossessing, selling, leasing, or otherwise disposing of the vehicle, including providing redemption rights to the debtor, is not a violation of this section.

(17)(a) For a dealer to enter into a new motor vehicle sales contract without disclosing in writing to a buyer of the new motor vehicle, or to a dealer in the case of an unregistered motor vehicle, any known damage and repair to the new motor vehicle if the damage exceeds five percent of the manufacturer's suggested retail price as calculated at the dealer's authorized warranty rate for labor and parts, or (~~one thousand dollars~~) \$1,000, whichever amount is greater.

A manufacturer or new motor vehicle dealer is not required to disclose to a dealer or buyer that glass, tires, bumpers, or cosmetic parts of a new motor vehicle were damaged at any time if the damaged item has been replaced with original or comparable equipment. A replaced part is not part of the cumulative damage required to be disclosed under this subsection.

(b) A manufacturer is required to provide the same disclosure to a dealer of any known damage or repair as required in (a) of this subsection.

(c) If disclosure of any known damage or repair is not required under this section, a buyer may not revoke or rescind a sales contract due to the fact that the new motor vehicle was damaged and repaired before completion of the sale.

(d) As used in this section:

(i) "Cosmetic parts" means parts that are attached by and can be replaced in total through the use of screws, bolts, or other fasteners without the use of welding or thermal cutting, and includes windshields, bumpers, hoods, or trim panels.

(ii) "Manufacturer's suggested retail price" means the retail price of the new motor vehicle suggested by the manufacturer, and includes the retail delivered price suggested by the manufacturer for each accessory or item of optional equipment physically attached to the new motor vehicle at the time of delivery to the new motor vehicle dealer that is not included within the retail price suggested by the manufacturer for the new motor vehicle.

### Part III

#### General Fund and Other Related Support

**Sec. 301.** RCW 82.32.385 and 2020 c 219 s 703 are each amended to read as follows:

(1) Beginning September 2019 and ending December 2019, by the last day of September and December, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~(thirteen million six hundred eighty thousand dollars)~~) \$13,680,000.

(2) Beginning March 2020 and ending June 2021, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the multimodal transportation account created in RCW 47.66.070 (~~(thirteen million six hundred eighty thousand dollars)~~) \$13,680,000.

(3) Beginning September 2021 and ending June 2023, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~(thirteen million eight hundred five thousand dollars)~~) \$13,805,000.

(4) Beginning September 2023 and ending June 2025, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~(thirteen million nine hundred eighty seven thousand dollars)~~) \$13,987,000.

(5) Beginning September 2025 and ending June 2027, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~(eleven million six hundred fifty eight thousand dollars)~~) \$11,658,000.

(6) Beginning September 2027 and ending June 2029, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~((seven million five hundred sixty four thousand dollars))~~) \$7,564,000.

(7) Beginning September 2029 and ending June 2031, by the last day of September, December, March, and June of each year, the state treasurer must transfer from the general fund to the connecting Washington account created in RCW 46.68.395 (~~((four million fifty six thousand dollars))~~) \$4,056,000.

(8) For fiscal year 2026 through fiscal year 2038, the state treasurer must transfer from the general fund to the move ahead WA flexible account created in section 402 of this act \$31,000,000 each fiscal year in four equal quarterly transfers. This amount represents the estimated state sales and use tax generated from new transportation projects and activities funded as a result of this act.

(9) For fiscal year 2024 through fiscal year 2038, the state treasurer must transfer from the general fund to the move ahead WA flexible account created in section 402 of this act \$57,000,000 each fiscal year in four equal quarterly transfers.

**Sec. 302.** RCW 43.155.050 and 2021 c 334 s 979 and 2021 c 332 s 7031 are each reenacted and amended to read as follows:

(1) The public works assistance account is hereby established in the state treasury. Money may be placed in the public works assistance account from the proceeds of bonds when authorized by the legislature or from any other lawful source. Money in the public works assistance account shall be used to make loans and grants and to give financial guarantees to local governments for public works projects. Moneys in the account may also be appropriated or transferred to the water pollution control revolving fund and the drinking water assistance account to provide for state match requirements under federal law. Moneys in the account may be transferred to the move ahead WA account to provide support of public works projects funded in the move ahead WA program. Not more than (~~((twenty))~~) 20 percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated for preconstruction loans and grants, emergency loans and grants, or loans and grants for capital facility planning under this chapter. Not more than (~~((ten))~~) 10 percent of the biennial capital budget appropriation to the public works board from this account may be expended or obligated as grants for preconstruction, emergency, capital facility planning, and construction projects. During the 2017-2019 and 2019-2021 fiscal biennia, the legislature may appropriate moneys from the account for activities related to rural economic development, the growth management act, the aviation revitalization loan program, the community economic revitalization board broadband program, and the voluntary stewardship program. During the 2021-2023 biennium, the legislature may appropriate moneys from the account for activities related to the aviation revitalization board. During the 2019-2021 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the public works assistance account to the education legacy trust account. During the 2019-2021 and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the public works assistance account to the statewide broadband account. During the 2021-2023 fiscal biennium, the legislature may

appropriate moneys from the public works assistance account for activities related to the voluntary stewardship program, rural economic development, and the growth management act.

(2) For fiscal year 2024 through fiscal year 2038, the state treasurer must transfer from the public works assistance account to the move ahead WA account created in section 401 of this act \$57,000,000 each fiscal year in four equal quarterly transfers.

**Sec. 303.** RCW 82.08.993 and 2021 c 171 s 2 are each amended to read as follows:

(1)(a) Subject to the limitations in this subsection, beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, ~~((fifty)) 50~~ percent of the tax levied by RCW 82.08.020 does not apply to sales or leases of new electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b)(i) By the end of the fifth working day of each month, until the expiration of the exemption as described in (c) of this subsection, the department must determine the cumulative number of vehicles that have claimed the exemption as described in (a) of this subsection.

(ii) The department of licensing must collect and provide, upon request, information in a form or manner as required by the department to determine the number of exemptions that have been claimed.

(c) The exemption under this section expires after the last day of the calendar month immediately following the month the department determines that the total number of vehicles exempt under (a) of this subsection reaches 650. All leased vehicles that qualified for the exemption before the expiration of the exemption must continue to receive the exemption as described under (a) of this subsection on lease payments due through the remainder of the lease.

(d) The department must provide notification on its website monthly on the amount of exemptions that have been applied for, the amount issued, and the amount remaining before the limit described in (c) of this subsection has been reached, and, once that limit has been reached, the date the exemption expires pursuant to (c) of this subsection.

(e) A person may not claim the exemption under this subsection if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(f) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles.

(2)(a) Subject to the limitations in this subsection (2), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, the entire tax levied by RCW 82.08.020 does not apply to the sale or lease of used electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles. However, the maximum value amount eligible for the exemption under (a) of this subsection is the lesser of either ~~((sixteen thousand dollars))~~ \$16,000 or the fair market value of the vehicle.

(c) A person may not claim the exemption under this subsection (2) if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(3)(a) For qualifying vehicles sold by a person licensed to do business in the state of Washington, the seller must keep records necessary for the department to verify eligibility under this section. The seller reporting the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(b) For vehicles purchased from (i) a seller that is not licensed to do business in the state of Washington, or (ii) a private party, the buyer must keep records necessary for the department to verify eligibility under this section. The buyer claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; date of sale; sales price; and the total amount qualifying for the incentive claimed for each vehicle. This information must be provided in a form and manner prescribed by the department.

(4)(a) The department of licensing must maintain and publish a list of all vehicle models qualifying for the tax exemptions under this section and RCW 82.12.817 until the expiration of this section, and is authorized to issue final rulings on vehicle model qualification for these criteria.

(b) The department of revenue retains responsibility for determining whether a vehicle meets the applicable qualifying criterion under subsections (1) and (2) of this section.

~~(5) ((On the last day of July, October, January, and April of each year, the state treasurer, based upon information provided by the department, must transfer from the electric vehicle account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior fiscal quarter but for the exemptions provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.~~

~~(6))~~ (6) By the last day of August 2023, and annually thereafter until this section expires, based on the best available data, the department must report the following information to the transportation committees of the legislature: The cumulative number of fuel cell electric vehicles that qualified for the exemptions under this section and RCW 82.12.817 by month of purchase or lease start and vehicle make and model; the dollar amount of all state retail sales and use taxes exempted on or after the qualification period start date, under this section and RCW 82.12.817; and estimates of the future costs of leased vehicles that qualified for the exemptions under this section and RCW 82.12.817.

~~((7))~~ (6)(a) Sales of vehicles delivered to the buyer after the expiration of this section, or leased vehicles for which the lease agreement was signed after

the expiration of this section, do not qualify for the exemptions under this section.

(b) All leased vehicles that qualified for the exemption under this section before the expiration of this section must continue to receive the exemption on any lease payments due through the remainder of the lease.

~~((8))~~ (7) For the purposes of this section:

(a) "Fair market value" has the same meaning as "value of the article used" in RCW 82.12.010.

(b) "Fuel cell" means a technology that uses an electrochemical reaction to generate electric energy by combining atoms of hydrogen and oxygen in the presence of a catalyst.

(c) "New vehicle" has the same meaning as "new motor vehicle" in RCW 46.04.358.

(d) "Selling price" and "sales price" have the same meaning as in RCW 82.08.010.

(e) "Used vehicle" has the same meaning as in RCW 46.04.660.

~~((9))~~ (8) This section expires June 30, 2029.

**Sec. 304.** RCW 82.12.817 and 2021 c 171 s 3 are each amended to read as follows:

(1) Subject to the limitations in this subsection and RCW 82.08.993(1)(c), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, ~~((fifty))~~ 50 percent of the tax levied by RCW 82.12.020 does not apply to sales or leases of new electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(2)(a) Subject to the limitations in this subsection (2), beginning July 1, 2022, with sales made or lease agreements signed on or after this date until the expiration of this section, the entire tax levied by RCW 82.12.020 does not apply to the sale or lease of used electric passenger cars, light duty trucks, and medium duty passenger vehicles, that are powered by a fuel cell.

(b) The per vehicle exemption must be based on the sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles. However, the maximum value amount eligible for the exemption under (a) of this subsection is the lesser of either ~~((sixteen thousand dollars))~~ \$16,000 or the fair market value of the vehicle.

(c) A person may not claim the exemption under this subsection (2) if the person claims the exemption under RCW 82.08.9999 or 82.12.9999.

(3) The buyer must keep records necessary for the department to verify eligibility under this section. The buyer claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(4) ~~((On the last day of July, October, January, and April of each year, the state treasurer, based upon information provided by the department, must~~

~~transfer from the electric vehicle account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior fiscal quarter but for the exemptions provided in this section. Information provided by the department to the state treasurer must be based on the best available data.~~

~~(5))~~(a) Sales of vehicles delivered to the buyer after the expiration of this section, or leased vehicles for which the lease agreement was signed after the expiration of this section, do not qualify for the exemptions under this section.

(b) All leased vehicles that qualified for the exemption under this section before the expiration of this section must continue to receive the exemption on any lease payments due through the remainder of the lease.

~~((6))~~ (5) The definitions in RCW 82.08.993 apply to this section.

~~((7))~~ (6) This section expires June 30, 2029.

**Sec. 305.** RCW 82.08.9999 and 2021 c 145 s 13 are each amended to read as follows:

(1) Beginning August 1, 2019, with sales made or lease agreements signed on or after the qualification period start date:

(a) The tax levied by RCW 82.08.020 does not apply as provided in (b) of this subsection to sales or leases of new or used passenger cars, light duty trucks, and medium duty passenger vehicles that:

(i) Are exclusively powered by a clean alternative fuel; or

(ii) Use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least ~~((thirty))~~ 30 miles using only battery power; and

(iii)(A) Have a vehicle selling price plus trade-in property of like kind for purchased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((forty-five thousand dollars))~~ \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((thirty thousand dollars))~~ \$30,000; or

(B) Have a fair market value at the inception of the lease for leased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((forty-five thousand dollars))~~ \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((thirty thousand dollars))~~ \$30,000;

(b)(i) The exemption in this section is applicable for up to the amounts specified in (b)(ii) or (iii) of this subsection of:

(A) The total amount of the vehicle's selling price, for sales made; or

(B) The total lease payments made plus any additional selling price of the leased vehicle if the original lessee purchases the leased vehicle before the qualification period end date, for lease agreements signed.

(ii) Based on the purchase date or the date the lease agreement was signed of the vehicle if the vehicle is a new vehicle at the time of the purchase date or the date the lease agreement was signed:

(A) From the qualification period start date until July 31, 2021, the maximum amount eligible under (b)(i) of this subsection is ~~((twenty-five thousand dollars))~~ \$25,000;

(B) From August 1, 2021, until July 31, 2023, the maximum amount eligible under (b)(i) of this subsection is ~~((twenty thousand dollars))~~ \$20,000;

(C) From August 1, 2023, until July 31, 2025, the maximum amount eligible under (b)(i) of this subsection is ~~((fifteen thousand dollars))~~ \$15,000.

(iii) If the vehicle is a used vehicle at the time of the purchase date or the date the lease agreement was signed, the maximum amount eligible under (b)(i) of this subsection is ~~((sixteen thousand dollars))~~ \$16,000.

(2) The seller must keep records necessary for the department to verify eligibility under this section. A person claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; sales price for purchased vehicles and fair market value at the inception of the lease for leased vehicles; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(3)(a) The department of licensing must maintain and publish a list of all vehicle models qualifying for the tax exemptions under this section or RCW 82.12.9999 until the expiration date of this section, and is authorized to issue final rulings on vehicle model qualification for these criteria. A seller is not responsible for repayment of the tax exemption under this section and RCW 82.12.9999 for a vehicle if the department of licensing's published list of qualifying vehicle models on the purchase date or the date the lease agreement was signed includes the vehicle model and the department of licensing subsequently removes the vehicle model from the published list, and, if applicable, the vehicle meets the qualifying criterion under subsection (1)(a)(iii)(B) of this section and RCW 82.12.9999(1)(a)(iii)(B).

(b) The department of revenue retains responsibility for determining whether a vehicle meets the applicable qualifying criterion under subsection (1)(a)(iii)(B) of this section and RCW 82.12.9999(1)(a)(iii)(B).

(4) ~~((On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the electric vehicle account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.~~

~~(5))~~ By the last day of October 2019, and every six months thereafter until this section expires, based on the best available data, the department must report the following information to the transportation committees of the legislature: The cumulative number of vehicles that qualified for the exemption under this section and RCW 82.12.9999 by month of purchase or lease start and vehicle make and model; the dollar amount of all state retail sales and use taxes



exempted on or after the qualification period start date, under this section and RCW 82.12.9999; and estimates of the future costs of leased vehicles that qualified for the exemption under this section and RCW 82.12.9999.

~~((6))~~ (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Clean alternative fuel" means natural gas, propane, hydrogen, or electricity, when used as a fuel in a motor vehicle that meets the California motor vehicle emission standards in Title 13 of the California Code of Regulations, effective January 1, 2019, and the rules of the Washington state department of ecology.

(b) "Fair market value" has the same meaning as "value of the article used" in RCW 82.12.010.

(c) "New vehicle" has the same meaning as "new motor vehicle" in RCW 46.04.358.

(d) "Qualification period end date" means August 1, 2025.

(e) "Qualification period start date" means August 1, 2019.

(f) "Used vehicle" has the same meaning as in RCW 46.04.660.

~~((7))~~ (6)(a) Sales of vehicles delivered to the buyer or leased vehicles for which the lease agreement was signed after the qualification period end date do not qualify for the exemption under this section.

(b) All leased vehicles that qualified for the exemption under this section before the qualification period end date must continue to receive the exemption as described under subsection (1)(b) of this section on any lease payments due through the remainder of the lease before August 1, 2028.

~~((8))~~ (7) This section expires August 1, 2028.

~~((9))~~ (8) This section is supported by the revenues generated in RCW 46.17.324, and therefore takes effect only if RCW 46.17.324 is enacted by June 30, 2019.

**Sec. 306.** RCW 82.12.9999 and 2019 c 287 s 10 are each amended to read as follows:

(1) Beginning August 1, 2019, beginning with sales made or lease agreements signed on or after the qualification period start date:

(a) The provisions of this chapter do not apply as provided in (b) of this subsection in respect to the use of new or used passenger cars, light duty trucks, and medium duty passenger vehicles that:

(i) Are exclusively powered by a clean alternative fuel; or

(ii) Use at least one method of propulsion that is capable of being reenergized by an external source of electricity and are capable of traveling at least ~~((thirty))~~ 30 miles using only battery power; and

(iii)(A) Have a fair market value at the time use tax is imposed for purchased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((forty five thousand dollars))~~ \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed ~~((thirty thousand dollars))~~ \$30,000; or

(B) Have a fair market value at the inception of the lease for leased vehicles that:

(I) For a vehicle that is a new vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed (~~(forty-five thousand dollars)~~) \$45,000; or

(II) For a vehicle that is a used vehicle at the time of the purchase date or the date the lease agreement was signed, does not exceed (~~(thirty thousand dollars)~~) \$30,000;

(b)(i) The exemption in this section is only applicable for up to the amounts specified in (b)(ii) or (iii) of this subsection of:

(A) The total amount of the vehicle's purchase price, for sales made; or

(B) The total lease payments made plus any additional purchase price of the leased vehicle if the original lessee purchases the leased vehicle before the qualification period end date, for lease agreements signed.

(ii) Based on the purchase date or the date the lease agreement was signed of the vehicle if the vehicle is a new vehicle at the time of the purchase date or the date the lease agreement was signed:

(A) From the qualification period start date until July 31, 2021, the maximum amount eligible under (b)(i) of this subsection is (~~(twenty-five thousand dollars)~~) \$25,000;

(B) From August 1, 2021, until July 31, 2023, the maximum amount eligible under (b)(i) of this subsection is (~~(twenty thousand dollars)~~) \$20,000;

(C) From August 1, 2023, until July 31, 2025, the maximum amount eligible under (b)(i) of this subsection is (~~(fifteen thousand dollars)~~) \$15,000.

(iii) If the vehicle is a used vehicle at the time of the purchase date or the date the lease agreement was signed, the maximum amount eligible under (b)(i) of this subsection is (~~(sixteen thousand dollars)~~) \$16,000.

(2)(a) The seller must keep records necessary for the department to verify eligibility under this section, except as provided in (b) of this subsection. A person claiming the exemption must also submit itemized information to the department for all vehicles for which an exemption is claimed that must include the following: Vehicle make; vehicle model; model year; whether the vehicle has been sold or leased; date of sale or start date of lease; length of lease; fair market value of the vehicle; and the total amount qualifying for the incentive claimed for each vehicle, in addition to the future monthly amount to be claimed for each leased vehicle. This information must be provided in a form and manner prescribed by the department.

(b) (a) of this subsection applies only if the seller or person claiming the exemption is a vehicle dealer, as defined under RCW 46.70.011. When the seller is not a vehicle dealer, the department of licensing must establish a process for granting the tax exemption under this section for use tax otherwise collected at the time the ownership of a vehicle is transferred when the vehicle qualifies for the use tax exemption under subsection (1)(a) of this section, and must provide any information required under (a) of this subsection that it obtains as part of the vehicle titling and registration process for these vehicles to the department on at least a quarterly basis.

(3) (~~On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the electric vehicle account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section.~~)

Information provided by the department to the state treasurer must be based on the best available data.

~~(4)~~(a) Vehicles purchased or leased vehicles for which the lease agreement was signed after the qualification period end date do not qualify for the exemption under this section.

(b) All leased vehicles that qualified for the exemption under this section before the qualification period end date must continue to receive the exemption as described under subsection (1)(b) of this section on any lease payments due through the remainder of the lease before August 1, 2028.

~~((5))~~ (4) The definitions in RCW 82.08.9999 apply to this section.

~~((6))~~ (5) This section is supported by the revenues generated in RCW 46.17.324, and therefore takes effect only if RCW 46.17.324 is enacted by June 30, 2019.

~~((7))~~ (6) This section expires August 1, 2028.

**Sec. 307.** RCW 82.04.4496 and 2019 c 287 s 8 are each amended to read as follows:

(1)(a)(i) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	75% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	75% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	75% of incremental cost	\$100,000	\$2,000,000

(ii) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter for up to ~~((fifty))~~ 50 percent of the cost to purchase alternative fuel vehicle infrastructure, tangible personal property that will become a component of alternative fuel vehicle infrastructure, and installation and construction of alternative fuel vehicle infrastructure, but excluding the cost of property acquisition and site improvement related to the installation of alternative fuel vehicle infrastructure. The credit is subject to a maximum annual credit amount of ~~((two million dollars))~~ \$2,000,000.

(b) On September 1st of each year, any unused credits from any category identified in (a) of this subsection must be made available to applicants applying for credits under any other category identified in (a) of this subsection, subject to the maximum annual and total credit amounts identified in this subsection. The credit established in this section and RCW 82.16.0496 is subject to a maximum annual credit amount of ~~((six million dollars))~~ \$6,000,000, and a maximum total

credit amount of (~~(thirty-two and one-half million dollars)~~) \$32,500,000 since the credit became available on July 15, 2015.

(c) The credit provided in (a)(i) of this subsection is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in (a)(i) of this subsection multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per category in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of (~~(twenty-five thousand dollars)~~) \$25,000 or (~~(fifty)~~) 50 percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under subsection (1)(a)(i) of this section may not exceed the lesser of (~~(two hundred fifty thousand dollars)~~) \$250,000 or (~~(twenty-five)~~) 25 vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.16 RCW.

(5) Credits are available on a first-in-time basis.

(a) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.16.0496, during any calendar year to exceed (~~(six million dollars)~~) \$6,000,000. The department must provide notification on its website monthly on the amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(b) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed beginning July 15, 2015, under this section and RCW 82.16.0496 to exceed (~~(thirty-two and one-half million dollars)~~) \$32,500,000. The department must provide notification on its website monthly on the total amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle, infrastructure, infrastructure components, infrastructure construction, or infrastructure installation;

(iii) The type of alternative fuel to be used by the vehicle or supported by the infrastructure;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) The anticipated delivery date of the vehicle, the anticipated delivery date of the infrastructure or infrastructure components, the anticipated construction completion date of the infrastructure, or the anticipated installation completion date of the infrastructure;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties or the estimated annual fuel to be supplied by the infrastructure;

(vii) The gross weight of each vehicle for vehicle credits;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within (~~(fifteen)~~) 15 days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle or infrastructure-related item, including the total cost for the vehicle or infrastructure-related item;

(ii) The anticipated delivery date of the vehicle or infrastructure or infrastructure component, which must be within one year of acceptance of the credit;

(iii) The anticipated construction or installation completion date of the infrastructure, which must be within two years of acceptance of the credit; and

(iv) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within (~~(thirty)~~) 30 days of receipt of the vehicle or infrastructure or infrastructure components or of completion of construction or installation of the infrastructure, including:

(i) A copy of the final invoice for the vehicle or infrastructure-related items;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) Attestations signed by both the seller and purchaser of each vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application. A separate application is required for infrastructure-related items, but all infrastructure-related items at a single location may be included in a single application provided the required information for each infrastructure-related item is included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its website monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit and total limit are reached;

(b) Within ~~((fifteen))~~ 15 days of receipt of the application, notify persons applying of the availability of tax credits in the year in which the vehicles or infrastructure applied for are anticipated to be delivered, constructed, or installed;

(c) Within ~~((fifteen))~~ 15 days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within ~~((fifteen))~~ 15 days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel;

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel; or

(iii) Sales of alternative fuel vehicle infrastructure or infrastructure components, or the cost of construction or installation of alternative fuel vehicle infrastructure.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or infrastructure-related item, the vehicle conversion is complete, or the construction or installation of the infrastructure is complete.

(13) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

~~(14)((a) Beginning November 25, 2015, and on the 25th of February, May, August, and November of each year thereafter, the department must notify the state treasurer of the amount of credits taken under this section as reported on returns filed with the department during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.~~

~~(b) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, must transfer a sum equal to the dollar amount of the credit provided under this section from the multimodal transportation account to the general fund.~~

~~(15))~~ The department must conduct outreach to interested parties to obtain input on how best to streamline the application process required for the credit made available in this section and RCW 82.16.0496 to further adoption of alternative fuel technologies in commercial vehicle fleets, and must incorporate the findings resulting from this outreach effort into the rules and practices it adopts to implement and administer this section and RCW 82.16.0496 to the extent permitted under law.

~~((16))~~ (15) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Alternative fuel vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a clean alternative fuel vehicle.

(b) "Auto transportation company" means any corporation or person owning, controlling, operating, or managing any motor propelled vehicle, used in the business of transporting persons for compensation over public highways within the state of Washington, between fixed points or over a regular route. For the purposes of this section, "auto transportation company" also includes the following categories of providers irrespective of whether they provide service between fixed points or over a regular route: "Private, nonprofit transportation provider" as defined in RCW 81.66.010, "charter party carrier" as defined in RCW 81.70.020, and paratransit service providers who primarily provide special needs transportation to individuals with disabilities and the elderly.

(c) "Clean alternative fuel" means electricity, dimethyl ether, hydrogen, methane, natural gas, liquefied natural gas, compressed natural gas, or propane.

(d) "Commercial vehicle" means any commercial vehicle that is purchased by a private business and that is used exclusively in the provision of commercial services or the transportation of commodities, merchandise, produce, refuse, freight, animals, or passengers, and that is displaying a Washington state license plate. All commercial vehicles that provide transportation to passengers must be operated by an auto transportation company.

(e) "Gross capitalized cost" means the agreed upon value of the commercial vehicle and including any other items a person pays over the lease term that are included in such cost.

(f) "Lease reduction factor" means the vehicle gross capitalized cost less the residual value, divided by the gross capitalized cost.

(g) "Qualifying used commercial vehicle" means vehicles that:

(i) Have an odometer reading of less than (~~four hundred fifty thousand~~) 450,000 miles;

(ii) Are less than (~~ten~~) 10 years past their original date of manufacture;

(iii) Were modified after the initial purchase with a United States environmental protection agency certified conversion that would allow the propulsion units to be principally powered by a clean alternative fuel; and

(iv) Are being sold for the first time after modification.

(h) "Residual value" means the lease-end value of the vehicle as determined by the lessor, at the end of the lease term included in the lease contract.

(~~(17)~~) (16) Credits may be earned under this section from January 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached, except for credits for leased vehicles, which may be earned from July 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached.

**Sec. 308.** RCW 82.16.0496 and 2019 c 287 s 13 are each amended to read as follows:

(1)(a)(i) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter according to the gross vehicle weight rating of the vehicle and the incremental cost of the vehicle purchased above the purchase price of a comparable conventionally fueled vehicle. The credit is limited, as set forth in the table below, to the lesser of the incremental cost amount or the maximum credit amount per vehicle purchased, and subject to a maximum annual credit amount per vehicle class.

Gross Vehicle Weight	Incremental Cost Amount	Maximum Credit Amount Per Vehicle	Maximum Annual Credit Per Vehicle Class
Up to 14,000 pounds	75% of incremental cost	\$25,000	\$2,000,000
14,001 to 26,500 pounds	75% of incremental cost	\$50,000	\$2,000,000
Above 26,500 pounds	75% of incremental cost	\$100,000	\$2,000,000

(ii) A person who is taxable under this chapter is allowed a credit against the tax imposed in this chapter for up to (~~(fifty)~~) 50 percent of the cost to purchase alternative fuel vehicle infrastructure, tangible personal property that will become a component of alternative fuel vehicle infrastructure, and installation and construction of alternative fuel vehicle infrastructure, but excluding the cost of property acquisition and site improvement related to the installation of alternative fuel vehicle infrastructure. The credit is subject to a maximum annual credit amount of (~~(two million dollars)~~) \$2,000,000.

(b) On September 1st of each year, any unused credits from any category identified in (a) of this subsection must be made available to applicants applying for credits under any other category identified in (a) of this subsection, subject to the maximum annual and total credit amounts identified in this subsection. The credit established in this section and RCW 82.04.4496 is subject to a maximum annual credit amount of (~~(six million dollars)~~) \$6,000,000, and a maximum total credit amount of (~~(thirty two and one half million dollars)~~) \$32,500,000 beginning July 15, 2015.

(c) The credit provided in (a)(i) of this subsection is available for the lease of a vehicle. The credit amount for a leased vehicle is equal to the credit in (a)(i) of this subsection multiplied by the lease reduction factor. The person claiming the credit for a leased vehicle must be the lessee as identified in the lease contract.

(2) A person who is taxable under this chapter is allowed, subject to the maximum annual credit per category in subsection (1)(a) of this section, a credit against the tax imposed in this chapter for the lesser of (~~(twenty five thousand dollars)~~) \$25,000 or (~~(fifty)~~) 50 percent of the costs of converting a commercial vehicle to be principally powered by a clean alternative fuel with a United States environmental protection agency certified conversion.

(3) The total credits under subsection (1)(a)(i) of this section may not exceed the lesser of (~~(two hundred fifty thousand dollars)~~) \$250,000 or (~~(twenty five)~~) 25 vehicles per person per calendar year.

(4) A person may not receive credit under this section for amounts claimed as credits under chapter 82.04 RCW.

(5) Credits are available on a first-in-time basis.

(a) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed under this section, and RCW 82.04.4496, during any calendar year to exceed (~~(six million dollars)~~) \$6,000,000. The department must provide notification on its website monthly on



the amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide annual limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(b) The department must disallow any credits, or portion thereof, that would cause the total amount of credits claimed beginning July 15, 2015, under this section and RCW 82.04.4496 to exceed ~~((thirty-two and one-half million dollars))~~ \$32,500,000. The department must provide notification on its website monthly on the total amount of credits that have been applied for, the amount issued, and the amount remaining before the statewide limit is reached. In addition, the department must provide written notice to any person who has applied to claim tax credits in excess of the limitation in this subsection.

(6) For the purposes of the limits provided in this section, a credit must be counted against such limits for the calendar year in which the credit is earned.

(7) To claim a credit under this section a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. No refunds may be granted for credits under this section.

(8) To claim a credit under this section, the person applying must:

(a) Complete an application for the credit which must include:

(i) The name, business address, and tax identification number of the applicant;

(ii) A quote or unexecuted copy of the purchase requisition or order for the vehicle, infrastructure, infrastructure components, infrastructure construction, or infrastructure installation;

(iii) The type of alternative fuel to be used by the vehicle or supported by the infrastructure;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) The anticipated delivery date of the vehicle, the anticipated delivery date of the infrastructure or infrastructure components, the anticipated construction completion date of the infrastructure, or the anticipated installation completion date of the infrastructure;

(vi) The estimated annual fuel use of the vehicle in the anticipated duties or the estimated annual fuel to be supplied by the infrastructure;

(vii) The gross weight of each vehicle for vehicle credits;

(viii) For leased vehicles, a copy of the lease contract that includes the gross capitalized cost, residual value, and name of the lessee; and

(ix) Any other information deemed necessary by the department to support administration or reporting of the program.

(b) Within ~~((fifteen))~~ 15 days of notice of credit availability from the department, provide notice of intent to claim the credit including:

(i) A copy of the order for the vehicle or infrastructure-related item, including the total cost for the vehicle or infrastructure-related item;

(ii) The anticipated delivery date of the vehicle or infrastructure or infrastructure component, which must be within one year of acceptance of the credit;

(iii) The anticipated construction or installation completion date of the infrastructure, which must be within two years of acceptance of the credit; and

(iv) Any other information deemed necessary by the department to support administration or reporting of the program.

(c) Provide final documentation within (~~thirty~~) 30 days of receipt of the vehicle or infrastructure or infrastructure components or of completion of construction or installation of the infrastructure, including:

(i) A copy of the final invoice for the vehicle or infrastructure-related items;

(ii) A copy of the factory build sheet or equivalent documentation;

(iii) The vehicle identification number of each vehicle;

(iv) The incremental cost of the alternative fuel system for vehicle credits;

(v) Attestations signed by both the seller and purchaser of the vehicle attesting that the incremental cost of the alternative fuel system includes only the costs necessary for the vehicle to run on alternative fuel and no other vehicle options, equipment, or costs; and

(vi) Any other information deemed necessary by the department to support administration or reporting of the program.

(9) A person applying for credit under subsection (8) of this section may apply for multiple vehicles on the same application, but the application must include the required information for each vehicle included in the application. A separate application is required for infrastructure-related items, but all infrastructure-related items at a single location may be included in a single application provided the required information for each infrastructure-related item is included in the application.

(10) To administer the credits, the department must, at a minimum:

(a) Provide notification on its website monthly of the amount of credits that have been applied for, claimed, and the amount remaining before the statewide annual limit and total limit are reached;

(b) Within (~~fifteen~~) 15 days of receipt of the application, notify persons applying of the availability of tax credits in the year in which the vehicles or infrastructure applied for are anticipated to be delivered, constructed, or installed;

(c) Within (~~fifteen~~) 15 days of receipt of the notice of intent to claim the tax credit, notify the applicant of the approval, denial, or missing information in their notice; and

(d) Within (~~fifteen~~) 15 days of receipt of final documentation, review the documentation and notify the person applying of the acceptance of their final documentation.

(11) If a person fails to supply the information as required in subsection (8) of this section, the department must deny the application.

(12)(a) Taxpayers are only eligible for a credit under this section based on:

(i) Sales or leases of new commercial vehicles and qualifying used commercial vehicles with propulsion units that are principally powered by a clean alternative fuel;

(ii) Costs to modify a commercial vehicle, including sales of tangible personal property incorporated into the vehicle and labor or service expenses incurred in modifying the vehicle, to be principally powered by a clean alternative fuel; or

(iii) Sales of alternative fuel vehicle infrastructure or infrastructure components, or the cost of construction or installation of alternative fuel vehicle infrastructure.

(b) A credit is earned when the purchaser or the lessee takes receipt of the qualifying commercial vehicle or infrastructure-related item, the vehicle conversion is complete, or the construction or installation of the infrastructure is complete.

(13) The definitions in RCW 82.04.4496 apply to this section.

(14) A credit earned during one calendar year may be carried over to be credited against taxes incurred in the subsequent calendar year, but may not be carried over a second year.

~~(15)((a) Beginning November 25, 2015, and on the 25th of February, May, August, and November of each year thereafter, the department must notify the state treasurer of the amount of credits taken under this section as reported on returns filed with the department during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.~~

~~(b) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, must transfer a sum equal to the dollar amount of the credit provided under this section from the multimodal transportation account to the general fund.~~

~~(16)) Credits may be earned under this section from January 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached, except for credits for leased vehicles, which may be earned from July 1, 2016, until the maximum total credit amount in subsection (1)(b) of this section is reached.~~

**Sec. 309.** RCW 82.08.816 and 2019 c 287 s 11 are each amended to read as follows:

(1) The tax imposed by RCW 82.08.020 does not apply to:

(a) The sale of batteries or fuel cells for electric vehicles, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) The sale of or charge made for labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) The sale of or charge made for labor and services rendered in respect to installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure, including hydrogen fueling stations;

(d) The sale of tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(e) The sale of zero emissions buses.

(2) Sellers may make tax exempt sales under this section only if the buyer provides the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

~~(3) ((On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide~~

~~estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.~~

~~(4))~~ The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, and renewable hydrogen production facilities.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(e) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(f) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(g) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

~~((5))~~ (4) This section expires July 1, 2025.

**Sec. 310.** RCW 82.12.816 and 2019 c 287 s 12 are each amended to read as follows:

(1) The tax imposed by RCW 82.12.020 does not apply to the use of:

(a) Electric vehicle batteries or fuel cells, including batteries or fuel cells sold as a component of an electric bus at the time of the vehicle's sale;

(b) Labor and services rendered in respect to installing, repairing, altering, or improving electric vehicle batteries or fuel cells;

(c) Tangible personal property that will become a component of battery or fuel cell electric vehicle infrastructure during the course of installing, constructing, repairing, or improving battery or fuel cell electric vehicle infrastructure; and

(d) Zero emissions buses.

(2) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Battery charging station" means an electrical component assembly or cluster of component assemblies designed specifically to charge batteries within electric vehicles, which meet or exceed any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(b) "Battery exchange station" means a fully automated facility that will enable an electric vehicle with a swappable battery to enter a drive lane and exchange the depleted battery with a fully charged battery through a fully automated process, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(c) "Electric vehicle infrastructure" means structures, machinery, and equipment necessary and integral to support a battery or fuel cell electric vehicle, including battery charging stations, rapid charging stations, battery exchange stations, fueling stations that provide hydrogen for fuel cell electric vehicles, and renewable hydrogen production facilities.

(d) "Rapid charging station" means an industrial grade electrical outlet that allows for faster recharging of electric vehicle batteries through higher power levels, which meets or exceeds any standards, codes, and regulations set forth by chapter 19.28 RCW and consistent with rules adopted under RCW 19.27.540.

(e) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for hydrogen and the source for the energy input into the production process.

(f) "Renewable resource" means (i) water; (ii) wind; (iii) solar energy; (iv) geothermal energy; (v) renewable natural gas; (vi) renewable hydrogen; (vii) wave, ocean, or tidal power; (viii) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (ix) biomass energy.

(g) "Zero emissions bus" means a bus that emits no exhaust gas from the onboard source of power, other than water vapor.

~~(3) ((On the last day of January, April, July, and October of each year, the state treasurer, based upon information provided by the department, must transfer from the multimodal transportation account to the general fund a sum equal to the dollar amount that would otherwise have been deposited into the general fund during the prior calendar quarter but for the exemption provided in this section. Information provided by the department to the state treasurer must be based on the best available data, except that the department may provide estimates of taxes exempted under this section until such time as retailers are able to report such exempted amounts on their tax returns.~~

~~(4)) This section expires July 1, 2025.~~

**Sec. 311.** RCW 82.70.040 and 2016 c 32 s 3 are each amended to read as follows:

(1)(a) The department must keep a running total of all credits allowed under RCW 82.70.020 during each fiscal year. The department may not allow any credits that would cause the total amount allowed to exceed ~~((two million seven hundred fifty thousand dollars))~~ \$2,750,000 in any fiscal year.

(b) If the total amount of credit applied for by all applicants in any year exceeds the limit in this subsection, the department must ratably reduce the amount of credit allowed for all applicants so that the limit in this subsection is

not exceeded. If a credit is reduced under this subsection, the amount of the reduction may not be carried forward and claimed in subsequent fiscal years.

(2)(a) Tax credits under RCW 82.70.020 may not be claimed in excess of the amount of tax otherwise due under chapter 82.04 or 82.16 RCW.

(b) Through June 30, 2005, a person with taxes equal to or in excess of the credit under RCW 82.70.020, and therefore not subject to the limitation in (a) of this subsection, may elect to defer tax credits for a period of not more than three years after the year in which the credits accrue. For credits approved by the department through June 30, 2015, the approved credit may be carried forward and used for tax reporting periods through December 31, 2016. Credits approved after June 30, 2015, must be used for tax reporting periods within the calendar year for which they are approved by the department and may not be carried forward to subsequent tax reporting periods. Credits carried forward as authorized by this subsection are subject to the limitation in subsection (1)(a) of this section for the fiscal year for which the credits were originally approved.

(3) No person may be approved for tax credits under RCW 82.70.020 in excess of ~~((one hundred thousand dollars))~~ \$100,000 in any fiscal year. This limitation does not apply to credits carried forward from prior years under subsection (2)(b) of this section.

(4) No person may claim tax credits after June 30, 2024.

~~((5) No person is eligible for tax credits under RCW 82.70.020 if the additional revenues for the multimodal transportation account created by chapter 361, Laws of 2003 are terminated.))~~

**Sec. 312.** RCW 82.70.050 and 2015 3rd sp.s. c 44 s 415 are each amended to read as follows:

~~((1))~~ The director must on the 25th of February, May, August, and November of each year advise the state treasurer of the amount of credit taken under RCW 82.70.020 during the preceding calendar quarter ending on the last day of December, March, June, and September, respectively.

~~((2) On the last day of March, June, September, and December of each year, the state treasurer, based upon information provided by the department, must deposit to the general fund a sum equal to the dollar amount of the credit provided under RCW 82.70.020 from the multimodal transportation account.~~

~~(3) This section expires January 1, 2025.)~~

**Sec. 313.** RCW 82.21.030 and 2021 c 333 s 705 are each amended to read as follows:

(1)(a) A tax is imposed on the privilege of possession of hazardous substances in this state. Except as provided in (b) of this subsection, the rate of the tax is seven-tenths of one percent multiplied by the wholesale value of the substance. Moneys collected under this subsection (1)(a) must be deposited in the model toxics control capital account.

(b) Beginning July 1, 2019, the rate of the tax on petroleum products is one dollar and nine cents per barrel. The tax collected under this subsection (1)(b) on petroleum products must be deposited as follows, after first depositing the tax as provided in (c) of this subsection, except that during the 2021-2023 biennium the deposit as provided in (c) of this subsection may be prorated equally across each month of the biennium:

(i) Sixty percent to the model toxics control operating account created under RCW 70A.305.180;

(ii) Twenty-five percent to the model toxics control capital account created under RCW 70A.305.190; and

(iii) Fifteen percent to the model toxics control stormwater account created under RCW 70A.305.200.

(c) Until the beginning of the ensuing biennium after the enactment of an additive transportation funding act, (~~fifty million dollars~~) \$50,000,000 per biennium to the motor vehicle fund to be used exclusively for transportation stormwater activities and projects. For purposes of this subsection, "additive transportation funding act" means an act enacted after June 30, 2023, in which the combined total of new revenues deposited into the motor vehicle fund and the multimodal transportation account exceed (~~two billion dollars~~) \$2,000,000,000 per biennium attributable solely to an increase in revenue from the enactment of the act.

(d) The department must compile a list of petroleum products that are not easily measured on a per barrel basis. Petroleum products identified on the list are subject to the rate under (a) of this subsection in lieu of the volumetric rate under (b) of this subsection. The list will be made in a form and manner prescribed by the department and must be made available on the department's internet website. In compiling the list, the department may accept technical assistance from persons that sell, market, or distribute petroleum products and consider any other resource the department finds useful in compiling the list.

(2) Chapter 82.32 RCW applies to the tax imposed in this chapter. The tax due dates, reporting periods, and return requirements applicable to chapter 82.04 RCW apply equally to the tax imposed in this chapter.

(3) Beginning July 1, 2020, and every July 1st thereafter, the rate specified in subsection (1)(b) of this section must be adjusted to reflect the percentage change in the implicit price deflator for nonresidential structures as published by the United States department of commerce, bureau of economic analysis for the most recent (~~twelve month~~) 12-month period ending December 31st of the prior year.

#### **Part IV**

### **Account Creation, Local Options, and Other Provisions**

**NEW SECTION. Sec. 401.** A new section is added to chapter 46.68 RCW to read as follows:

The move ahead WA account is created in the motor vehicle fund. Moneys in the account may be spent only after appropriation. Expenditures from the account must be used only for projects or improvements identified as move ahead WA projects or improvements in an omnibus transportation appropriations act, including any principal and interest on bonds authorized for the projects or improvements.

**NEW SECTION. Sec. 402.** A new section is added to chapter 46.68 RCW to read as follows:

The move ahead WA flexible 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 transportation projects, programs, or activities

identified as move ahead WA projects, programs, or activities in an omnibus transportation appropriations act.

**Sec. 403.** RCW 43.84.092 and 2021 c 199 s 504 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 abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the ambulance transport fund, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the climate active transportation account, the climate transit programs account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community services account, the diesel



idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the move ahead WA account, the move ahead WA flexible account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the

transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 404.** RCW 43.84.092 and 2021 c 199 s 505 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 abandoned recreational vehicle disposal account, the aeronautics account, the Alaskan Way viaduct replacement project account, the brownfield redevelopment trust fund account, the budget stabilization account, the capital vessel replacement account, the capitol building construction account, the Central Washington University capital projects account, the charitable, educational, penal and reformatory institutions account, the Chehalis basin account, the Chehalis basin taxable account, the cleanup settlement account, the climate active transportation account, the climate transit programs account, the Columbia river basin water supply development account, the Columbia river basin taxable bond water supply development account, the Columbia river basin water supply revenue recovery account, the common school construction fund, the community forest trust account, the connecting Washington account, the county arterial preservation account, the county criminal justice assistance account, the deferred compensation administrative account, the deferred compensation principal account, the department of licensing services account, the department of retirement systems expense account, the developmental disabilities community services account, the diesel idle reduction account, the drinking water assistance account, the administrative subaccount of the drinking water assistance account, the early learning facilities development account, the early learning facilities revolving account, the Eastern Washington University capital projects account, the education construction fund, the education legacy trust account, the election account, the electric vehicle account, the energy freedom account, the energy recovery act account, the essential rail assistance account, The Evergreen State College capital projects account, the fair start for kids account, the ferry bond retirement fund, the fish, wildlife, and conservation account, the freight mobility investment account, the freight mobility multimodal account, the grade crossing protective fund, the public health services account, the state higher education construction account, the higher education construction account, the higher education retirement plan supplemental benefit fund, the highway bond retirement fund, the highway infrastructure account, the highway safety fund, the hospital safety net assessment fund, the Interstate 405 and state route number 167 express toll lanes account, the judges' retirement account, the judicial retirement administrative account, the judicial retirement principal account, the limited fish and wildlife account, the local leasehold excise tax account, the local real estate excise tax

account, the local sales and use tax account, the marine resources stewardship trust account, the medical aid account, the money-purchase retirement savings administrative account, the money-purchase retirement savings principal account, the motor vehicle fund, the motorcycle safety education account, the move ahead WA account, the move ahead WA flexible account, the multimodal transportation account, the multiuse roadway safety account, the municipal criminal justice assistance account, the oyster reserve land account, the pension funding stabilization account, the perpetual surveillance and maintenance account, the pilotage account, the pollution liability insurance agency underground storage tank revolving account, the public employees' retirement system plan 1 account, the public employees' retirement system combined plan 2 and plan 3 account, the public facilities construction loan revolving account, the public health supplemental account, the public works assistance account, the Puget Sound capital construction account, the Puget Sound ferry operations account, the Puget Sound Gateway facility account, the Puget Sound taxpayer accountability account, the real estate appraiser commission account, the recreational vehicle account, the regional mobility grant program account, the resource management cost account, the rural arterial trust account, the rural mobility grant program account, the rural Washington loan fund, the sexual assault prevention and response account, the site closure account, the skilled nursing facility safety net trust fund, the small city pavement and sidewalk account, the special category C account, the special wildlife account, the state investment board expense account, the state investment board commingled trust fund accounts, the state patrol highway account, the state reclamation revolving account, the state route number 520 civil penalties account, the state route number 520 corridor account, the statewide broadband account, the statewide tourism marketing account, the supplemental pension account, the Tacoma Narrows toll bridge account, the teachers' retirement system plan 1 account, the teachers' retirement system combined plan 2 and plan 3 account, the tobacco prevention and control account, the tobacco settlement account, the toll facility bond retirement account, the transportation 2003 account (nickel account), the transportation equipment fund, the transportation future funding program account, the transportation improvement account, the transportation improvement board bond retirement account, the transportation infrastructure account, the transportation partnership account, the traumatic brain injury account, the University of Washington bond retirement fund, the University of Washington building account, the voluntary cleanup account, the volunteer firefighters' and reserve officers' relief and pension principal fund, the volunteer firefighters' and reserve officers' administrative fund, the vulnerable roadway user education account, the Washington judicial retirement system account, the Washington law enforcement officers' and firefighters' system plan 1 retirement account, the Washington law enforcement officers' and firefighters' system plan 2 retirement account, the Washington public safety employees' plan 2 retirement account, the Washington school employees' retirement system combined plan 2 and 3 account, the Washington state patrol retirement account, the Washington State University building account, the Washington State University bond retirement fund, the water pollution control revolving administration account, the water pollution control revolving fund, the Western Washington University capital projects account, the Yakima integrated plan implementation account, the

Yakima integrated plan implementation revenue recovery account, and the Yakima integrated plan implementation taxable bond account. Earnings derived from investing balances of the agricultural permanent fund, the normal school permanent fund, the permanent common school fund, the scientific permanent fund, and the state university permanent fund shall be allocated to their respective beneficiary accounts.

(b) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the state treasury that deposits funds into a fund or account in the state treasury pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no treasury accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**Sec. 405.** RCW 82.47.020 and 1991 c 173 s 1 are each amended to read as follows:

(1) The legislative authority of a border area jurisdiction may, by resolution for the purposes authorized in this chapter and by approval of a majority of the registered voters of the jurisdiction voting on the proposition at a general or special election, fix and impose an excise tax on the retail sale of motor vehicle fuel and special fuel within the jurisdiction. An election held under this section must be held not more than ~~((twelve))~~ 12 months before the date on which the proposed tax is to be levied. The ballot setting forth the proposition ~~((shall))~~ must state the tax rate that is proposed. The rate of such tax ~~((shall be in increments of one-tenth of a cent per gallon and shall))~~ may not exceed ~~((one cent))~~ two cents per gallon for ballot propositions submitted in calendar year 2022. For ballot propositions submitted after calendar year 2022, this two cents per gallon maximum tax rate may be adjusted to reflect the percentage change in the implicit price deflator for personal consumption expenditures for the United States as published by the bureau of economic analysis of the federal department of commerce, for the period of time between calendar year 2022 and when the tax is placed on the ballot for voter approval.

(2) The tax imposed in this section shall be collected and paid to the jurisdiction but once in respect to any motor vehicle fuel or special fuel. This tax shall be in addition to any other tax authorized or imposed by law.

(3) For purposes of this chapter, the term "border area jurisdictions" means all cities and towns within ~~((ten))~~ 10 miles of an international border crossing and any transportation benefit district established under RCW 36.73.020 which has within its boundaries an international border crossing.

**Sec. 406.** RCW 36.73.065 and 2015 3rd sp.s. c 44 s 309 are each amended to read as follows:

(1) Except as provided in subsection (4) of this section, taxes, fees, charges, and tolls may not be imposed by a district without approval of a majority of the voters in the district voting on a proposition at a general or special election. The proposition must include a specific description of: (a) The transportation improvement or improvements proposed by the district; (b) any rebate program proposed to be established under RCW 36.73.067; and (c) the proposed taxes,

fees, charges, and the range of tolls imposed by the district to raise revenue to fund the improvement or improvements or rebate program, as applicable.

(2) Voter approval under this section must be accorded substantial weight regarding the validity of a transportation improvement as defined in RCW 36.73.015.

(3) A district may not increase any taxes, fees, charges, or range of tolls imposed or change a rebate program under this chapter once the taxes, fees, charges, tolls, or rebate program takes effect, except:

(a) If authorized by the district voters pursuant to RCW 36.73.160;

(b) With respect to a change in a rebate program, a material change policy adopted pursuant to RCW 36.73.160 is followed and the change does not reduce the percentage level or rebate amount;

(c) For up to ~~((forty dollars))~~ \$40 of the vehicle fee authorized in RCW 82.80.140 by the governing board of the district if a vehicle fee of ~~((twenty dollars))~~ \$20 has been imposed for at least ~~((twenty-four))~~ 24 months; ~~((or))~~

(d) For up to ~~((fifty dollars))~~ \$50 of the vehicle fee authorized in RCW 82.80.140 by the governing board of the district if a vehicle fee of ~~((forty dollars))~~ \$40 has been imposed for at least ~~((twenty-four))~~ 24 months and a district has met the requirements of subsection (6) of this section; or

(e) For up to three-tenths of one percent of the selling price, in the case of a sales tax, or value of the article used, in the case of a use tax, pursuant to the sales and use tax authorized in RCW 82.14.0455.

(4)(a) A district that includes all the territory within the boundaries of the jurisdiction, or jurisdictions, establishing the district may impose by a majority vote of the governing board of the district the following fees, taxes, and charges:

(i) Up to ~~((twenty dollars))~~ \$20 of the vehicle fee authorized in RCW 82.80.140;

(ii) Up to ~~((forty dollars))~~ \$40 of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of ~~((twenty dollars))~~ \$20 has been imposed for at least ~~((twenty-four))~~ 24 months;

(iii) Up to ~~((fifty dollars))~~ \$50 of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of forty dollars has been imposed for at least ~~((twenty-four))~~ 24 months and a district has met the requirements of subsection (6) of this section; ~~((or))~~

(iv) A fee or charge in accordance with RCW 36.73.120; or

(v) Up to one-tenth of one percent of the sales and use tax in accordance with RCW 82.14.0455.

(b) The vehicle fee authorized in (a) of this subsection may only be imposed for a passenger-only ferry transportation improvement if the vehicle fee is first approved by a majority of the voters within the jurisdiction of the district.

(c)(i) A district solely comprised of a city or cities may not impose the fees or charges identified in (a) of this subsection within ~~((one hundred eighty))~~ 180 days after July 22, 2007, unless the county in which the city or cities reside, by resolution, declares that it will not impose the fees or charges identified in (a) of this subsection within the ~~((one hundred eighty day))~~ 180-day period; or

(ii) A district solely comprised of a city or cities identified in RCW 36.73.020(6)(b) may not impose the fees or charges until after May 22, 2008, unless the county in which the city or cities reside, by resolution, declares that it

will not impose the fees or charges identified in (a) of this subsection through May 22, 2008.

(5) If the interlocal agreement in RCW 82.80.140(2)(a) cannot be reached, a district that includes only the unincorporated territory of a county may impose by a majority vote of the governing body of the district up to: (a) ~~((Twenty dollars))~~ \$20 of the vehicle fee authorized in RCW 82.80.140, (b) ~~((forty dollars))~~ \$40 of the vehicle fee authorized in RCW 82.80.140 if a fee of ~~((twenty dollars))~~ \$20 has been imposed for at least ~~((twenty-four))~~ 24 months, or (c) ~~((fifty dollars))~~ \$50 of the vehicle fee authorized in RCW 82.80.140 if a vehicle fee of ~~((forty dollars))~~ \$40 has been imposed for at least ~~((twenty-four))~~ 24 months and a district has met the requirements of subsection (6) of this section.

(6) If a district intends to impose a vehicle fee of more than ~~((forty dollars))~~ \$40 by a majority vote of the governing body of the district, the governing body must publish notice of this intention, in one or more newspapers of general circulation within the district, by April 1st of the year in which the vehicle fee is to be imposed. If within ~~((ninety))~~ 90 days of the date of publication a petition is filed with the county auditor containing the signatures of eight percent of the number of voters registered and voting in the district for the office of the governor at the last preceding gubernatorial election, the county auditor must canvass the signatures in the same manner as prescribed in RCW 29A.72.230 and certify their sufficiency to the governing body within two weeks. The proposition to impose the vehicle fee must then be submitted to the voters of the district at a special election, called for this purpose, no later than the date on which a primary election would be held under RCW 29A.04.311. The vehicle fee may then be imposed only if approved by a majority of the voters of the district voting on the proposition.

**Sec. 407.** RCW 82.14.0455 and 2010 c 105 s 3 are each amended to read as follows:

(1) Subject to the provisions in RCW 36.73.065, a transportation benefit district under chapter 36.73 RCW may fix and impose a sales and use tax in accordance with the terms of this chapter. The tax authorized in this section is in addition to any other taxes authorized by law and shall be collected from those persons who are taxable by the state under chapters 82.08 and 82.12 RCW upon the occurrence of any taxable event within the boundaries of the district. The rate of tax shall not exceed ~~((two-tenths))~~ three-tenths of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax. Except as provided in subsection (2) of this section, the tax may not be imposed for a period exceeding ~~((ten))~~ 10 years ~~((This tax, if not imposed under the conditions of subsection (2) of this section, may be extended for a period not exceeding ten years))~~ unless renewed with an affirmative vote of the voters voting at ~~((the))~~ an election or a majority vote of the governing board of the district. Each renewal by the voters may extend the tax for additional periods not exceeding 10 years. The governing board of the district may only fix, impose, or extend a sales and use tax of up to one-tenth of one percent of the selling price in the case of a sales tax, or value of the article used, in the case of a use tax.

(2) The voter-approved sales tax initially imposed under this section after July 1, 2010, may be imposed for a period exceeding ~~((ten))~~ 10 years if the moneys received under this section are dedicated for the repayment of

indebtedness incurred in accordance with the requirements of chapter 36.73 RCW.

(3) Money received from the tax imposed under this section must be spent in accordance with the requirements of chapter 36.73 RCW.

**NEW SECTION. Sec. 408.** A new section is added to chapter 70A.535 RCW to read as follows:

(1) The department shall adopt rules that establish standards that reduce carbon intensity in transportation fuels used in Washington. The standards established by the rules must be based on the carbon intensity of gasoline and gasoline substitutes and the carbon intensity of diesel and diesel substitutes. The standards:

(a) Must reduce the overall, aggregate carbon intensity of transportation fuels used in Washington;

(b) May only require carbon intensity reductions at the aggregate level of all transportation fuels and may not require a reduction in carbon intensity to be achieved by any individual type of transportation fuel;

(c) Must assign a compliance obligation to fuels whose carbon intensity exceeds the standards adopted by the department, consistent with the requirements of RCW 70A.535.030; and

(d) Must assign credits that can be used to satisfy or offset compliance obligations to fuels whose carbon intensity is below the standards adopted by the department and that elect to participate in the program, consistent with the requirements of RCW 70A.535.030.

(2) The clean fuels program adopted by the department must be designed such that:

(a) Regulated parties generate deficits and may reconcile the deficits, and thus comply with the clean fuels program standards for a compliance period, by obtaining and retiring credits;

(b) Regulated parties and credit generators may generate credits for fuels used as substitutes or alternatives for gasoline or diesel;

(c) Regulated parties, credit generators, and credit aggregators shall have opportunities to trade credits; and

(d) Regulated parties shall be allowed to carry over to the next compliance period a small deficit without penalty.

(3) The department shall, throughout a compliance period, regularly monitor the availability of fuels needed for compliance with the clean fuels program.

(4)(a) Under the clean fuels program, the department shall monthly calculate the volume-weighted average price of credits and, no later than the last day of the month immediately following the month for which the calculation is completed, post the formula and the nonaggregated data the department used for the calculation and the results of the calculation on the department's website.

(b) In completing the calculation required by this subsection, the department may exclude from the data set credit transfers without a price or other credit transfers made for a price that falls two standard deviations outside of the mean credit price for the month. Data posted on the department's website under this section may not include any individually identifiable information or information that would constitute a trade secret.



(5)(a) Except as provided in this section, the rules adopted under this section must reduce the greenhouse gas emissions attributable to each unit of the fuels to 20 percent below 2017 levels by 2038 based on the following schedule:

- (i) No more than 0.5 percent each year in 2023 and 2024;
- (ii) No more than an additional one percent each year beginning in 2025 through 2027;
- (iii) No more than an additional 1.5 percent each year beginning in 2028 through 2031; and
- (iv) No change in 2032 and 2033.

(b) The rules must establish a start date for the clean fuels program of no later than January 1, 2023.

(6) Beginning with the program year beginning in calendar year 2028, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the department demonstrates that the following have occurred:

(a) At least a 15 percent net increase in the volume of in-state liquid biofuel production and the use of feedstocks grown or produced within the state relative to the start of the program; and

(b) At least one new or expanded biofuel production facility representing an increase in production capacity or producing, in total, in excess of 60,000,000 gallons of biofuels per year has or have received after July 1, 2021, all necessary siting, operating, and environmental permits post all timely and applicable appeals. As part of the threshold of 60,000,000 gallons of biofuel under this subsection, at least one new facility producing at least 10,000,000 gallons per year must have received all necessary siting, operating, and environmental permits. Timely and applicable appeals must be determined by the attorney general's office.

(7) Beginning with the program year beginning in calendar year 2031, the department may not increase the carbon intensity reductions required by the applicable clean fuels program standard adopted by the department under subsection (5) of this section beyond a 10 percent reduction in carbon intensity until the:

(a) Joint legislative audit and review committee report required in RCW 70A.535.140 has been completed; and

(b) 2033 regular legislative session has adjourned, in order to allow an opportunity for the legislature to amend the requirements of this chapter in light of the report required in (a) of this subsection.

(8) Transportation fuels exported from Washington are not subject to the greenhouse gas emissions reduction requirements in this section.

(9) To the extent the requirements of this chapter conflict with the requirements of chapter 19.112 RCW, the requirements of this chapter prevail.

**Sec. 409.** RCW 70A.535.010 and 2021 c 317 s 2 are each amended to read as follows:

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

(1) "Carbon dioxide equivalents" has the same meaning as defined in RCW 70A.45.010.

(2) "Carbon intensity" means the quantity of life-cycle greenhouse gas emissions, per unit of fuel energy, expressed in grams of carbon dioxide equivalent per megajoule (gCO<sub>2</sub>e/MJ).

(3) "Clean fuels program" means the requirements established under this chapter.

(4) "Cost" means an expense connected to the manufacture, distribution, or other aspects of the provision of a transportation fuel product.

(5) "Credit" means a unit of measure generated when a transportation fuel with a carbon intensity that is less than the applicable standard adopted by the department under (~~RCW 70A.535.020~~) section 408 of this act is produced, imported, or dispensed for use in Washington, such that one credit is equal to one metric ton of carbon dioxide equivalents. A credit may also be generated through other activities consistent with this chapter.

(6) "Deficit" means a unit of measure generated when a transportation fuel with a carbon intensity that is greater than the applicable standard adopted by the department under (~~RCW 70A.535.020~~) section 408 of this act is produced, imported, or dispensed for use in Washington, such that one deficit is equal to one metric ton of carbon dioxide equivalents.

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

(8) "Electric utility" means a consumer-owned utility or investor-owned utility, as those terms are defined in RCW 19.29A.010.

(9) "Greenhouse gas" has the same meaning as defined in RCW 70A.45.010.

(10) "Military tactical vehicle" means a motor vehicle owned by the United States department of defense or the United States military services and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(11) "Motor vehicle" has the same meaning as defined in RCW 46.04.320.

(12) "Price" means the amount of payment or compensation provided as consideration for a specified quantity of transportation fuel by a consumer or end user of the transportation fuel.

(13) "Regulated party" means a producer or importer of any amount of a transportation fuel that is ineligible to generate credits under this chapter.

(14)(a) "Tactical support equipment" means equipment using a portable engine, including turbines, that meets military specifications, owned by the United States military services or its allies, and that is used in combat, combat support, combat service support, tactical or relief operations, or training for such operations.

(b) "Tactical support equipment" includes, but is not limited to, engines associated with portable generators, aircraft start carts, heaters, and lighting carts.

(15) "Transportation fuel" means electricity and any liquid or gaseous fuel sold, supplied, offered for sale, or used for the propulsion of a motor vehicle or that is intended for use for transportation purposes.

**Sec. 410.** RCW 70A.535.030 and 2021 c 317 s 4 are each amended to read as follows:

The rules adopted by the department to achieve the greenhouse gas emissions reductions per unit of fuel energy specified in (~~RCW 70A.535.020~~) section 408 of this act must include, but are not limited to, the following:

(1) Standards for greenhouse gas emissions attributable to the transportation fuels throughout their life cycles, including but not limited to emissions from the production, storage, transportation, and combustion of transportation fuels and from changes in land use associated with transportation fuels and any permanent greenhouse gas sequestration activities.

(a) The rules adopted by the department under this subsection (1) may:

(i) Include provisions to address the efficiency of a fuel as used in a powertrain as compared to a reference fuel;

(ii) Consider carbon intensity calculations for transportation fuels developed by national laboratories or used by similar programs in other states; and

(iii) Consider changes in land use and any permanent greenhouse gas sequestration activities associated with the production of any type of transportation fuel.

(b) The rules adopted by the department under this subsection (1) must:

(i) Neutrally consider the life-cycle emissions associated with transportation fuels with respect to the political jurisdiction in which the fuels originated and may not discriminate against fuels on the basis of having originated in another state or jurisdiction. Nothing in this subsection may be construed to prohibit inclusion or assessment of emissions related to fuel production, storage, transportation, or combustion or associated changes in land use in determining the carbon intensity of a fuel;

(ii) Measure greenhouse gas emissions associated with electricity and hydrogen based on a mix of generation resources specific to each electric utility participating in the clean fuels program. The department may apply an asset-controlling supplier emission factor certified or approved by a similar program to reduce the greenhouse gas emissions associated with transportation fuels in another state;

(iii) Include mechanisms for certifying electricity that has a carbon intensity of zero. This electricity must include, at minimum, electricity:

(A) For which a renewable energy credit or other environmental attribute has been retired or used; and

(B) Produced using a zero emission resource including, but not limited to, solar, wind, geothermal, or the industrial combustion of biomass consistent with RCW 70A.45.020(3), that is directly supplied as a transportation fuel by the generator of the electricity to a metered customer for electric vehicle charging or refueling;

(iv) Allow the generation of credits associated with electricity with a carbon intensity lower than that of standard adopted by the department. The department may not require electricity to have a carbon intensity of zero in order to be eligible to generate credits from use as a transportation fuel; and

(v) Include procedures for setting and adjusting the amounts of greenhouse gas emissions per unit of fuel energy that is assigned to transportation fuels under this subsection.

(c) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with transportation fuels, the department may require transportation fuel suppliers to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the greenhouse gas emissions data reported under RCW 70A.15.2200(5)(a)(iii).

(d) If the department determines that it is necessary for purposes of accurately measuring greenhouse gas emissions associated with electricity supplied to retail customers or hydrogen production facilities by an electric utility, the department may require electric utilities participating in the clean fuels program to submit data or information to be used for purposes of calculating greenhouse gas emissions that is different from or additional to the fuel mix disclosure information submitted under chapter 19.29A RCW. To the extent practicable, rules adopted by the department may allow data requested of utilities to be submitted in a form and manner consistent with other required state or federal data submissions;

(2) Provisions allowing for the achievement of limits on the greenhouse gas emissions intensity of transportation fuels in (~~RCW 70A.535.020~~) section 408 of this act to be achieved by any combination of credit generating activities capable of meeting such standards. Where such provisions would not produce results counter to the emission reduction goals of the program or prove administratively burdensome for the department, the rules should provide each participant in the clean fuels program with the opportunity to demonstrate appropriate carbon intensity values taking into account both emissions from production facilities and elsewhere in the production cycle, including changes in land use and permanent greenhouse gas sequestration activities;

(3)(a) Methods for assigning compliance obligations and methods for tracking tradable credits. The department may assign the generation of a credit when a fuel with associated life-cycle greenhouse gas emissions that are lower than the applicable per-unit standard adopted by the department under (~~RCW 70A.535.020~~) section 408 of this act is produced, imported, or dispensed for use in Washington, or when specified activities are undertaken that support the reduction of greenhouse gas emissions associated with transportation in Washington;

(b) Mechanisms that allow credits to be traded and to be banked for future compliance periods; and

(c) Procedures for verifying the validity of credits and deficits generated under the clean fuels program;

(4) Mechanisms to elect to participate in the clean fuels program for persons associated with the supply chains of transportation fuels that are eligible to generate credits consistent with subsection (3) of this section, including producers, importers, distributors, users, or retailers of such fuels, and electric vehicle manufacturers;

(5) Mechanisms for persons associated with the supply chains of transportation fuels that are used for purposes that are exempt from the clean fuels program compliance obligations including, but not limited to, fuels used by aircraft, vessels, railroad locomotives, and other exempt fuels specified in RCW 70A.535.040, to elect to participate in the clean fuels program by earning credits for the production, import, distribution, use, or retail of exempt fuels with associated life-cycle greenhouse gas emissions lower than the per-unit standard established in (~~RCW 70A.535.020~~) section 408 of this act;

(6) Mechanisms that allow for the assignment of credits to an electric utility for electricity used within its utility service area, at minimum, for residential electric vehicle charging or fueling;

(7) Cost containment mechanisms.

(a) Cost containment mechanisms must include the credit clearance market specified in subsection (8) of this section and may also include, but are not limited to:

(i) Procedures similar to the credit clearance market required in subsection (8) of this section that provide a means of compliance with the clean fuels program requirements in the event that a regulated person has not been able to acquire sufficient volumes of credits at the end of a compliance period; or

(ii) Similar procedures that ensure that credit prices do not significantly exceed credit prices in other jurisdictions that have adopted similar programs to reduce the carbon intensity of transportation fuels.

(b) Any cost containment mechanisms must be designed to provide financial disincentive for regulated persons to rely on the cost containment mechanism for purposes of program compliance instead of seeking to generate or acquire sufficient credits under the program.

(c) The department shall harmonize the program's cost containment mechanisms with the cost containment rules in the states specified in RCW 70A.535.060(1).

(d) The department shall consider mechanisms such as the establishment of a credit price cap or other alternative cost containment measures if deemed necessary to harmonize market credit costs with those in the states specified in RCW 70A.535.060(1);

(8)(a)(i) A credit clearance market for any compliance period in which at least one regulated party reports that the regulated party has a net deficit balance at the end of the compliance period, after retirement of all credits held by the regulated party, that is greater than a small deficit. A regulated party described by this subsection is required to participate in the credit clearance market.

(ii) If a regulated party has a small deficit at the end of a compliance period, the regulated party shall notify the department that it will achieve compliance with the clean fuels program during the compliance period by either: (A) Participating in a credit clearance market; or (B) carrying forward the small deficit.

(b) For the purposes of administering a credit clearance market required by this section, the department shall:

(i) Allow any regulated party, credit generator, or credit aggregator that holds excess credits at the end of the compliance period to voluntarily participate in the credit clearance market as a seller by pledging a specified number of credits for sale in the market;

(ii) Require each regulated party participating in the credit clearance market as purchaser of credits to:

(A) Have retired all credits in the regulated party's possession prior to participating in the credit clearance market; and

(B) Purchase the specified number of the total pledged credits that the department has determined are that regulated party's pro rata share of the pledged credits;

(iii) Require all sellers to:

(A) Agree to sell pledged credits at a price no higher than a maximum price for credits;

(B) Accept all offers to purchase pledged credits at the maximum price for credits; and

(C) Agree to withhold any pledged credits from sale in any transaction outside of the credit clearance market until the end of the credit clearance market, or if no credit clearance market is held in a given year, then until the date on which the department announces it will not be held.

(c)(i) The department shall set a maximum price for credits in a credit clearance market, consistent with states that have adopted similar clean fuels programs, not to exceed \$200 in 2018 dollars for 2023.

(ii) For 2024 and subsequent years, the maximum price may exceed \$200 in 2018 dollars, but only to the extent that a greater maximum price for credits is necessary to annually adjust for inflation, beginning on January 1, 2024, pursuant to the increase, if any, from the preceding calendar year in the consumer price index for all urban consumers, west region (all items), as published by the bureau of labor statistics of the United States department of labor.

(d) A regulated party that has a net deficit balance after the close of a credit clearance market:

(i) Must carry over the remaining deficits into the next compliance period; and

(ii) May not be subject to interest greater than five percent, penalties, or assertions of noncompliance that accrue based on the carryover of deficits under this subsection.

(e) If a regulated party has been required under (a) of this subsection to participate as a purchaser in two consecutive credit clearance markets and continues to have a net deficit balance after the close of the second consecutive credit clearance market, the department shall complete, no later than two months after the close of the second credit clearance market, an analysis of the root cause of an inability of the regulated party to retire the remaining deficits. The department may recommend and implement any remedy that the department determines is necessary to address the root cause identified in the analysis including, but not limited to, issuing a deferral, provided that the remedy implemented does not:

(i) Require a regulated party to purchase credits for an amount that exceeds the maximum price for credits in the most recent credit clearance market; or

(ii) Compel a person to sell credits.

(f) If credits sold in a credit clearance market are subsequently invalidated as a result of fraud or any other form of noncompliance on the part of the generator of the credit, the department may not pursue civil penalties against, or require credit replacement by, the regulated party that purchased the credits unless the regulated party was a party to the fraud or other form of noncompliance.

(g) The department may not disclose the deficit balances or pro rata share purchase requirements of a regulated party that participates in the credit clearance market;

(9) Authority for the department to designate an entity to aggregate and use unclaimed credits associated with persons that elect not to participate in the clean fuels program under subsection (4) of this section.

**Sec. 411.** RCW 70A.535.040 and 2021 c 317 s 5 are each amended to read as follows:

(1) The rules adopted under RCW (~~(70A.535.020 and)~~ 70A.535.030 and section 408 of this act must include exemptions for, at minimum, the following transportation fuels:

- (a) Fuels used in volumes below thresholds adopted by the department;
- (b) Fuels used for the propulsion of all aircraft, vessels, and railroad locomotives; and
- (c) Fuels used for the operation of military tactical vehicles and tactical support equipment.

(2)(a) The rules adopted under RCW (~~(70A.535.020 and)~~ 70A.535.030 and section 408 of this act must exempt the following transportation fuels from greenhouse gas emissions intensity reduction requirements until January 1, 2028:

- (i) Special fuel used off-road in vehicles used primarily to transport logs;
- (ii) Dyed special fuel used in vehicles that are not designed primarily to transport persons or property, that are not designed to be primarily operated on highways, and that are used primarily for construction work including, but not limited to, mining and timber harvest operations; and
- (iii) Dyed special fuel used for agricultural purposes exempt from chapter 82.38 RCW.

(b) Prior to January 1, 2028, fuels identified in this subsection (2) are eligible to generate credits, consistent with subsection (5) of this section. Beginning January 1, 2028, the fuels identified in this subsection (2) are subject to the greenhouse gas emissions intensity reduction requirements applicable to transportation fuels specified in (~~(RCW 70A.535.020))~~ section 408 of this act.

(3) The department may adopt rules to specify the standards for persons to qualify for the exemptions provided in this section. The department may implement the exemptions under subsection (2) of this section to align with the implementation of exemptions for similar fuels exempt from chapter 82.38 RCW.

(4) The rules adopted under RCW (~~(70A.535.020 and)~~ 70A.535.030 and section 408 of this act may include exemptions in addition to those described in subsections (1) and (2) of this section, but only if such exemptions are necessary, with respect to the relationship between the program and similar greenhouse gas emissions requirements or low carbon fuel standards, in order to avoid:

- (a) Mismatched incentives across programs;
- (b) Fuel shifting between markets; or
- (c) Other results that are counter to the intent of this chapter.

(5) Nothing in this chapter precludes the department from adopting rules under RCW (~~(70A.535.020 and)~~ 70A.535.030 and section 408 of this act that allow the generation of credits associated with electric or alternative transportation infrastructure that existed prior to July 25, 2021, or to the start date of program requirements. The department must apply the same baseline years to credits associated with electric or alternative transportation infrastructure that apply to gasoline and diesel liquid fuels in any market-based program enacted by the legislature that establishes a cap on greenhouse gas emissions.

**Sec. 412.** RCW 70A.535.050 and 2021 c 317 s 6 are each amended to read as follows:

(1) The rules adopted under RCW (~~(70A.535.020 and)~~) 70A.535.030 and section 408 of this act may allow the generation of credits from activities that support the reduction of greenhouse gas emissions associated with transportation in Washington, including but not limited to:

(a) Carbon capture and sequestration projects, including but not limited to:

(i) Innovative crude oil production projects that include carbon capture and sequestration;

(ii) Project-based refinery greenhouse gas mitigation including, but not limited to, process improvements, renewable hydrogen use, and carbon capture and sequestration; or

(iii) Direct air capture projects;

(b) Investments and activities that support deployment of machinery and equipment used to produce gaseous and liquid fuels from nonfossil feedstocks, and derivatives thereof;

(c) The fueling of battery or fuel cell electric vehicles by a commercial, nonprofit, or public entity that is not an electric utility, which may include, but is not limited to, the fueling of vehicles using electricity certified by the department to have a carbon intensity of zero; and

(d) The use of smart vehicle charging technology that results in the fueling of an electric vehicle during times when the carbon intensity of grid electricity is comparatively low.

(2)(a) The rules adopted under RCW (~~(70A.535.020 and)~~) 70A.535.030 and section 408 of this act must allow the generation of credits based on capacity for zero emission vehicle refueling infrastructure, including DC fast charging infrastructure and hydrogen refueling infrastructure.

(b) The rules adopted under RCW (~~(70A.535.020 and)~~) 70A.535.030 and section 408 of this act may allow the generation of credits from the provision of low carbon fuel infrastructure not specified in (a) of this subsection.

(3) The rules adopted under RCW (~~(70A.535.020 and)~~) 70A.535.030 and section 408 of this act must allow the generation of credits from state transportation investments funded in an omnibus transportation appropriations act for activities and projects that reduce greenhouse gas emissions and decarbonize the transportation sector. These include, but are not limited to: (a) Electrical grid and hydrogen fueling infrastructure investments; (b) ferry operating and capital investments; (c) electrification of the state ferry fleet; (d) alternative fuel vehicle rebate programs; (e) transit grants; (f) infrastructure and other costs associated with the adoption of alternative fuel use by transit agencies; (g) bike and pedestrian grant programs and other activities; (h) complete streets and safe walking grants and allocations; (i) rail funding; and (j) multimodal investments.

(4) The rules adopted by the department may establish limits for the number of credits that may be earned each year by persons participating in the program for some or all of the activities specified in subsections (1) and (2) of this section. The department must limit the number of credits that may be earned each year under subsection (3) of this section to 10 percent of the total program credits. Any limits established under this subsection must take into consideration the return on investment required in order for an activity specified in subsection (2) of this section to be financially viable.



(5)(a) In coordination with the department, the Washington state department of transportation must immediately begin work on identifying the amount of credit revenues likely to be generated under subsection (3) of this section from the state transportation investments funded in an omnibus transportation appropriations act, including the move ahead WA transportation package. It is the intent of the legislature that these credits will be maximized to allow further investment in efforts to reduce greenhouse gas emissions and decarbonize the transportation sector including, but not limited to, additional funding in future years, for ferry electrification beyond four new hybrid electric vessels, active transportation, and transit programs and projects.

(b) Beginning November 1, 2022, and annually thereafter, the Washington state department of transportation must present a detailed projection of the credit revenues generated under subsection (3) of this section and a preferred reinvestment strategy for the revenues for the following 10-year time period to the joint transportation committee.

**Sec. 413.** RCW 70A.535.120 and 2021 c 317 s 13 are each amended to read as follows:

(1) The director of the department may issue an order declaring an emergency deferral of compliance with the carbon intensity standard established under ~~((RCW 70A.535.020))~~ section 408 of this act no later than 15 calendar days after the date the department determines, in consultation with the governor's office and the department of commerce, that:

(a) Extreme and unusual circumstances exist that prevent the distribution of an adequate supply of renewable fuels needed for regulated parties to comply with the clean fuels program taking into consideration all available methods of obtaining sufficient credits to comply with the standard;

(b) The extreme and unusual circumstances are the result of a natural disaster, an act of God, a significant supply chain disruption or production facility equipment failure, or another event that could not reasonably have been foreseen or prevented and not the lack of prudent planning on the part of the suppliers of the fuels to the state; and

(c) It is in the public interest to grant the deferral such as when a deferral is necessary to meet projected temporary shortfalls in the supply of the renewable fuel in the state and that other methods of obtaining compliance credits are unavailable to compensate for the shortage of renewable fuel supply.

(2) If the director of the department makes the determination required under subsection (1) of this section, such a temporary extreme and unusual deferral is permitted only if:

(a) The deferral applies only for the shortest time necessary to address the extreme and unusual circumstances;

(b) The deferral is effective for the shortest practicable time period the director of the department determines necessary to permit the correction of the extreme and unusual circumstances; and

(c) The director has given public notice of a proposed deferral.

(3) An order declaring an emergency deferral under this section must set forth:

(a) The duration of the emergency deferral;

(b) The types of fuel to which the emergency deferral applies;

(c) Which of the following methods the department has selected for deferring compliance with the clean fuels program during the emergency deferral:

(i) Temporarily adjusting the scheduled applicable carbon intensity standard to a standard identified in the order that better reflects the availability of credits during the emergency deferral and requiring regulated parties to comply with the temporary standard;

(ii) Allowing for the carryover of deficits accrued during the emergency deferral into the next compliance period without penalty; or

(iii) Suspending deficit accrual during the emergency deferral period.

(4) An emergency deferral may be terminated prior to the expiration date of the emergency deferral if new information becomes available indicating that the shortage that provided the basis for the emergency deferral has ended. The director of the department shall consult with the department of commerce and the governor's office in making an early termination decision. Termination of an emergency deferral is effective 15 calendar days after the date that the order declaring the termination is adopted.

(5)(a) In addition to the emergency deferral specified in subsection (1) of this section, the department may issue a full or partial deferral for one calendar quarter of a person's obligation to furnish credits for compliance under RCW 70A.535.030 if it finds that the person is unable to comply with the requirements of this chapter due to reasons beyond the person's reasonable control. The department may initiate a deferral under this subsection at its own discretion or at the request of a person regulated under this chapter. The department may renew issued deferrals. In evaluating whether to issue a deferral under this subsection, the department may consider the results of the fuel supply forecast in RCW 70A.535.100, but is not bound in its decision-making discretion by the results of the forecast.

(b) If the department issues a deferral pursuant to this subsection, the department may:

(i) Direct the person subject to the deferral to file a progress report on achieving full compliance with the requirements of this chapter within an amount of time determined to be reasonable by the department; and

(ii) Direct the person to take specific actions to achieve full compliance with the requirements of this chapter.

(c) The issuance of a deferral under this subsection does not permanently relieve the deferral recipient of the obligation to comply with the requirements of this chapter.

**NEW SECTION. Sec. 414.** RCW 70A.535.020 (Carbon intensity of transportation fuels—Standards to reduce carbon intensity—Adoption of rules) and 2021 c 317 s 3 are each repealed.

**NEW SECTION. Sec. 415.** (1) A target is established for the state that all publicly owned and privately owned passenger and light duty vehicles of model year 2030 or later that are sold, purchased, or registered in Washington state be electric vehicles.

(2) On or before December 31, 2023, the interagency electric vehicle coordinating council created in section 428 of this act shall complete a scoping plan for achieving the 2030 target.

**NEW SECTION. Sec. 416.** A new section is added to chapter 47.66 RCW to read as follows:

(1) The department shall establish a bus and bus facilities grant program. The purpose of this competitive grant program is to provide grants to any transit authority for the replacement, expansion, rehabilitation, and purchase of transit rolling stock; construction, modification, or rehabilitation of transit facilities; and funding to adapt to technological change or innovation through the retrofitting of transit rolling stock and facilities.

(2)(a) The department must incorporate environmental justice principles into the grant selection process, with the goal of increasing the distribution of funding to communities based on addressing environmental harms and provide environmental benefits for overburdened communities, as defined in RCW 70A.02.010, and vulnerable populations.

(b) The department must incorporate geographic diversity into the grant selection process.

(c) No grantee may receive more than 35 percent of the amount appropriated for the grant program in a particular biennium.

(d) Fuel type may not be a factor in the grant selection process.

(3) The department must establish an advisory committee to carry out the mandates of this section, including assisting with the establishment of grant criteria.

(4) The department must report annually to the transportation committees of the legislature on the status of any grant projects funded by the program created under this section.

(5) For the purposes of this section:

(a) "Transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county public transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, or any special purpose district formed to operate a public transportation system.

(b) "Transit rolling stock" means transit vehicles including, but not limited to, buses, ferries, and vans.

**NEW SECTION. Sec. 417.** A new section is added to chapter 47.04 RCW to read as follows:

(1) The legislature finds that many communities across Washington state have not equitably benefited from investments in the active transportation network. The legislature also finds that legacy state transportation facilities designed primarily for vehicle use caused disconnections in safe routes for people who walk, bike, and roll to work and to carry out other daily activities.

(2) To address these investment gaps, the connecting communities program is established within the department. The purpose of the program is to improve active transportation connectivity in communities by:

(a) Providing safe, continuous routes for pedestrians, bicyclists, and other nonvehicle users carrying out their daily activities;

(b) Mitigating for the health, safety, and access impacts of transportation infrastructure that bisects communities and creates obstacles in the local active transportation network;

(c) Investing in greenways providing protected routes for a wide variety of nonvehicular users; and

(d) Facilitating the planning, development, and implementation of projects and activities that will improve the connectivity and safety of the active transportation network.

(3) The department must select projects to propose to the legislature for funding. In selecting projects, the department must consider, at a minimum, the following criteria:

(a) Access to a transit facility, community facility, commercial center, or community-identified assets;

(b) The use of minority and women-owned businesses and community-based organizations in planning, community engagement, design, and construction of the project;

(c) Whether the project will serve:

(i) Overburdened communities as defined in RCW 70A.02.010 to mean a geographic area where vulnerable populations face combined, multiple environmental harms and health impacts, and includes, but is not limited to, highly impacted communities as defined in RCW 19.405.020;

(ii) Vulnerable populations as defined in RCW 70A.02.010 to mean population groups that are more likely to be at higher risk for poor health outcomes in response to environmental harms, due to adverse socioeconomic factors, such as unemployment, high housing, and transportation costs relative to income, limited access to nutritious food and adequate health care, linguistic isolation, and other factors that negatively affect health outcomes and increase vulnerability to the effects of environmental harms; and sensitivity factors, such as low birth weight and higher rates of hospitalization. Vulnerable populations include, but are not limited to: Racial or ethnic minorities, low-income populations, populations disproportionately impacted by environmental harms, and populations of workers experiencing environmental harms;

(iii) Household incomes at or below 200 percent of the federal poverty level; and

(iv) People with disabilities;

(d) Environmental health disparities, such as those indicated by the diesel pollution burden portion of the Washington environmental health disparities map developed by the department of health, or other similar indicators;

(e) Location on or adjacent to tribal lands or locations providing essential services to tribal members;

(f) Crash experience involving pedestrians and bicyclists; and

(g) Identified need by the community, for example in the state active transportation plan or a regional, county, or community plan.

(4) It is the intent of the legislature that the connecting communities program comply with the requirements of chapter 314, Laws of 2021.

(5) The department shall submit a report to the transportation committees of the legislature by December 1, 2022, and each December 1st thereafter identifying the selected connecting communities projects for funding by the legislature. The report must also include the status of previously funded projects.

(6) This section expires July 1, 2027.

**NEW SECTION. Sec. 418.** A new section is added to chapter 47.24 RCW to read as follows:

(1) In order to improve the safety, mobility, and accessibility of state highways, it is the intent of the legislature that the department must incorporate the principles of complete streets with facilities that provide street access with all users in mind, including pedestrians, bicyclists, and public transportation users, notwithstanding the provisions of RCW 47.24.020 concerning responsibility beyond the curb of state rights-of-way. As such, state transportation projects starting design on or after July 1, 2022, and that are \$500,000 or more, must:

(a) Identify those locations on state rights-of-way that do not have a complete and Americans with disabilities act accessible sidewalk or shared-use path, that do not have bicycle facilities in the form of a bike lane or adjacent parallel trail or shared-use path, that have such facilities on a state route within a population center that has a posted speed in excess of 30 miles per hour and no buffer or physical separation from vehicular traffic for pedestrians and bicyclists, and/or that have a design that hampers the ability of motorists to see a crossing pedestrian with sufficient time to stop given posted speed limits and roadway configuration;

(b) Consult with local jurisdictions to confirm existing and planned active transportation connections along or across the location; identification of connections to existing and planned public transportation services, ferry landings, commuter and passenger rail, and airports; the existing and planned facility type(s) within the local jurisdiction that connect to the location; and the potential use of speed management techniques to minimize crash exposure and severity;

(c) Adjust the speed limit to a lower speed with appropriate modifications to roadway design and operations to achieve the desired operating speed in those locations where this speed management approach aligns with local plans or ordinances, particularly in those contexts that present a higher possibility of serious injury or fatal crashes occurring based on land use context, observed crash data, crash potential, roadway characteristics that are likely to increase exposure, or a combination thereof, in keeping with a safe system approach and with the intention of ultimately eliminating serious and fatal crashes; and

(d) Plan, design, and construct facilities providing context-sensitive solutions that contribute to network connectivity and safety for pedestrians, bicyclists, and people accessing public transportation and other modal connections, such facilities to include Americans with disabilities act accessible sidewalks or shared-use paths, bicyclist facilities, and crossings as needed to integrate the state route into the local network.

(2) Projects undertaken for emergent work required to reopen a state highway in the event of a natural disaster or other emergency repair are not required to comply with the provisions of this section.

(3) Maintenance of facilities constructed under this provision shall be as provided under existing law.

(4) This section does not create a private right of action.

**NEW SECTION. Sec. 419.** A new section is added to chapter 47.04 RCW to read as follows:

(1) The department shall establish a statewide school-based bicycle education grant program. The grant will support two programs: One for elementary and middle school; and one for junior high and high school aged

youth to develop the skills and street safety knowledge to be more confident bicyclists for transportation and/or recreation. In development of the grant program, the department is encouraged to consult with the environmental justice council and the office of equity.

(2)(a) For the elementary and middle school program, the department shall contract with a nonprofit organization with relevant reach and experience, including a statewide footprint and demonstrable experience deploying bicycling and road safety education curriculum via a train the trainer model in schools. The selected nonprofit shall identify partner schools that serve target populations, based on the criteria in subsection (3) of this section. Partner schools shall receive from the nonprofit: In-school bike and pedestrian safety education curriculum, materials, equipment guidance and consultation, and physical education teacher trainings. Youth grades three through eight are eligible for the program.

(b) Selected school districts shall receive and maintain a fleet of bicycles for the youth in the program. Youth and families participating in the school-based bicycle education grant program shall have an opportunity to receive a bike, lock, helmet, and lights free of cost.

(3) For the junior high and high school program, the department shall contract with a nonprofit organization with relevant reach and experience, including a statewide footprint; demonstrable experience developing and managing youth-based programming serving youth of color in an after-school and/or community setting; and deploying bicycling and road safety education curriculum via a train the trainer model. The selected nonprofit shall use the equity-based criteria in subsection (4) of this section to identify target populations and partner organizations including, but not limited to, schools, community-based organizations, housing authorities, and parks and recreation departments, that work with the eligible populations of youth ages 14 to 18. Partner organizations shall receive from the nonprofit: Education curriculum, materials, equipment guidance and consultation, and initial instructor/volunteer training, as well as ongoing support.

(4) In selecting schools and partner organizations for the school-based bicycle education grant program, the department and nonprofit must consider, at a minimum, the following criteria:

(a) Population impacted by poverty, as measured by free and reduced lunch population or 200 percent federal poverty level;

(b) People of color;

(c) People of Hispanic heritage;

(d) People with disabilities;

(e) Environmental health disparities, such as those indicated by the diesel pollution burden portion of the Washington environmental health disparities map developed by the department of health, or other similar indicators;

(f) Location on or adjacent to an Indian reservation;

(g) Geographic location throughout the state;

(h) Crash experience involving pedestrians and bicyclists;

(i) Access to a community facility or commercial center; and

(j) Identified need in the state active transportation plan or a regional, county, or community plan.

(5) The department shall submit a report for both programs to the transportation committees of the legislature by December 1, 2022, and each December 1st thereafter identifying the selected programs and school districts for funding by the legislature. The report must also include the status of previously funded programs.

**NEW SECTION. Sec. 420.** A new section is added to chapter 47.04 RCW to read as follows:

For the purposes of submitting a request by October 1, 2022, to Amtrak to adopt a fare policy change, the department shall negotiate with the Oregon department of transportation to determine ridership, revenue, and policy impacts relating to elimination of fares for Amtrak Cascades passengers 18 years of age and younger. It is the intent of the legislature that fares for passengers 18 years of age and younger for service on the Amtrak Cascades corridor be eliminated. The department shall report back to the transportation committees of the legislature with results of negotiations with the Oregon department of transportation and the status of fare policy requests submitted to Amtrak by December 1, 2022.

**NEW SECTION. Sec. 421.** A new section is added to chapter 47.60 RCW to read as follows:

Consistent with RCW 47.60.315(1)(b), the commission shall adopt an annual fare policy for Washington state ferries to allow all riders 18 years of age and younger to ride free of charge on all system routes. This fare change must apply to both walk-on passengers and passengers in vehicles. The commission is directed to make the initial fare policy change effective no later than October 1, 2022.

**NEW SECTION. Sec. 422.** A new section is added to chapter 47.66 RCW to read as follows:

(1) The department shall establish a transit support grant program for the purpose of providing financial support to transit agencies for operating and capital expenses only. Public transit agencies must maintain or increase their local sales tax authority on or after January 1, 2022, in order to qualify for the grants.

(a) Grants for transit agencies must be prorated based on the amount expended for operations in the most recently published report of "Summary of Public Transportation" published by the department.

(b) No transit agency may receive more than 35 percent of these distributions.

(c) Fuel type may not be a factor in the grant selection process.

(2) To be eligible to receive a grant, the transit agency must have adopted, at a minimum, a zero-fare policy that allows passengers 18 years of age and younger to ride free of charge on all modes provided by the agency. Transit agencies must submit documentation of a zero-fare policy for 18 years of age and under by October 1, 2022, to be eligible for the 2023-2025 biennium. Transit agencies that submit such fare policy documentation following the October 1, 2022, deadline shall become eligible for the next biennial distribution.

(3) The department shall, for the purposes of the "Summary of Public Transportation" report, require grantees to report the number of trips that were taken under this program.

(4) For the purposes of this section, "transit agency" or "agency" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county public transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, or any special purpose district formed to operate a public transportation system.

**Sec. 423.** RCW 46.63.170 and 2020 c 224 s 1 are each amended to read as follows:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) Except for proposed locations used solely for the pilot program purposes permitted under subsection (6) of this section, the appropriate local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located: (i) Before enacting an ordinance allowing for the initial use of automated traffic safety cameras; and (ii) before adding additional cameras or relocating any existing camera to a new location within the jurisdiction. Automated traffic safety cameras may be used to detect one or more of the following: Stoplight, railroad crossing, ~~((#))~~ school speed zone violations~~((#))~~, speed violations on any roadway identified in a school walk area as defined in RCW 28A.160.160, speed violations in public park speed zones, hospital speed zones, speed violations subject to (c) or (d) of this subsection((#)), or violations included in subsection (6) of this section for the duration of the pilot program authorized under subsection (6) of this section. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance. Beginning one year after June 7, 2012, cities and counties using automated traffic safety cameras must post an annual report of the number of traffic accidents that occurred at each location where an automated traffic safety camera is located as well as the number of notices of infraction issued for each camera and any other relevant information about the automated traffic safety cameras that the city or county deems appropriate on the city's or county's website.

(b)(i) Except as provided in (c) and (d) of this subsection and subsection (6) of this section, use of automated traffic safety cameras is restricted to the following locations only: ~~((#))~~ (A) Intersections of two or more arterials with traffic control signals that have yellow change interval durations in accordance with RCW 47.36.022, which interval durations may not be reduced after placement of the camera; ((##)) (B) railroad crossings; ((and-##)) (C) school speed zones; (D) roadways identified in a school walk area as defined in RCW 28A.160.160; (E) public park speed zones, as defined in (b)(ii) of this subsection; and (F) hospital speed zones, as defined in (b)(ii) of this subsection.

(ii) For the purposes of this section:

(A) "Public park speed zone" means the marked area within public park property and extending 300 feet from the border of public park property (I) consistent with active park use; and (II) where signs are posted to indicate the location is within a public park speed zone.



(B) "Hospital speed zone" means the marked area within hospital property and extending 300 feet from the border of hospital property (I) consistent with hospital use; and (II) where signs are posted to indicate the location is within a hospital speed zone, where "hospital" has the same meaning as in RCW 70.41.020.

(c) ((Any)) In addition to the automated traffic safety cameras authorized under (d) of this subsection, any city west of the Cascade mountains with a population of more than ((one hundred ninety five thousand)) 195,000 located in a county with a population of fewer than ((one million five hundred thousand)) 1,500,000 may operate an automated traffic safety camera to detect speed violations subject to the following limitations:

(i) A city may only operate one such automated traffic safety camera within its respective jurisdiction; and

(ii) The use and location of the automated traffic safety camera must have first been authorized by the Washington state legislature as a pilot project for at least one full year.

(d)(i) Cities may operate at least one automated traffic safety camera under this subsection to detect speed violations, subject to the requirements of (d)(ii) of this subsection. Cities may operate one additional automated traffic safety camera to detect speed violations for every 10,000 residents included in the city's population. Cameras must be placed in locations that comply with one of the following:

(A) The location has been identified as a priority location in a local road safety plan that a city has submitted to the Washington state department of transportation and where other speed reduction measures are not feasible or have not been sufficiently effective at reducing travel speed;

(B) The location has a significantly higher rate of collisions than the city average in a period of at least three years prior to installation and other speed reduction measures are not feasible or have not been sufficiently effective at reducing travel speed; or

(C) The location is in an area within the city limits designated by local ordinance as a zone subject to specified restrictions and penalties on racing and race attendance.

(ii) A city locating an automated traffic safety camera under this subsection (1)(d) must complete an equity analysis that evaluates livability, accessibility, economics, education, and environmental health, and shall consider the outcome of that analysis when identifying where to locate an automated traffic safety camera.

(e) All locations where an automated traffic safety camera is used to detect speed violations on roadways identified in a school walk area, speed violations in public park speed zones, speed violations in hospital speed zones, or speed violations under (d) of this subsection must be clearly marked by placing signs in locations that clearly indicate to a driver either: (i) That the driver is within a school walk area, public park speed zone, or hospital speed zone; or (ii) that the driver is entering an area where speed violations are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

(f) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle. The primary purpose of camera placement is to take pictures of the vehicle and vehicle license plate when an infraction is occurring. Cities and counties shall consider installing cameras in a manner that minimizes the impact of camera flash on drivers.

~~((e))~~ (g) A notice of infraction must be mailed to the registered owner of the vehicle within ~~((fourteen))~~ 14 days of the violation, or to the renter of a vehicle within ~~((fourteen))~~ 14 days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

~~((f))~~ (h) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(d) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

~~((g))~~ (i) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images, or any other personally identifying data prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image, or any other personally identifying data may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

~~((h))~~ (j) All locations where an automated traffic safety camera is used must be clearly marked at least ~~((thirty))~~ 30 days prior to activation of the camera by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

~~((i))~~ (k) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the

system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(1) If a city is operating an automated traffic safety camera to detect speed violations on roadways identified in a school walk area, speed violations in public park speed zones, speed violations in hospital speed zones, or speed violations under (d) of this subsection, the city shall remit monthly to the state 50 percent of the noninterest money received for infractions issued by those cameras excess of the cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions. Money remitted under this subsection to the state treasurer shall be deposited in the Cooper Jones active transportation safety account created in RCW 46.68.480. This subsection (1)(1) does not apply to automated traffic safety cameras authorized for stoplight, railroad crossing, or school speed zone violations.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(2). Except as provided otherwise in subsection (6) of this section, the amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction. However, the amount of the fine issued for a traffic control signal violation detected through the use of an automated traffic safety camera shall not exceed the monetary penalty for a violation of RCW 46.61.050 as provided under RCW 46.63.110, including all applicable statutory assessments.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within ~~((eighteen))~~ 18 days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5)(a) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit as detected by a speed measuring device.

(b) For the purposes of the pilot program authorized under subsection (6) of this section, "automated traffic safety camera" also includes a device used to detect stopping at intersection or crosswalk violations; stopping when traffic obstructed violations; public transportation only lane violations; and stopping or traveling in restricted lane violations. The device, including all technology defined under "automated traffic safety camera," must not reveal the face of the driver or the passengers in vehicles, and must not use any facial recognition technology in real time or after capturing any information. If the face of any individual in a crosswalk or otherwise within the frame is incidentally captured, it may not be made available to the public nor used for any purpose including, but not limited to, any law enforcement action, except in a pending action or proceeding related to a violation under this section.

(6)(a)(i) A city with a population greater than ~~((five hundred thousand))~~ 500,000 may adopt an ordinance creating a pilot program authorizing automated traffic safety cameras to be used to detect one or more of the following violations: Stopping when traffic obstructed violations; stopping at intersection or crosswalk violations; public transportation only lane violations; and stopping or traveling in restricted lane violations. Under the pilot program, stopping at intersection or crosswalk violations may only be enforced at the ~~((twenty))~~ 20 intersections where the city would most like to address safety concerns related to stopping at intersection or crosswalk violations. At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage.

(ii) Except where specifically exempted, all of the rules and restrictions applicable to the use of automated traffic safety cameras in this section apply to the use of automated traffic safety cameras in the pilot program established in this subsection (6).

(iii) As used in this subsection (6), "public transportation vehicle" means any motor vehicle, streetcar, train, trolley vehicle, ferry boat, or any other device, vessel, or vehicle that is owned or operated by a transit authority or an entity providing service on behalf of a transit authority that is used for the purpose of carrying passengers and that operates on established routes. "Transit authority" has the meaning provided in RCW 9.91.025.

(b) Use of automated traffic safety cameras as authorized in this subsection (6) is restricted to the following locations only: Locations authorized in subsection (1)(b) of this section; and midblock on arterials. Additionally, the use of automated traffic safety cameras as authorized in this subsection (6) is further limited to the following:

(i) The portion of state and local roadways in downtown areas of the city used for office and commercial activities, as well as retail shopping and support services, and that may include mixed residential uses;

(ii) The portion of state and local roadways in areas in the city within one-half mile north of the boundary of the area described in (b)(i) of this subsection;

(iii) Portions of roadway systems in the city that travel into and out of (b)(ii) of this subsection that are designated by the Washington state department of transportation as noninterstate freeways for up to four miles; and

(iv) Portions of roadway systems in the city connected to the portions of the noninterstate freeways identified in (b)(iii) of this subsection that are designated by the Washington state department of transportation as arterial roadways for up to one mile from the intersection of the arterial roadway and the noninterstate freeway.

(c) However, automated traffic safety cameras may not be used on an on-ramp to an interstate.

(d) From June 11, 2020, through December 31, 2020, a warning notice with no penalty must be issued to the registered owner of the vehicle for a violation generated through the use of an automated traffic safety camera authorized in this subsection (6). Beginning January 1, 2021, a notice of infraction must be issued, in a manner consistent with subsections (1)((~~e~~)) (g) and (3) of this section, for a violation generated through the use of an automated traffic safety camera authorized in this subsection (6). However, the penalty for the violation may not exceed (~~seventy-five dollars~~) \$75.

(e) For infractions issued as authorized in this subsection (6), a city with a pilot program shall remit monthly to the state (~~fifty~~) 50 percent of the noninterest money received under this subsection (6) in excess of the cost to install, operate, and maintain the automated traffic safety cameras for use in the pilot program. Money remitted under this subsection to the state treasurer shall be deposited in the Cooper Jones active transportation safety account created in RCW 46.68.480. The remaining (~~fifty~~) 50 percent retained by the city must be used only for improvements to transportation that support equitable access and mobility for persons with disabilities.

(f) A transit authority may not take disciplinary action, regarding a warning or infraction issued pursuant to this subsection (6), against an employee who was operating a public transportation vehicle at the time the violation that was the basis of the warning or infraction was detected.

(g) A city that implements a pilot program under this subsection (6) must provide a preliminary report to the transportation committees of the legislature by June 30, (~~2022~~) 2024, and a final report by January 1, (~~2023~~) 2025, on the pilot program that includes the locations chosen for the automated traffic safety cameras used in the pilot program, the number of warnings and traffic infractions issued under the pilot program, the number of traffic infractions issued with respect to vehicles registered outside of the county in which the city is located, the infrastructure improvements made using the penalty moneys as required under (e) of this subsection, an equity analysis that includes any disproportionate impacts, safety, and on-time performance statistics related to the impact on driver behavior of the use of automated traffic safety cameras in the pilot program, and any recommendations on the use of automated traffic safety cameras to enforce the violations that these cameras were authorized to detect under the pilot program.

**Sec. 424.** RCW 46.63.170 and 2015 3rd sp.s. c 44 s 406 are each amended to read as follows:

(1) The use of automated traffic safety cameras for issuance of notices of infraction is subject to the following requirements:

(a) The appropriate local legislative authority must prepare an analysis of the locations within the jurisdiction where automated traffic safety cameras are proposed to be located: (i) Before enacting an ordinance allowing for the initial use of automated traffic safety cameras; and (ii) before adding additional cameras or relocating any existing camera to a new location within the jurisdiction. Automated traffic safety cameras may be used to detect one or more of the following: ~~Stoplight, railroad crossing, ((or)) school speed zone violations((;)), speed violations on any roadway identified in a school walk area as defined in RCW 28A.160.160, speed violations in public park speed zones, hospital speed zones, or speed violations subject to (c) or (d) of this subsection.~~ At a minimum, the local ordinance must contain the restrictions described in this section and provisions for public notice and signage. Cities and counties using automated traffic safety cameras before July 24, 2005, are subject to the restrictions described in this section, but are not required to enact an authorizing ordinance. Beginning one year after June 7, 2012, cities and counties using automated traffic safety cameras must post an annual report of the number of traffic accidents that occurred at each location where an automated traffic safety camera is located as well as the number of notices of infraction issued for each camera and any other relevant information about the automated traffic safety cameras that the city or county deems appropriate on the city's or county's website.

(b)(i) Except as provided in (c) and (d) of this subsection, use of automated traffic safety cameras is restricted to the following locations only: ~~((;)) (A)~~ Intersections of two arterials with traffic control signals that have yellow change interval durations in accordance with RCW 47.36.022, which interval durations may not be reduced after placement of the camera; ~~((;)) (B)~~ railroad crossings; ~~((and -iii)) (C)~~ school speed zones; (D) roadways identified in a school walk area as defined in RCW 28A.160.160; (E) public park speed zones, as defined in (b)(ii) of this subsection; and (F) hospital speed zones, as defined in (b)(ii) of this subsection.

(ii) For the purposes of this section:

(A) "Public park speed zone" means the marked area within public park property and extending 300 feet from the border of public park property (I) consistent with active park use; and (II) where signs are posted to indicate the location is within a public park speed zone.

(B) "Hospital speed zone" means the marked area within hospital property and extending 300 feet from the border of hospital property (I) consistent with hospital use; and (II) where signs are posted to indicate the location is within a hospital speed zone, where "hospital" has the same meaning as in RCW 70.41.020.

(c) ~~((Any))~~ In addition to the automated traffic safety cameras authorized under (d) of this subsection, any city west of the Cascade mountains with a population of more than ~~((one hundred ninety-five thousand)) 195,000~~ located in a county with a population of fewer than ~~((one million five hundred thousand)) 1,500,000~~ may operate an automated traffic safety camera to detect speed violations subject to the following limitations:

(i) A city may only operate one such automated traffic safety camera within its respective jurisdiction; and

(ii) The use and location of the automated traffic safety camera must have first been authorized by the Washington state legislature as a pilot project for at least one full year.

(d)(i) Cities may operate at least one automated traffic safety camera under this subsection to detect speed violations, subject to the requirements of (d)(ii) of this subsection. Cities may operate one additional automated traffic safety camera to detect speed violations for every 10,000 residents included in the city's population. Cameras must be placed in locations that comply with one of the following:

(A) The location has been identified as a priority location in a local road safety plan that a city has submitted to the Washington state department of transportation and where other speed reduction measures are not feasible or have not been sufficiently effective at reducing travel speed;

(B) The location has a significantly higher rate of collisions than the city average in a period of at least three years prior to installation and other speed reduction measures are not feasible or have not been sufficiently effective at reducing travel speed; or

(C) The location is in an area within the city limits designated by local ordinance as a zone subject to specified restrictions and penalties on racing and race attendance.

(ii) A city locating an automated traffic safety camera under this subsection (1)(d) must complete an equity analysis that evaluates livability, accessibility, economics, education, and environmental health, and shall consider the outcome of that analysis when identifying where to locate an automated traffic safety camera.

(e) All locations where an automated traffic safety camera is used to detect speed violations on roadways identified in a school walk area, speed violations in public park speed zones, speed violations in hospital speed zones, or speed violations under (d) of this subsection must be clearly marked by placing signs in locations that clearly indicate to a driver either: (i) That the driver is within a school walk area, public park speed zone, or hospital speed zone; or (ii) that the driver is entering an area where speed violations are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

(f) Automated traffic safety cameras may only take pictures of the vehicle and vehicle license plate and only while an infraction is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle. The primary purpose of camera placement is to take pictures of the vehicle and vehicle license plate when an infraction is occurring. Cities and counties shall consider installing cameras in a manner that minimizes the impact of camera flash on drivers.

~~((e))~~ (g) A notice of infraction must be mailed to the registered owner of the vehicle within ~~((fourteen))~~ 14 days of the violation, or to the renter of a vehicle within ~~((fourteen))~~ 14 days of establishing the renter's name and address under subsection (3)(a) of this section. The law enforcement officer issuing the

notice of infraction shall include with it a certificate or facsimile thereof, based upon inspection of photographs, microphotographs, or electronic images produced by an automated traffic safety camera, stating the facts supporting the notice of infraction. This certificate or facsimile is prima facie evidence of the facts contained in it and is admissible in a proceeding charging a violation under this chapter. The photographs, microphotographs, or electronic images evidencing the violation must be available for inspection and admission into evidence in a proceeding to adjudicate the liability for the infraction. A person receiving a notice of infraction based on evidence detected by an automated traffic safety camera may respond to the notice by mail.

~~((h))~~ (h) The registered owner of a vehicle is responsible for an infraction under RCW 46.63.030(1)(d) unless the registered owner overcomes the presumption in RCW 46.63.075, or, in the case of a rental car business, satisfies the conditions under subsection (3) of this section. If appropriate under the circumstances, a renter identified under subsection (3)(a) of this section is responsible for an infraction.

~~((g))~~ (i) Notwithstanding any other provision of law, all photographs, microphotographs, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding unless the action or proceeding relates to a violation under this section. No photograph, microphotograph, or electronic image may be used for any purpose other than enforcement of violations under this section nor retained longer than necessary to enforce this section.

~~((h))~~ (j) All locations where an automated traffic safety camera is used must be clearly marked at least ~~((thirty))~~ 30 days prior to activation of the camera by placing signs in locations that clearly indicate to a driver that he or she is entering a zone where traffic laws are enforced by an automated traffic safety camera. Signs placed in automated traffic safety camera locations after June 7, 2012, must follow the specifications and guidelines under the manual of uniform traffic control devices for streets and highways as adopted by the department of transportation under chapter 47.36 RCW.

~~((h))~~ (k) If a county or city has established an authorized automated traffic safety camera program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based only upon the value of the equipment and services provided or rendered in support of the system, and may not be based upon a portion of the fine or civil penalty imposed or the revenue generated by the equipment.

(l) If a city is operating an automated traffic safety camera to detect speed violations on roadways identified in a school walk area, speed violations in public park speed zones, speed violations in hospital speed zones, or speed violations under (d) of this subsection, the city shall remit monthly to the state 50 percent of the noninterest money received for infractions issued by those cameras excess of the cost to administer, install, operate, and maintain the automated traffic safety cameras, including the cost of processing infractions. Money remitted under this subsection to the state treasurer shall be deposited in the Cooper Jones active transportation safety account created in RCW 46.68.480. This subsection (1)(l) does not apply to automated traffic safety



cameras authorized for stoplight, railroad crossing, or school speed zone violations.

(2) Infractions detected through the use of automated traffic safety cameras are not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120. Additionally, infractions generated by the use of automated traffic safety cameras under this section shall be processed in the same manner as parking infractions, including for the purposes of RCW 3.50.100, 35.20.220, 46.16A.120, and 46.20.270(2). The amount of the fine issued for an infraction generated through the use of an automated traffic safety camera shall not exceed the amount of a fine issued for other parking infractions within the jurisdiction. However, the amount of the fine issued for a traffic control signal violation detected through the use of an automated traffic safety camera shall not exceed the monetary penalty for a violation of RCW 46.61.050 as provided under RCW 46.63.110, including all applicable statutory assessments.

(3) If the registered owner of the vehicle is a rental car business, the law enforcement agency shall, before a notice of infraction being issued under this section, provide a written notice to the rental car business that a notice of infraction may be issued to the rental car business if the rental car business does not, within (~~eighteen~~) 18 days of receiving the written notice, provide to the issuing agency by return mail:

(a) A statement under oath stating the name and known mailing address of the individual driving or renting the vehicle when the infraction occurred; or

(b) A statement under oath that the business is unable to determine who was driving or renting the vehicle at the time the infraction occurred because the vehicle was stolen at the time of the infraction. A statement provided under this subsection must be accompanied by a copy of a filed police report regarding the vehicle theft; or

(c) In lieu of identifying the vehicle operator, the rental car business may pay the applicable penalty.

Timely mailing of this statement to the issuing law enforcement agency relieves a rental car business of any liability under this chapter for the notice of infraction.

(4) Nothing in this section prohibits a law enforcement officer from issuing a notice of traffic infraction to a person in control of a vehicle at the time a violation occurs under RCW 46.63.030(1) (a), (b), or (c).

(5) For the purposes of this section, "automated traffic safety camera" means a device that uses a vehicle sensor installed to work in conjunction with an intersection traffic control system, a railroad grade crossing control system, or a speed measuring device, and a camera synchronized to automatically record one or more sequenced photographs, microphotographs, or electronic images of the rear of a motor vehicle at the time the vehicle fails to stop when facing a steady red traffic control signal or an activated railroad grade crossing control signal, or exceeds a speed limit as detected by a speed measuring device.

(6) During the 2011-2013 and 2013-2015 fiscal biennia, this section does not apply to automated traffic safety cameras for the purposes of section 216(5), chapter 367, Laws of 2011 and section 216(6), chapter 306, Laws of 2013.

NEW SECTION. Sec. 425. A new section is added to chapter 47.56 RCW to read as follows:

The legislature recognizes the need to reduce congestion and improve mobility on the Interstate 405 and state route number 167 corridors, and finds that performance on the corridors has not met the goal that average vehicle speeds in the express toll lanes remain above 45 miles per hour at least 90 percent of the time during peak hours. Therefore, the legislature intends that the commission reevaluate options at least every two years to improve performance on the Interstate 405 and state route number 167 corridors, pursuant to RCW 47.56.880 and 47.56.850.

**Sec. 426.** RCW 70A.65.230 and 2021 c 316 s 26 are each amended to read as follows:

(1) It is the intent of the legislature that each year the total investments made through the carbon emissions reduction account created in RCW 70A.65.240, the climate commitment account created in RCW 70A.65.260, the natural climate solutions account created in RCW 70A.65.270, ~~((and))~~ the air quality and health disparities improvement account created in RCW 70A.65.280, the climate transit programs account created in section 103 of this act, and the climate active transportation account created in section 102 of this act, achieve the following:

(a) A minimum of not less than 35 percent and a goal of 40 percent of total investments that provide direct and meaningful benefits to vulnerable populations within the boundaries of overburdened communities identified under chapter 314, Laws of 2021; and

(b) In addition to the requirements of (a) of this subsection, a minimum of not less than 10 percent of total investments that are used for programs, activities, or projects formally supported by a resolution of an Indian tribe, with priority given to otherwise qualifying projects directly administered or proposed by an Indian tribe. An investment that meets the requirements of both this subsection (1)(b) and (a) of this subsection may count toward the minimum percentage targets for both subsections.

(2) The expenditure of moneys under this chapter must be consistent with applicable federal, state, and local laws, and treaty rights including, but not limited to, prohibitions on uses of funds imposed by the state Constitution.

(3) For the purposes of this section, "benefits" means investments or activities that:

(a) Reduce vulnerable population characteristics, environmental burdens, or associated risks that contribute significantly to the cumulative impact designation of highly impacted communities;

(b) Meaningfully protect an overburdened community from, or support community response to, the impacts of air pollution or climate change; or

(c) Meet a community need identified by vulnerable members of the community that is consistent with the intent of this chapter.

(4) The state must develop a process by which to evaluate the impacts of the investments made under this chapter, work across state agencies to develop and track priorities across the different eligible funding categories, and work with the environmental justice council pursuant to RCW 70A.65.040.

~~((5) No expenditures may be made from the carbon emissions reduction account created in RCW 70A.65.240, the climate investment account created in RCW 70A.65.250, or the air quality and health disparities improvement account created in RCW 70A.65.280 if, by April 1, 2023, the legislature has not~~

~~considered and enacted request legislation brought forth by the department under RCW 70A.65.060 that outlines a compliance pathway specific to emissions-intensive, trade-exposed businesses for achieving their proportionate share of the state's emissions reduction limits through 2050.)~~

**NEW SECTION. Sec. 427.** The legislature finds that in order to meet the statewide greenhouse gas emissions limits in RCW 70A.45.020 and 70A.45.050, the state must drastically reduce vehicle greenhouse gas emissions. A critical strategy to meet those goals is transitioning to zero emissions vehicles and this transition requires ongoing purposeful interagency coordination and cooperation. As such, it is the intent of the legislature to create a formal interagency council responsible for coordinating the state's transportation electrification efforts to ensure the state is leveraging state and federal resources to the best extent possible and to ensure zero emissions incentives, infrastructure, and opportunities are available and accessible to all Washingtonians.

The legislature further finds that in order to meet the statewide greenhouse gas emissions limits in the transportation sector of the economy, more resources must be directed toward achieving zero emissions transportation and transit, while continuing to relieve energy burdens that exist in overburdened communities.

**NEW SECTION. Sec. 428.** (1) There is hereby created an interagency electric vehicle coordinating council jointly led by the Washington state department of commerce and the Washington state department of transportation with participation from the following agencies:

- (a) The office of financial management;
- (b) The department of ecology;
- (c) The department of enterprise services;
- (d) The state efficiency and environmental performance office;
- (e) The department of agriculture;
- (f) The department of health;
- (g) The utilities and transportation commission;
- (h) A representative from the office of the superintendent of public instruction knowledgeable on issues pertaining to student transportation; and
- (i) Other agencies with key roles in electrifying the transportation sector.

(2) The Washington state department of commerce and Washington state department of transportation shall assign staff in each agency to lead the council's coordination work and provide ongoing reports to the governor and legislature including, but not limited to, the transportation, energy, economic development, and other appropriate legislative committees.

**NEW SECTION. Sec. 429.** (1) Interagency electric vehicle coordinating council responsibilities include, but are not limited to:

- (a) Development of a statewide transportation electrification strategy to ensure market and infrastructure readiness for all new vehicle sales;
- (b) Identification of all electric vehicle infrastructure grant-related funding to include existing and future opportunities, including state, federal, and other funds;
- (c) Coordination of grant funding criteria across agency grant programs to most efficiently distribute state and federal electric vehicle-related funding in a

manner that is most beneficial to the state, advances best practices, and recommends additional criteria that could be useful in advancing transportation electrification;

(d) Development of a robust public and private outreach plan that includes engaging with:

(i) Community organizers and the environmental justice council to develop community-driven programs to address zero emissions transportation needs and priorities in overburdened communities; and

(ii) Local governments to explore procurement opportunities and work with local government and community programs to support electrification;

(e) Creation of an industry electric vehicle advisory committee; and

(f) Ensuring the statewide transportation electrification strategy, grant distribution, programs, and activities associated with advancing transportation electrification benefit vulnerable and overburdened communities.

(2) The council shall provide an annual report to the appropriate committees of the legislature summarizing electric vehicle implementation progress, gaps, and resource needs.

**Sec. 430.** RCW 46.68.480 and 2020 c 224 s 2 are each amended to read as follows:

The Cooper Jones active transportation safety account is created in the state treasury. All receipts from penalties collected under RCW 46.63.170(~~((6)(e))~~) shall be deposited into the account. Expenditures from the account may be used only to fund grant projects or programs for bicycle, pedestrian, and nonmotorist safety improvement administered by the Washington traffic safety commission. The account is subject to allotment procedures under chapter 43.88 RCW. Moneys in the account may be spent only after appropriation.

NEW SECTION. **Sec. 431.** A new section is added to chapter 47.60 RCW to read as follows:

It is the intent of the legislature to fully fund the vessel and terminal electrification program in accordance with the Washington state ferries 2040 long range plan. The legislature finds that to attain the 2040 target fleet size of 26 vessels, a biennial replacement schedule is necessary to ensure the level of ferry service and reliability expected by the public. Therefore, by June 30, 2025, the legislature will secure funding options, including but not limited to a vessel surcharge, to devote the resources necessary to fulfill the vessel and terminal needs outlined in the 2040 long range plan.

NEW SECTION. **Sec. 432.** Washington state's target zero program envisions Washington having policies that will lead to zero deaths of people using the transportation system. For almost two decades more than 200 people have lost their lives annually in circumstances where a vehicle unintentionally left its lane of travel. Such fatalities made up 48 percent of all traffic-related fatalities in 2019. There are multiple ways to make improvements on the highway system that have been proven in other locations to help reduce lane departures and fatalities. Sections 433 and 434 of this act are intended to direct resources towards deploying such improvements by requiring the Washington state department of transportation to create a program that is focused on addressing this specific safety concern.

**NEW SECTION. Sec. 433.** A new section is added to chapter 47.04 RCW to read as follows:

(1)(a) When an appropriation is made for this purpose, the department shall establish a reducing rural roadway departures program to provide funding for safety improvements specific to preventing lane departures in areas where the departure is likely to cause serious injuries or death. The program must use data driven methods to determine potential projects, and associated ranking methods for prioritization of funding consistent with chapter 47.05 RCW. Funding under this program may be used to:

(i) Widen roadway shoulders or modify roadway design to improve visibility or reduce lane departure risks;

(ii) Improve markings and paint on roadways, including making markings on roads more visible for vehicles with lane departure technology;

(iii) Apply high friction surface treatments;

(iv) Install rumble strips, signage, lighting, raised barriers, medians, guardrails, cable barriers, or other safety equipment, including deployment of innovative technology and connected infrastructure devices;

(v) Remove or relocate fixed objects from rights-of-way that pose a significant risk of serious injury or death if a vehicle were to collide with the object due to a lane departure;

(vi) Repair or replace existing barriers that are damaged or nonfunctional; or

(vii) Take other reasonable actions that are deemed likely to address or prevent vehicle lane departures in specific areas of concern.

(b) The department must create a program whereby it can distribute funding or install safety improvements based on the prioritization process established under (a) of this subsection. Any installation of safety measures that are not under the jurisdiction of the department must be done with permission from the entity that is responsible for operation and maintenance of the roadway.

(c) The department's program must create a form and application process whereby towns, small cities, counties, and transportation benefit districts may apply for program funding for high risk areas in their jurisdictions in need of safety improvements.

(d) Subject to the availability of amounts appropriated for this specific purpose, the department must issue program funding for purposes defined in (a) and (b) of this subsection in a geographically diverse manner throughout the state. Criteria used to assess a location can include the communities inability or lack of resources to make the corrections themselves and to make corrections where there has been historic disparate impacts.

(e) By December 31st of each year when there is funding distributed in accordance with this program, the department must provide the transportation committees of the legislature and the traffic safety commission with a list of locations that received funding and a description of the safety improvements installed there.

(2) During the first five years of the program, the department must track incidence of lane departures at the locations where the new infrastructure is installed and evaluate the effectiveness of the safety improvements.

**Sec. 434.** RCW 46.68.060 and 2021 c 333 s 706 are each amended to read as follows:

There is hereby created in the state treasury a fund to be known as the highway safety fund to the credit of which must be deposited all moneys directed by law to be deposited therein. This fund must be used for carrying out the provisions of law relating to driver licensing, driver improvement, financial responsibility, cost of furnishing abstracts of driving records and maintaining such case records, and to carry out the purposes set forth in RCW 43.59.010, ((and)) chapters 46.72 and 46.72A RCW, and section 433 of this act. During the 2013-2015 and 2015-2017 fiscal biennia, the legislature may transfer from the highway safety fund to the Puget Sound ferry operations account, the motor vehicle fund, and the multimodal transportation account such amounts as reflect the excess fund balance of the highway safety fund. During the 2017-2019, 2019-2021, and 2021-2023 fiscal biennia, the legislature may direct the state treasurer to make transfers of moneys in the highway safety fund to the multimodal transportation account and the state patrol highway account.

**Sec. 435.** RCW 46.68.396 and 2015 3rd sp.s. c 12 s 2 are each amended to read as follows:

The JUDY transportation future funding program account is created in the connecting Washington account established in chapter 44, Laws of 2015 3rd sp. sess. Moneys in the account may be spent only after appropriation. Expenditures from the account must be used only for preservation projects, to accelerate the schedule of connecting Washington projects identified in chapter 43, Laws of 2015 3rd sp. sess., for new connecting Washington projects, and for principal and interest on bonds authorized for the projects. It is the legislature's intent that moneys not be appropriated from the account until 2024 and that moneys in the account be expended in equal amounts between preservation and improvement projects. Moneys in the account may not be expended on the state route number 99 Alaskan Way viaduct replacement project.

**Sec. 436.** RCW 47.01.480 and 2015 3rd sp.s. c 12 s 1 are each amended to read as follows:

(1)(a) For projects identified as connecting Washington projects and supported by revenues under chapter 44, Laws of 2015 3rd sp. sess., it is the priority of the legislature that the department deliver the named projects. The legislature encourages the department to continue to institutionalize innovation and collaboration in design and project delivery with an eye toward the most efficient use of resources. In doing so, the legislature expects that, for some projects, costs will be reduced during the project design phase due to the application of practical design. However, significant changes to a project title or scope arising from the application of practical design requires legislative approval. The legislature will utilize existing mechanisms and processes to ensure timely and efficient approval. Practical design-related changes to the scope may be proposed by the department, for the legislature's approval, only if the project's intended performance is substantially unchanged and the local governments and interested stakeholders impacted by the project have been consulted and have reviewed the proposed changes.

(b) To the greatest extent practicable, a contract for the construction of a project with any change to the title or scope, whether significant or not, arising from the application of practical design must not be let until the department has provided a detailed notice describing the change to the chairs and ranking

members of the house of representatives and senate transportation committees or, if during the interim, to the joint transportation committee.

(c) To determine the savings attributable to practical design, each connecting Washington project must be evaluated. For design-bid-build projects, the evaluation must occur at the end of the project design phase. For design-build projects, the evaluation must occur at the completion of ~~((thirty))~~ 30 percent design. Each year as a part of its annual budget submittal, the department must include a detailed summary of how practical design has been applied and the associated savings gained. The annual summary must also include for each project: Details regarding any savings gained specifically through changes in the cost of materials, changes in the scope of a project and associated impacts on risk, the retirement of any risk reserves, and unused contingency funds.

(2)(a) The transportation future funding program is intended to provide for future emergent transportation projects, accelerating the schedule for existing connecting Washington projects, and highway preservation investments, beginning in fiscal year 2024, based on savings accrued from the application of practical design and any retired risk or unused contingency funding on connecting Washington projects.

(b) Beginning July 1, 2016, the department must submit a report to the state treasurer and the transportation committees of the legislature once every six months identifying the amount of savings attributable to the application of practical design, retired risk, and unused contingency funding, and report when the savings become available. The state treasurer must transfer the available amounts identified in the report to the JUDY transportation future funding program account created in RCW 46.68.396.

(c) Beginning in fiscal year 2024, as a part of its budget submittal, the department may provide a list of highway improvement projects or preservation investments for potential legislative approval as part of the transportation future funding program. Highway improvement projects considered for inclusion under the transportation future funding program may include new connecting Washington projects, or accelerate the schedule for existing connecting Washington projects, and must: Address significant safety concerns; alleviate congestion and advance mobility; provide compelling economic development gains; leverage partnership funds from local, federal, or other sources; or require a next phase of funding to build upon initial investments provided by the legislature.

(d) It is the intent of the legislature that if savings attributable to the application of practical design are used to accelerate existing connecting Washington projects, savings must also be used for new connecting Washington projects of equal cost.

NEW SECTION. Sec. 437. A new SECTION is added to chapter 47.06A RCW to read as follows:

A railroad crossing grant program is hereby created in the department, local programs division. The department shall develop a prioritization process to make awards for cities and counties with projects that eliminate at grade highway-rail crossings, improving safety and expediting the movement of vehicles. Awards must be made for matching funds to federal grants.

**Sec. 438.** RCW 81.104.160 and 2015 3rd sp.s. c 44 s 319 are each amended to read as follows:

(1) Regional transit authorities that include a county with a population of more than (~~one million five hundred thousand~~) 1,500,000 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 eight-tenths 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. The maximum tax rate under this subsection does not include a motor vehicle excise tax approved before July 15, 2015, if the tax will terminate on the date bond debt to which the tax is pledged is repaid. This tax does not apply to vehicles licensed under RCW 46.16A.455 except vehicles with an unladen weight of (~~six thousand~~) 6,000 pounds or less, RCW 46.16A.425 or 46.17.335(2). Notwithstanding any other provision of this subsection or chapter 82.44 RCW, a motor vehicle excise tax imposed by a regional transit authority before or after July 15, 2015, must comply with chapter 82.44 RCW as it existed on January 1, 1996, until December 31st of the year in which the regional transit authority repays bond debt to which a motor vehicle excise tax was pledged before July 15, 2015. Motor vehicle taxes collected by regional transit authorities after December 31st of the year in which a regional transit authority repays bond debt to which a motor vehicle excise tax was pledged before July 15, 2015, must comply with chapter 82.44 RCW as it existed on the date the tax was approved by voters.

(2) An agency and high capacity transportation corridor area may 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 applicable jurisdiction that are taxable by the state under chapters 82.08 and 82.12 RCW. The rate of tax may not exceed 2.172 percent. The rate of tax imposed under this subsection must bear the same ratio of the 2.172 percent authorized that the rate imposed under subsection (1) of this section bears to the rate authorized under subsection (1) of this section. The base of the tax is 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.

(3) Any motor vehicle excise tax previously imposed under the provisions of (~~RCW 81.104.160(1)~~) subsection (1) of this section shall be repealed, terminated, and expire on December 5, 2002, except for a motor vehicle excise tax for which revenues have been contractually pledged to repay a bonded debt issued before December 5, 2002, as determined by *Pierce County et al. v. State*, 159 Wn.2d 16, 148 P.3d 1002 (2006). In the case of bonds that were previously issued, the motor vehicle excise tax must comply with chapter 82.44 RCW as it existed on January 1, 1996.

(4) If a regional transit authority imposes the tax authorized under subsection (1) of this section, the authority may not receive any state grant funds provided in an omnibus transportation appropriations act except transit coordination grants created in chapter 11, Laws of 2015 3rd sp. sess. and regional mobility grant program funds. To be eligible to receive regional mobility grant program funds, a regional transit authority must have adopted, at a minimum, a zero-fare policy that allows passengers 18 years of age and



younger to ride free of charge on all modes provided by the authority by October 1, 2022.

**Sec. 439.** RCW 47.66.120 and 2021 c 333 s 721 are each amended to read as follows:

(1)(a) (~~Subject to the availability of amounts appropriated for this specific purpose through the 2023-2025 biennium, the~~) The department's public transportation division shall establish a green transportation capital grant program. The purpose of the grant program is to aid any transit authority in funding cost-effective capital projects to reduce the carbon intensity of the Washington transportation system, examples of which include: Electrification of vehicle fleets, including battery and fuel cell electric vehicles; modification or replacement of capital facilities in order to facilitate fleet electrification and/or hydrogen refueling; necessary upgrades to electrical transmission and distribution systems; and construction of charging and fueling stations. The department's public transportation division shall identify projects and shall submit a prioritized list of all projects requesting funding to the legislature by December 1st of each even-numbered year.

(b) The department's public transportation division shall select projects based on a competitive process that considers the following criteria:

(i) The cost-effectiveness of the reductions in carbon emissions provided by the project; and

(ii) The benefit provided to transitioning the entire state to a transportation system with lower carbon intensity.

(2) The department's public transportation division must establish an advisory committee to assist in identifying projects under subsection (1) of this section. The advisory committee must include representatives from the department of ecology, the department of commerce, the utilities and transportation commission, and at least one transit authority.

(3) In order to receive green transportation capital grant program funding for a project, a transit authority must provide matching funding for that project that is at least equal to twenty percent of the total cost of the project.

(4) The department's public transportation division must report annually to the transportation committees of the legislature on the status of any grant projects funded by the program created under this section.

(5) For purposes of this section, "transit authority" means a city transit system under RCW 35.58.2721 or chapter 35.95A RCW, a county public transportation authority under chapter 36.57 RCW, a metropolitan municipal corporation transit system under chapter 36.56 RCW, a public transportation benefit area under chapter 36.57A RCW, an unincorporated transportation benefit area under RCW 36.57.100, a regional transit authority under chapter 81.112 RCW, or any special purpose district formed to operate a public transportation system.

(6) During the 2021-2023 fiscal biennium, the department may provide up to 20 percent of the total green transportation capital grant program funding for zero emissions capital transition planning projects.

**Part V**  
**Miscellaneous**

NEW SECTION. Sec. 501. Sections 415 and 427 through 429 of this act constitute a new chapter in Title 43 RCW.

NEW SECTION. Sec. 502. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

NEW SECTION. Sec. 503. Sections 311 and 403 of this act expire July 1, 2024.

NEW SECTION. Sec. 504. Section 404 of this act takes effect July 1, 2024.

**Sec. 505.** 2020 c 224 s 3 (uncodified) is amended to read as follows:  
Section 1 of this act expires June 30, (~~(2023)~~) 2025.

NEW SECTION. Sec. 506. Section 423 of this act expires June 30, 2025.

NEW SECTION. Sec. 507. Section 424 of this act takes effect June 30, 2025.

NEW SECTION. Sec. 508. Sections 313, 408 through 414, and 421 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. 509. Sections 205, 206, 209, and 210 of this act take effect October 1, 2022.

NEW SECTION. Sec. 510. Sections 207 and 208 of this act take effect January 1, 2023, and apply to registrations that become due on or after that date.

NEW SECTION. Sec. 511. Sections 1, 101 through 105, 201 through 204, 211, 301 through 312, 401 through 407, 415 through 420, 422, 423, 425 through 439, and 505 of this act take effect July 1, 2022.

Passed by the Senate March 10, 2022.

Passed by the House March 10, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

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**CHAPTER 183**

[Engrossed Second Substitute House Bill 1812]

ENERGY FACILITY SITE EVALUATION COUNCIL—MODIFICATION

AN ACT Relating to modernizing the energy facility site evaluation council to meet the state's clean energy goals; amending RCW 80.50.010, 80.50.020, 80.50.040, 80.50.060, 80.50.071, 80.50.100, 80.50.175, 80.50.340, 80.50.075, 44.39.010, and 44.39.012; reenacting and amending RCW 80.50.030, 80.50.090, and 43.79A.040; adding new sections to chapter 80.50 RCW; adding a new section to chapter 41.06 RCW; creating new sections; repealing RCW 80.50.190 and 80.50.904; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 80.50.010 and 2001 c 214 s 1 are each amended to read as follows:

The legislature finds that the present and predicted growth in energy demands in the state of Washington requires ~~((the development of))~~ a procedure for the selection and ~~((utilization))~~ use of sites for energy facilities and the identification of a state position with respect to each proposed site. The legislature recognizes that the selection of sites will have a significant impact upon the welfare of the population, the location and growth of industry and the use of the natural resources of the state.

It is the policy of the state of Washington to reduce dependence on fossil fuels by recognizing the need for clean energy in order to strengthen the state's economy, meet the state's greenhouse gas reduction obligations, and mitigate the significant near-term and long-term impacts from climate change while conducting a public process that is transparent and inclusive to all with particular attention to overburdened communities.

The legislature finds that the in-state manufacture of industrial products that enable a clean energy economy is critical to advancing the state's objectives in providing affordable electricity, promoting renewable energy, strengthening the state's economy, and reducing greenhouse gas emissions. Therefore, the legislature intends to provide the council with additional authority regarding the siting of clean energy product manufacturing facilities.

It is the policy of the state of Washington to recognize the pressing need for increased energy facilities, and to ensure through available and reasonable methods~~((s))~~ that the location and operation of ~~((such))~~ all energy facilities and certain clean energy product manufacturing facilities will produce minimal adverse effects on the environment, ecology of the land and its wildlife, and the ecology of state waters and their aquatic life.

It is the intent to seek courses of action that will balance the increasing demands for energy facility location and operation in conjunction with the broad interests of the public. In addition, it is the intent of the legislature to streamline application review for energy facilities to meet the state's energy goals and to authorize applications for review of certain clean energy product manufacturing facilities to be considered under the provisions of this chapter.

Such action will be based on these premises:

(1) To assure Washington state citizens that, where applicable, operational safeguards are at least as stringent as the criteria established by the federal government and are technically sufficient for their welfare and protection.

(2) To preserve and protect the quality of the environment; to enhance the public's opportunity to enjoy the esthetic and recreational benefits of the air, water and land resources; to promote air cleanliness; ~~((and))~~ to pursue beneficial changes in the environment; and to promote environmental justice for overburdened communities.

(3) To encourage the development and integration of clean energy sources.

(4) To provide abundant clean energy at reasonable cost.

~~((4))~~ (5) To avoid costs of complete site restoration and demolition of improvements and infrastructure at unfinished nuclear energy sites, and to use unfinished nuclear energy facilities for public uses, including economic development, under the regulatory and management control of local governments and port districts.

~~((5))~~ (6) To avoid costly duplication in the siting process and ensure that decisions are made timely and without unnecessary delay while also

encouraging meaningful public comment and participation in energy facility decisions.

**Sec. 2.** RCW 80.50.020 and 2021 c 317 s 17 are each amended to read as follows:

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

(1) "Alternative energy resource" includes energy facilities of the following types: (a) Wind; (b) solar energy; (c) geothermal energy; (d) ~~((landfill))~~ renewable natural gas; (e) wave or tidal action; ~~((or))~~ (f) biomass energy based on solid organic fuels from wood, forest, or field residues, or dedicated energy crops that do not include wood pieces that have been treated with chemical preservatives such as creosote, pentachlorophenol, or copper-chrome-arsenic; or (g) renewable or green electrolytic hydrogen.

(2) "Applicant" means any person who makes application for a site certification pursuant to the provisions of this chapter.

(3) "Application" means any request for approval of a particular site or sites filed in accordance with the procedures established pursuant to this chapter, unless the context otherwise requires.

(4) "Associated facilities" means storage, transmission, handling, or other related and supporting facilities connecting an energy plant with the existing energy supply, processing, or distribution system, including, but not limited to, communications, controls, mobilizing or maintenance equipment, instrumentation, and other types of ancillary transmission equipment, off-line storage or venting required for efficient operation or safety of the transmission system and overhead, and surface or subsurface lines of physical access for the inspection, maintenance, and safe operations of the transmission facility and new transmission lines constructed to operate at nominal voltages of at least 115,000 volts to connect a thermal power plant or alternative energy facilities to the northwest power grid. However, common carrier railroads or motor vehicles shall not be included.

(5) "Biofuel" means a liquid or gaseous fuel derived from organic matter ~~((intended for use as a transportation fuel))~~ including, but not limited to, biodiesel, renewable diesel, ethanol, renewable natural gas, and renewable propane.

(6) "Certification" means a binding agreement between an applicant and the state which shall embody compliance to the siting guidelines, in effect as of the date of certification, which have been adopted pursuant to RCW 80.50.040 as now or hereafter amended as conditions to be met prior to or concurrent with the construction or operation of any energy facility.

(7) "Construction" means on-site improvements, excluding exploratory work, which cost in excess of two hundred fifty thousand dollars.

(8) "Council" means the energy facility site evaluation council created by RCW 80.50.030.

(9) "Counsel for the environment" means an assistant attorney general or a special assistant attorney general who shall represent the public in accordance with RCW 80.50.080.

(10) "Electrical transmission facilities" means electrical power lines and related equipment.

(11) "Energy facility" means an energy plant or transmission facilities: PROVIDED, That the following are excluded from the provisions of this chapter:

(a) Facilities for the extraction, conversion, transmission or storage of water, other than water specifically consumed or discharged by energy production or conversion for energy purposes; and

(b) Facilities operated by and for the armed services for military purposes or by other federal authority for the national defense.

(12) "Energy plant" means the following facilities together with their associated facilities:

(a) Any nuclear power facility where the primary purpose is to produce and sell electricity;

(b) Any nonnuclear stationary thermal power plant with generating capacity of three hundred fifty thousand kilowatts or more, measured using maximum continuous electric generating capacity, less minimum auxiliary load, at average ambient temperature and pressure, and floating thermal power plants of one hundred thousand kilowatts or more suspended on the surface of water by means of a barge, vessel, or other floating platform;

(c) Facilities which will have the capacity to receive liquefied natural gas in the equivalent of more than one hundred million standard cubic feet of natural gas per day, which has been transported over marine waters;

(d) Facilities which will have the capacity to receive more than an average of fifty thousand barrels per day of crude or refined petroleum or liquefied petroleum gas which has been or will be transported over marine waters, except that the provisions of this chapter shall not apply to storage facilities unless occasioned by such new facility construction;

(e) Any underground reservoir for receipt and storage of natural gas as defined in RCW 80.40.010 capable of delivering an average of more than one hundred million standard cubic feet of natural gas per day; and

(f) Facilities capable of processing more than twenty-five thousand barrels per day of petroleum or biofuel into refined products except where such biofuel production is undertaken at existing industrial facilities(~~;~~ and

~~(g) Facilities capable of producing more than one thousand five hundred barrels per day of refined biofuel but less than twenty five thousand barrels of refined biofuel).~~

(13) "Independent consultants" means those persons who have no financial interest in the applicant's proposals and who are retained by the council to evaluate the applicant's proposals, supporting studies, or to conduct additional studies.

(14) "Land use plan" means a comprehensive plan or land use element thereof adopted by a unit of local government pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW, or as otherwise designated by chapter 325, Laws of 2007.

(15) "Person" means an individual, partnership, joint venture, private or public corporation, association, firm, public service company, political subdivision, municipal corporation, government agency, public utility district, or any other entity, public or private, however organized.

(16) "Preapplicant" means a person considering applying for a site certificate agreement for any (~~transmission~~) facility.

(17) "Preapplication process" means the process which is initiated by written correspondence from the preapplicant to the council, and includes the process adopted by the council for consulting with the preapplicant and with federally recognized tribes, cities, towns, and counties prior to accepting applications for ~~((all transmission facilities))~~ any facility.

(18) "Secretary" means the secretary of the United States department of energy.

(19) "Site" means any proposed or approved location of an energy facility, alternative energy resource, clean energy product manufacturing facility, or electrical transmission facility.

(20) "Thermal power plant" means, for the purpose of certification, any electrical generating facility using any fuel for distribution of electricity by electric utilities.

(21) "Transmission facility" means any of the following together with their associated facilities:

(a) Crude or refined petroleum or liquid petroleum product transmission pipeline of the following dimensions: A pipeline larger than six inches minimum inside diameter between valves for the transmission of these products with a total length of at least fifteen miles;

(b) Natural gas, synthetic fuel gas, or liquefied petroleum gas transmission pipeline of the following dimensions: A pipeline larger than fourteen inches minimum inside diameter between valves, for the transmission of these products, with a total length of at least fifteen miles for the purpose of delivering gas to a distribution facility, except an interstate natural gas pipeline regulated by the United States federal ~~((power))~~ energy regulatory commission.

(22) "Zoning ordinance" means an ordinance of a unit of local government regulating the use of land and adopted pursuant to chapter 35.63, 35A.63, 36.70, or 36.70A RCW or Article XI of the state Constitution, or as otherwise designated by chapter 325, Laws of 2007.

(23) "Clean energy product manufacturing facility" means a facility that exclusively or primarily manufactures the following products or components primarily used by such products:

(a) Vehicles, vessels, and other modes of transportation that emit no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other types of vehicles that emit no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable or green electrolytic hydrogen, including preparing renewable or green electrolytic hydrogen for distribution as an energy carrier or manufacturing feedstock, or converting it to a green hydrogen carrier;

(d) Equipment and products used to produce energy from alternative energy resources; and

(e) Equipment and products used at storage facilities.

(24) "Director" means the director of the energy facility site evaluation council appointed by the chair of the council in accordance with section 4 of this act.

(25)(a) "Green electrolytic hydrogen" means hydrogen produced through electrolysis.

(b) "Green electrolytic hydrogen" does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(26) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(27) "Renewable hydrogen" means hydrogen produced using renewable resources both as the source for the hydrogen and the source for the energy input into the production process.

(28) "Renewable natural gas" means a gas consisting largely of methane and other hydrocarbons derived from the decomposition of organic material in landfills, wastewater treatment facilities, and anaerobic digesters.

(29) "Renewable resource" means: (a) Water; (b) wind; (c) solar energy; (d) geothermal energy; (e) renewable natural gas; (f) renewable hydrogen; (g) wave, ocean, or tidal power; (h) biodiesel fuel that is not derived from crops raised on land cleared from old growth or first growth forests; or (i) biomass energy.

(30) "Storage facility" means a plant that: (a) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or (b) stores renewable hydrogen, green electrolytic hydrogen, or a green hydrogen carrier for subsequent delivery or consumption.

**Sec. 3.** RCW 80.50.030 and 2010 c 271 s 601 and 2010 c 152 s 2 are each reenacted and amended to read as follows:

(1) ~~((There is created and established the))~~ The energy facility site evaluation council is created and established.

(2) ~~((a))~~ The chair of the council shall be appointed by the governor with the advice and consent of the senate, shall have a vote on matters before the council, shall serve for a term coextensive with the term of the governor, and is removable for cause. The chair may designate a member of the council to serve as acting chair in the event of the chair's absence. The salary of the chair shall be determined under RCW 43.03.040. The chair is a "state employee" for the purposes of chapter 42.52 RCW. As applicable, when attending meetings of the council, members may receive reimbursement for travel expenses in accordance with RCW 43.03.050 and 43.03.060, and are eligible for compensation under RCW 43.03.250.

~~((b) The chair or a designee shall execute all official documents, contracts, and other materials on behalf of the council. The Washington utilities and transportation commission shall provide all administrative and staff support for the council. The commission has supervisory authority over the staff of the council and shall employ such personnel as are necessary to implement this chapter. Not more than three such employees may be exempt from chapter 41.06 RCW. The council shall otherwise retain its independence in exercising its powers, functions, and duties and its supervisory control over nonadministrative staff support. Membership, powers, functions, and duties of the Washington state utilities and transportation commission and the council shall otherwise remain as provided by law.))~~

(3)(a) The council shall consist of the (~~directors, administrators, or their designees, of the following departments, agencies, commissions, and committees or their statutory successors:~~

- ~~(i) Department of ecology;~~
- ~~(ii) Department of fish and wildlife;~~
- ~~(iii) Department of commerce;~~
- ~~(iv) Utilities and transportation commission; and~~
- ~~(v) Department of natural resources)) chair of the council and:~~

(i) The director of the department of ecology or the director's designee;  
(ii) The director of the department of fish and wildlife or the director's designee;

(iii) The director of the department of commerce or the director's designee;

(iv) The chair of the utilities and transportation commission or the chair's designee; and

(v) The commissioner of public lands or the commissioner's designee.

(b) The directors, administrators, or their designees, of the following departments, agencies, and commissions, or their statutory successors, may participate as councilmembers at their own discretion provided they elect to participate no later than sixty days after an application is filed:

- (i) Department of agriculture;
- (ii) Department of health;
- (iii) Military department; and
- (iv) Department of transportation.

~~((c) Council membership is discretionary for agencies that choose to participate under (b) of this subsection only for applications that are filed with the council on or after May 8, 2001. For applications filed before May 8, 2001, council membership is mandatory for those agencies listed in (b) of this subsection.))~~

(4) The appropriate county legislative authority of every county wherein an application for a proposed site is filed shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the county which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(5) The city legislative authority of every city within whose corporate limits an energy facility is proposed to be located shall appoint a member or designee as a voting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the city which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site.

(6) For any port district wherein an application for a proposed port facility is filed subject to this chapter, the port district shall appoint a member or designee as a nonvoting member to the council. The member or designee so appointed shall sit with the council only at such times as the council considers the proposed site for the port district which he or she represents, and such member or designee shall serve until there has been a final acceptance or rejection of the proposed site. The provisions of this subsection shall not apply if the port district is the applicant, either singly or in partnership or association with any other person.



(7) A quorum of the council consists of a majority of members appointed for business to be conducted.

NEW SECTION. Sec. 4. A new section is added to chapter 80.50 RCW to read as follows:

(1) The chair of the council or the chair's designee shall execute all official documents, contracts, and other materials on behalf of the council.

(2) The chair of the council shall appoint a director to oversee the operations of the council and carry out the duties of this chapter as delegated by the chair. The chair of the council may delegate to the director its status as appointing authority for the council.

(3) The director shall employ such administrative and professional personnel as may be necessary to perform the administrative work of the council and implement this chapter. The director has supervisory authority over all staff of the council. Not more than four employees may be exempt from chapter 41.06 RCW.

**Sec. 5.** RCW 80.50.040 and 2001 c 214 s 6 are each amended to read as follows:

The council shall have the following powers:

(1) To adopt, promulgate, amend, or rescind suitable rules and regulations, pursuant to chapter 34.05 RCW, to carry out the provisions of this chapter, and the policies and practices of the council in connection therewith;

(2) To develop and apply environmental and ecological guidelines in relation to the type, design, location, construction, ~~((and))~~ initial operational conditions of certification, and ongoing regulatory oversight under the regulatory authority established in this chapter of energy facilities subject to this chapter;

(3) To establish rules of practice for the conduct of public hearings pursuant to the provisions of the Administrative Procedure Act, as found in chapter 34.05 RCW;

(4) To prescribe the form, content, and necessary supporting documentation for site certification;

(5) To receive applications for energy facility locations and to investigate the sufficiency thereof;

(6) To ~~((make and contract, when applicable, for independent studies of sites proposed by the applicant))~~ enter into contracts to carry out the provisions of this chapter;

(7) To conduct hearings on the proposed location and operational conditions of the energy facilities under the regulatory authority established in this chapter;

(8) To prepare written reports to the governor which shall include: (a) A statement indicating whether the application is in compliance with the council's guidelines, (b) criteria specific to the site and transmission line routing, (c) a council recommendation as to the disposition of the application, and (d) a draft certification agreement when the council recommends approval of the application;

(9) To prescribe the means for monitoring of the effects arising from the construction and the operation of energy facilities to assure continued compliance with terms of certification and/or permits issued by the council pursuant to chapter 90.48 RCW or subsection (12) of this section: PROVIDED,

That any on-site inspection required by the council shall be performed by other state agencies pursuant to interagency agreement: PROVIDED FURTHER, That the council may retain authority for determining compliance relative to monitoring;

(10) To integrate its site evaluation activity with activities of federal agencies having jurisdiction in such matters to avoid unnecessary duplication;

(11) To present state concerns and interests to other states, regional organizations, and the federal government on the location, construction, and operation of any energy facility which may affect the environment, health, or safety of the citizens of the state of Washington;

(12) To issue permits in compliance with applicable provisions of the federally approved state implementation plan adopted in accordance with the Federal Clean Air Act, as now existing or hereafter amended, for the new construction, reconstruction, or enlargement or operation of energy facilities: PROVIDED, That such permits shall become effective only if the governor approves an application for certification and executes a certification agreement pursuant to this chapter: AND PROVIDED FURTHER, That all such permits be conditioned upon compliance with all provisions of the federally approved state implementation plan which apply to energy facilities covered within the provisions of this chapter; and

(13) To serve as an interagency coordinating body for energy-related issues.

**Sec. 6.** RCW 80.50.060 and 2021 c 317 s 18 are each amended to read as follows:

~~((Except for biofuel refineries specified in RCW 80.50.020(12)(g), the))~~  
(a) The provisions of this chapter apply to the construction of energy facilities which includes the new construction of energy facilities and the reconstruction or enlargement of existing energy facilities where the net increase in physical capacity or dimensions resulting from such reconstruction or enlargement meets or exceeds those capacities or dimensions set forth in RCW 80.50.020 (12) and (21). No construction or reconstruction of such energy facilities may be undertaken, except as otherwise provided in this chapter, ((after July 15, 1977,)) without first obtaining certification in the manner provided in this chapter.

~~((2) The provisions of this chapter apply to the construction, reconstruction, or enlargement of a new or existing biofuel refinery specified in RCW 80.50.020(12)(g) or a new or existing energy facility that exclusively uses alternative energy resources and chooses to receive certification under this chapter, regardless of the generating capacity of the project.~~

~~(3))~~ (b) If applicants proposing the following types of facilities choose to receive certification under this chapter, the provisions of this chapter apply to the construction, reconstruction, or enlargement of these new or existing facilities:

(i) Facilities that produce refined biofuel, but which are not capable of producing 25,000 barrels or more per day;

(ii) Alternative energy resource facilities;

(iii) Electrical transmission facilities: (A) Of a nominal voltage of at least 115,000 volts; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances;

(iv) Clean energy product manufacturing facilities; and

(v) Storage facilities.

(c) All of the council's powers with regard to energy facilities apply to all of the facilities in (b) of this subsection and these facilities are subject to all provisions of this chapter that apply to an energy facility.

(2)(a) The provisions of this chapter must apply to the construction, reconstruction, or modification of electrical transmission facilities when(:

~~(i) The~~) the facilities are located in a national interest electric transmission corridor as specified in RCW 80.50.045(:

~~(ii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage of at least one hundred fifteen thousand volts and are located in a completely new corridor, except for the terminus of the new facility or interconnection of the new facility with the existing grid, and the corridor is not otherwise used for electrical transmission facilities; and (B) located in more than one jurisdiction that has promulgated land use plans or zoning ordinances; or~~

~~(iii) An applicant chooses to receive certification under this chapter, and the facilities are: (A) Of a nominal voltage in excess of one hundred fifteen thousand volts; and (B) located outside an electrical transmission corridor identified in (a)(i) and (ii) of this subsection (3)).~~

~~(b) For the purposes of this subsection, ("modify")~~ "modification" means a significant change to an electrical transmission facility and does not include the following: (i) Minor improvements such as the replacement of existing transmission line facilities or supporting structures with equivalent facilities or structures; (ii) the relocation of existing electrical transmission line facilities; (iii) the conversion of existing overhead lines to underground; or (iv) the placing of new or additional conductors, supporting structures, insulators, or their accessories on or replacement of supporting structures already built.

~~((4))~~ (3) The provisions of this chapter shall not apply to normal maintenance and repairs which do not increase the capacity or dimensions beyond those set forth in RCW 80.50.020 (12) and (21).

~~((5))~~ (4) Applications for certification of energy facilities made prior to July 15, 1977, shall continue to be governed by the applicable provisions of law in effect on the day immediately preceding July 15, 1977, with the exceptions of RCW ~~((80.50.190 and))~~ 80.50.071 which shall apply to such prior applications and to site certifications prospectively from July 15, 1977.

~~((6))~~ (5) Applications for certification shall be upon forms prescribed by the council and shall be supported by such information and technical studies as the council may require.

(6) Upon receipt of an application for certification under this chapter, the chair of the council shall notify:

(a) The appropriate county legislative authority or authorities where the proposed facility is located;

(b) The appropriate city legislative authority or authorities where the proposed facility is located;

(c) The department of archaeology and historic preservation; and

(d) The appropriate federally recognized tribal governments that may be affected by the proposed facility.

(7) The council must work with local governments where a project is proposed to be sited in order to provide for meaningful participation and input during siting review and compliance monitoring.

(8) The council must consult with all federally recognized tribes that possess resources, rights, or interests reserved or protected by federal treaty, statute, or executive order in the area where an energy facility is proposed to be located to provide early and meaningful participation and input during siting review and compliance monitoring. The chair and designated staff must offer to conduct government-to-government consultation to address issues of concern raised by such a tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the proposed energy facility and to seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights. The chair must provide regular updates on the consultation to the council throughout the application review process. The report from the council to the governor required in RCW 80.50.100 must include a summary of the government-to-government consultation process that complies with RCW 42.56.300, including the issues and proposed resolutions.

(9) The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites.

NEW SECTION. Sec. 7. A new section is added to chapter 80.50 RCW to read as follows:

(1) A person proposing to construct, reconstruct, or enlarge a clean energy product manufacturing facility may choose to receive certification under this chapter.

(2) All of the council's powers with regard to energy facilities apply to clean energy product manufacturing facilities, and such a facility is subject to all provisions of this chapter that apply to an energy facility.

**Sec. 8.** RCW 80.50.071 and 2016 sp.s. c 10 s 1 are each amended to read as follows:

(1) The council shall receive all applications for energy facility site certification. Each applicant shall pay actual costs incurred by the council (~~and the utilities and transportation commission~~) in processing an application.

(a) Each applicant shall, at the time of application submission, (~~deposit with the utilities and transportation commission~~) pay to the council for deposit into the energy facility site evaluation council account created in section 15 of this act an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the applicant. The council (~~and the utilities and transportation commission~~) shall charge costs against the deposit if the applicant withdraws its application and has not reimbursed (~~the commission, on behalf of~~) the council(;) for all actual expenditures incurred in considering the application.

(b) The council may commission its own independent consultant study to measure the consequences of the proposed energy facility on the environment or any matter that it deems essential to an adequate appraisal of the site. The council(~~, after consultation with the utilities and transportation commission,~~) shall provide an estimate of the cost of the study to the applicant and consider applicant comments.

(c) In addition to the deposit required under (a) of this subsection, applicants must reimburse (~~the utilities and transportation commission, on behalf of~~) the

council((;)) for actual expenditures that arise in considering the application, including the cost of any independent consultant study. The ~~((utilities and transportation commission, on behalf of the))~~ council((;)) shall submit to each applicant an invoice of actual expenditures made during the preceding calendar quarter in sufficient detail to explain the expenditures. The applicant shall pay the ~~((utilities and transportation commission))~~ council the amount of the invoice by the due date.

(2) Each certificate holder shall pay ~~((to the utilities and transportation commission))~~ the actual costs incurred by the council for inspection and determination of compliance by the certificate holder with the terms of the certification relative to monitoring the effects of construction, operation, and site restoration of the facility.

(a) Each certificate holder shall, within thirty days of execution of the site certification agreement, ~~((deposit with the utilities and transportation commission))~~ pay to the council for deposit into the energy facility site evaluation council account created in section 15 of this act an amount up to fifty thousand dollars, or such greater amount as specified by the council after consultation with the certificate holder. The council ~~((and the utilities and transportation commission))~~ shall charge costs against the deposit if the certificate holder ceases operations and has not reimbursed ~~((the commission, on behalf of))~~ the council((;)) for all actual expenditures incurred in conducting inspections and determining compliance with the terms of the certification.

(b) In addition to the deposit required under (a) of this subsection, certificate holders must reimburse ~~((the utilities and transportation commission, on behalf of))~~ the council((;)) for actual expenditures that arise in administering this chapter and determining compliance. The council ~~((; after consultation with the utilities and transportation commission,))~~ shall submit to each certificate holder an invoice of the expenditures actually made during the preceding calendar quarter in sufficient detail to explain the expenditures. The certificate holder shall pay ~~((the utilities and transportation commission))~~ the amount of the invoice by the due date.

(3) If an applicant or certificate holder fails to provide the initial deposit, or if subsequently required payments are not received within thirty days following receipt of the invoice from the council, the council may (a) in the case of the applicant, suspend processing of the application until payment is received; or (b) in the case of a certificate holder, suspend the certification.

(4) All payments required of the applicant or certificate holder under this section are to be made to the ~~((utilities and transportation commission who shall make payments as instructed by the council from the funds submitted))~~ council for deposit into the energy facility site evaluation council account created in section 15 of this act. All such funds shall be subject to state auditing procedures. Any unexpended portions of the deposit shall be returned to the applicant within sixty days following the conclusion of the application process or to the certificate holder within sixty days after a determination by the council that the certificate is no longer required and there is no continuing need for compliance with its terms. For purposes of this section, "conclusion of the application process" means after the governor's decision granting or denying a certificate and the expiration of any opportunities for judicial review.

(5)(a) Upon receipt of an application for an energy facility site certification proposing an energy plant or alternative energy resource that is connected to electrical transmission facilities of a nominal voltage of at least one hundred fifteen thousand volts, the council shall notify in writing the United States department of defense. The notification shall include, but not be limited to, the following:

- (i) A description of the proposed energy plant or alternative energy resource;
- (ii) The location of the site;
- (iii) The placement of the energy plant or alternative energy resource on the site;
- (iv) The date and time by which comments must be received by the council; and
- (v) Contact information of the council and the applicant.

(b) The purpose of the written notification is to provide an opportunity for the United States department of defense to comment upon the application, and to identify potential issues relating to the placement and operations of the energy plant or alternative energy resource, before a site certification application is approved. The time period set forth by the council for receipt of such comments shall not extend the time period for the council's processing of the application.

(c) In order to assist local governments required to notify the United States department of defense under RCW 35.63.270, 35A.63.290, and 36.01.320, the council shall post on its website the appropriate information for contacting the United States department of defense.

**Sec. 9.** RCW 80.50.090 and 2006 c 205 s 3 and 2006 c 196 s 6 are each reenacted and amended to read as follows:

(1) The council shall conduct an informational public hearing in the county of the proposed site as soon as practicable but not later than sixty days after receipt of an application for site certification. However, the place of such public hearing shall be as close as practical to the proposed site.

(2) Subsequent to the informational public hearing, the council shall conduct a public hearing to determine whether or not the proposed site is consistent and in compliance with city, county, or regional land use plans or zoning ordinances (~~If it is determined that the proposed site does conform with existing land use plans or zoning ordinances in effect as of the date of the application, the city, county, or regional planning authority shall not thereafter change such land use plans or zoning ordinances so as to affect the proposed site~~) on the date of the application.

(3)(a) After the submission of an environmental checklist and prior to issuing a threshold determination that a facility is likely to cause a significant adverse environmental impact under chapter 43.21C RCW, the director must notify the project applicant and explain in writing the basis for its anticipated determination of significance. Prior to issuing the threshold determination of significance, the director must give the project applicant the option of withdrawing and revising its application and the associated environmental checklist to clarify or make changes to features of the proposal that are designed to mitigate the impacts that were the basis of the director's anticipated determination of significance. The director shall make the threshold determination based upon the changed or clarified proposal following the

applicant's submittal. The director must provide an opportunity for public comment on a project for which a project applicant has withdrawn and revised the application and environmental checklist and subsequently received a threshold determination of nonsignificance or mitigated determination of nonsignificance.

(b) The notification required under (a) of this subsection is not an official determination by the director and is not subject to appeal under chapter 43.21C RCW.

~~((3))~~ (4) Prior to the issuance of a council recommendation to the governor under RCW 80.50.100 a public hearing, conducted as an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, shall be held.

(a) At such public hearing any person shall be entitled to be heard in support of or in opposition to the application for certification by raising one or more specific issues, provided that the person has raised the issue or issues in writing with specificity during the application review process or during the public comment period that will be held prior to the start of the adjudicative hearing.

(b) If the environmental impact of the proposed facility in an application for certification is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031, the council may limit the topic of the public hearing conducted as an adjudicative proceeding under this section to whether any land use plans or zoning ordinances with which the proposed site is determined to be inconsistent under subsection (2) of this section should be preempted.

(5) After expedited processing is granted under RCW 80.50.075, the council must hold a public meeting to take comments on the proposed application prior to issuing a council recommendation to the governor.

~~((4))~~ (6) Additional public hearings shall be held as deemed appropriate by the council in the exercise of its functions under this chapter.

**Sec. 10.** RCW 80.50.100 and 2011 c 180 s 109 are each amended to read as follows:

(1)(a) The council shall report to the governor its recommendations as to the approval or rejection of an application for certification within twelve months of receipt by the council of ~~((such))~~ an application deemed complete by the director, or such later time as is mutually agreed by the council and the applicant.

(b) The council shall review and consider comments received during the application process in making its recommendation.

(c) In the case of an application filed prior to December 31, 2025, for certification of an energy facility proposed for construction, modification, or expansion for the purpose of providing generating facilities that meet the requirements of RCW 80.80.040 and are located in a county with a coal-fired electric ~~((generating [generation]))~~ generation facility subject to RCW 80.80.040(3)(c), the council shall expedite the processing of the application pursuant to RCW 80.50.075 and shall report its recommendations to the governor within one hundred eighty days of receipt by the council of such an application, or a later time as is mutually agreed by the council and the applicant.

(2) If the council recommends approval of an application for certification, it shall also submit a draft certification agreement with the report. The council shall include conditions in the draft certification agreement to implement the provisions of this chapter~~((;))~~ including, but not limited to, conditions to protect

state ~~((or))~~, local governmental, or community interests, or overburdened communities as defined in RCW 70A.02.010 affected by the construction or operation of the ~~((energy))~~ facility, and conditions designed to recognize the purpose of laws or ordinances, or rules or regulations promulgated thereunder, that are preempted or superseded pursuant to RCW 80.50.110 as now or hereafter amended.

(3)(a) Within ~~((sixty))~~ 60 days of receipt of the council's report the governor shall take one of the following actions:

- (i) Approve the application and execute the draft certification agreement; or
- (ii) Reject the application; or

(iii) Direct the council to reconsider certain aspects of the draft certification agreement.

(b) The council shall reconsider such aspects of the draft certification agreement by reviewing the existing record of the application or, as necessary, by reopening the adjudicative proceeding for the purposes of receiving additional evidence. Such reconsideration shall be conducted expeditiously. The council shall resubmit the draft certification to the governor incorporating any amendments deemed necessary upon reconsideration. Within ~~((sixty))~~ 60 days of receipt of such draft certification agreement, the governor shall either approve the application and execute the certification agreement or reject the application. The certification agreement shall be binding upon execution by the governor and the applicant.

(4) The rejection of an application for certification by the governor shall be final as to that application but shall not preclude submission of a subsequent application for the same site on the basis of changed conditions or new information.

**Sec. 11.** RCW 80.50.175 and 1983 c 3 s 205 are each amended to read as follows:

(1) In addition to all other powers conferred on the council under this chapter, the council shall have the powers set forth in this section.

~~(2) ((The council, upon request of any potential applicant, is authorized, as provided in this section, to conduct a preliminary study of any potential site prior to receipt of an application for site certification. A fee of ten thousand dollars for each potential site, to be applied toward the cost of any study agreed upon pursuant to subsection (3) of this section, shall accompany the request and shall be a condition precedent to any action on the request by the council.~~

~~(3) After receiving a request to study a potential site, the council shall commission its own independent consultant to study matters relative to the potential site. The study shall include, but need not be limited to, the preparation and analysis of environmental impact information for the proposed potential site and any other matter the council and the potential applicant deem essential to an adequate appraisal of the potential site. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential site is located, any federal, state, or local governmental agency that might be requested to comment upon the potential site, and any municipal or public corporation having an interest in the matter. The full cost of the study shall be paid by the potential applicant: PROVIDED, That such costs exceeding a total of ten thousand dollars shall be payable subject to the potential applicant giving prior approval to such excess amount.~~



~~(4) Any study prepared by the council pursuant to subsection (3) of this section may be used in place of the "detailed statement" required by RCW 43.21C.030(2)(c) by any branch of government except the council created pursuant to chapter 80.50 RCW.~~

~~(5) All payments required of the potential applicant under this section are to be made to the state treasurer, who in turn shall pay the consultant as instructed by the council. All such funds shall be subject to state auditing procedures. Any unexpended portions thereof shall be returned to the potential applicant.~~

~~(6) Nothing in this section shall change the requirements for an application for site certification or the requirement of payment of a fee as provided in RCW 80.50.071, or change the time for disposition of an application for certification as provided in RCW 80.50.100.~~

~~(7) Nothing in this section shall be construed as preventing a city or county from requiring any information it deems appropriate to make a decision approving a particular location.)) (a) The council, upon agreement with any potential applicant, is authorized as provided in this section to conduct a preliminary study of any potential project prior to receipt of an application for site certification. This preliminary study must be completed before any environmental review or process under RCW 43.21C.031 is initiated. A fee of \$10,000 for each potential project, to be applied toward the cost of any study agreed upon pursuant to (b) of this subsection, must accompany the agreement and is a condition precedent to any action on the agreement by the council.~~

~~(b) Upon agreement with the potential applicant, the council may commission its own independent consultant to study matters relative to the potential project. In conducting the study, the council is authorized to cooperate and work jointly with the county or counties in which the potential project is located, any federal, state, local, or tribal governmental agency that might be requested to comment on the potential project, and any municipal or public corporation having an interest in the matter. The full cost of the study must be paid by the potential applicant. However, costs exceeding a total of \$10,000 are payable subject to the potential applicant giving prior approval to such an excess amount.~~

~~(3) All payments required of the potential applicant under this section must be deposited into the energy facility site evaluation council account created in section 15 of this act. All of these funds are subject to state auditing procedures. Any unexpended portions of the funds must be returned to the potential applicant.~~

~~(4) If a potential applicant subsequently submits a formal application for site certification to the council for a site where a preliminary study was conducted, payments made under this section for that study may be considered as payment towards the application fee provided in RCW 80.50.071.~~

**NEW SECTION, Sec. 12.** A new section is added to chapter 80.50 RCW to read as follows:

(1) Except for the siting of electrical transmission facilities, any potential applicant may request a preapplication review of a proposed project. Council staff must review the preapplicant's draft application materials and provide comments on either additional studies or stakeholder and tribal input, or both, that should be included in the formal application for site certification. Council staff must inform affected federally recognized tribes under RCW 80.50.060 of

the preapplication review. The department of archaeology and historic preservation shall coordinate with the affected federally recognized tribes and the applicant in order to assess potential effects to tribal cultural resources, archaeological sites, and sacred sites.

(2) After initial review, the director and the applicant may agree on fees to be paid by the applicant so that council staff may conduct further review and consultation, including contracting for review by other parties.

**Sec. 13.** RCW 80.50.340 and 2007 c 325 s 4 are each amended to read as follows:

(1) A preapplicant applying under RCW 80.50.330 shall pay to the council a fee of ten thousand dollars to be applied to the cost of the preapplication process as a condition precedent to any action by the council, provided that costs in excess of this amount shall be paid only upon prior approval by the preapplicant, and provided further that any unexpended portions thereof shall be returned to the preapplicant.

(2) The council shall consult with the preapplicant and prepare a plan for the preapplication process which shall commence with an informational public hearing within ~~((sixty))~~ 60 days after the receipt of the preapplication fee as provided in RCW 80.50.090.

(3) The preapplication plan shall include but need not be limited to:

(a) An initial consultation to explain the proposal and request input from council staff, federal and state agencies, cities, towns, counties, port districts, tribal governments, property owners, and interested individuals;

(b) Where applicable, a process to guide negotiations between the preapplicant and cities, towns, and counties within the corridor proposed pursuant to RCW 80.50.330.

(4) Fees paid under this section must be deposited in the energy facility site evaluation council account created in section 15 of this act.

NEW SECTION. **Sec. 14.** A new section is added to chapter 41.06 RCW to read as follows:

In addition to the exemptions provided under RCW 41.06.070, the provisions of this chapter do not apply to the following positions at the energy facility site evaluation council: The director; the personal secretary to the director and the council chair; and up to two professional staff members.

NEW SECTION. **Sec. 15.** A new section is added to chapter 80.50 RCW to read as follows:

The energy facility site evaluation council account is created in the custody of the state treasurer. All receipts from funds received by the council for all payments, including fees, deposits, and reimbursements received under this chapter must be deposited into the account. Expenditures from the account may be used for purposes set forth in this chapter. Only the chair of the council or the chair'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 43.79A.040 and 2021 c 175 s 10 and 2021 c 108 s 5 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, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must 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 must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship (~~([account])~~) account, the Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the energy facility site evaluation council account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the

Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive (~~eighty~~) 80 percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance 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.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 17. A new section is added to chapter 80.50 RCW to read as follows:

(1) Those administrative powers, duties, and functions of the utilities and transportation commission that were performed under the provisions of this chapter for the council prior to the effective date of this section are transferred to the council as set forth in this act.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the utilities and transportation commission pertaining to the powers, duties, and functions transferred must be delivered to the custody of the council. All cabinets, furniture, office equipment, motor vehicles, and other tangible property under the inventory of the utilities and transportation commission for the council must be transferred to the council. All funds, credits, or other assets held by the utilities and transportation commission for the benefit of the council, of which were paid to the utilities and transportation commission pursuant to this chapter must be assigned to the

council and transferred to the energy facility site evaluation council account created in section 15 of this act.

(b) Any appropriations made to the utilities and transportation commission for the council to carrying out its powers, functions, and duties transferred must, on the effective date of this section, be transferred and credited to the council. Any funds received pursuant to payment made under this chapter must be credited to the council and deposited in the energy facility site evaluation council account created in section 15 of this act.

(c) If any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall decide as to the proper allocation and certify the same to the state agencies concerned.

(3) All pending business before the utilities and transportation commission pertaining to the powers, duties, and functions transferred must be continued and acted upon by the council. All existing contracts and obligations remain in full force and must be performed by the council.

(4) The transfer of the powers, duties, functions, and personnel of the utilities and transportation commission does not affect the validity of any act performed before the effective date of this section.

(5) If apportionments of budgeted or nonbudgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) All employees of the utilities and transportation commission that are engaged in performing the powers, functions, and duties of the council, are transferred to the council. All employees classified under chapter 41.06 RCW, the state civil service law, assigned to the council shall continue to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing state civil service law.

**Sec. 18.** RCW 80.50.075 and 2006 c 205 s 2 are each amended to read as follows:

(1) Any person filing an application for certification of ~~((an energy facility or an alternative energy resource))~~ any facility pursuant to this chapter may apply to the council for an expedited processing of such an application. The application for expedited processing shall be submitted to the council in such form and manner and accompanied by such information as may be prescribed by council rule. The council may grant an applicant expedited processing of an application for certification upon finding that the environmental impact of the proposed ~~((energy))~~ facility is not significant or will be mitigated to a nonsignificant level under RCW 43.21C.031 and the project is found under RCW 80.50.090(2) to be consistent and in compliance with city, county, or regional land use plans or zoning ordinances.

(2) Upon granting an applicant expedited processing of an application for certification, the council shall not be required to:

(a) Commission an independent study to further measure the consequences of the proposed (~~energy facility or alternative energy resource~~) facility on the environment, notwithstanding the other provisions of RCW 80.50.071; nor

(b) Hold an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, on the application.

(3) The council shall adopt rules governing the expedited processing of an application for certification pursuant to this section.

***\*NEW SECTION. Sec. 19. (1)(a) The department must consult with stakeholders from rural communities, agriculture, natural resource management and conservation, and forestry to gain a better understanding of the benefits and impacts of anticipated changes in the state's energy system, including the siting of facilities under the jurisdiction of the energy facility site evaluation council, and to identify risks and opportunities for rural communities. This consultation must be conducted in compliance with the community engagement plan developed by the department under chapter 70A.02 RCW and with input from the environmental justice council, using the best recommended practices available at the time. The department must collect the best available information and learn from the lived experiences of people in rural communities, with the objective of improving state implementation of clean energy policies, including the siting of energy facilities under the jurisdiction of the energy facility site evaluation council, in ways that protect and improve life in rural Washington. The department must consult with an array of rural community members, including: Low-income community and vulnerable population members or representatives; legislators; local elected officials and staff; those involved with agriculture, forestry, and natural resource management and conservation; renewable energy project property owners; utilities; large energy consumers; and others.***

***(b) The consultation must include stakeholder meetings with at least one in eastern Washington and one in western Washington.***

***(c) The department's consultation with stakeholders may include, but is not limited to, the following topics:***

***(i) Energy facility siting under the jurisdiction of the energy facility site evaluation council, including placement of new renewable energy resources, such as wind and solar generation, pumped storage, and batteries or new nonemitting electric generation resources, and their contribution to resource adequacy;***

***(ii) Production of hydrogen, biofuels, and feedstocks for clean fuels;***

***(iii) Programs to reduce energy cost burdens on rural families and farm operations;***

***(iv) Electric vehicles, farm and warehouse equipment, and charging infrastructure suitable for rural use;***

***(v) Efforts to capture carbon or produce energy on agricultural, forest, and other rural lands, including dual use solar projects that ensure ongoing agricultural operations;***

***(vi) The use of wood products and forest practices that provide low-carbon building materials and renewable fuel supplies; and***

***(vii) The development of clean manufacturing facilities, such as solar panels, vehicles, and carbon fiber.***

(2)(a) *The department must complete a report on rural clean energy and resilience that takes into consideration the consultation with rural stakeholders as described in subsection (1) of this section. The report must include recommendations for how policies, projects, and investment programs, including energy facility siting through the energy facility site evaluation council, can be developed or amended to more equitably distribute costs and benefits to rural communities. The report must include an assessment of how to improve the total benefits to rural areas overall, as well as the equitable distribution of benefits and costs within rural communities.*

(b) *The report must include a baseline understanding of rural energy production and consumption, and collect data on their economic impacts. Specifically, the report must examine:*

(i) *Direct, indirect, and induced jobs in construction and operations;*

(ii) *Financial returns to property owners;*

(iii) *Effects on local tax revenues and public services, which must include whether any school districts had a net loss of resources from diminished local effort assistance payments required under chapter 28A.500 RCW;*

(iv) *Effects on other rural land uses, such as agriculture, natural resource management and conservation, and tourism;*

(v) *Geographic distribution of large energy projects previously sited or forecast to be sited in Washington;*

(vi) *Potential forms of economic development assistance and impact mitigation payments; and*

(vii) *Relevant information from the least-conflict priority solar siting pilot project in the Columbia basin of eastern and central Washington required under section 607, chapter 334, Laws of 2021.*

(c) *The report must include a forecast of what Washington's clean energy transition will require for siting energy projects in rural Washington. The department must gather and analyze the best available information to produce forecast scenarios.*

(d) *By December 1, 2022, the department must submit an interim report on rural clean energy and resilience to the joint committee on energy supply, energy conservation, and energy resilience created in RCW 44.39.010, the energy facility site evaluation council, and the appropriate policy and fiscal committees of the legislature.*

(e) *By December 1, 2023, the department must submit a final report on rural clean energy and resilience to the joint committee on energy supply, energy conservation, and energy resilience created in RCW 44.39.010, the energy facility site evaluation council, and the appropriate policy and fiscal committees of the legislature.*

(3) *For the purposes of this section, "department" means the department of commerce.*

*\*Sec. 19 was vetoed. See message at end of chapter.*

*\*Sec. 20. RCW 44.39.010 and 2005 c 299 s 1 are each amended to read as follows:*

*There is hereby created the joint committee on energy supply (~~and~~), energy conservation, and energy resilience.*

*\*Sec. 20 was vetoed. See message at end of chapter.*

*\*Sec. 21. RCW 44.39.012 and 2005 c 299 s 4 are each amended to read as follows:*

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

*(1) "Committee" means the joint committee on energy supply ~~((and)),~~ energy conservation, and energy resilience.*

*(2) "Conservation" means reduced energy consumption or energy cost, or increased efficiency in the use of energy, and activities, measures, or equipment designed to achieve such results.*

*\*Sec. 21 was vetoed. See message at end of chapter.*

*NEW SECTION. Sec. 22. (1)(a) The committee shall review the following issues:*

*(i) Inequities in where large alternative energy projects, including projects under the jurisdiction of the energy facility site evaluation council, have been sited in Washington;*

*(ii) Inequities in where large alternative energy projects, including projects under the jurisdiction of the energy facility site evaluation council, are forecast to be sited in Washington; and*

*(iii) Forms of economic development assistance, mitigation payments, and viewed impairment payments that counties not hosting their per capita share of alternative energy resources should provide to counties that host more than their per capita share.*

*(b) In support of its obligations under (a) of this subsection, the committee must review the report produced by the department of commerce under section 19 of this act.*

*(2) The committee must hold at least four meetings, at least two of which must be in eastern Washington. The first meeting of the committee must occur by September 30, 2022.*

*(3) Relevant state agencies, departments, and commissions, including the energy facility site evaluation council, shall cooperate with the committee and provide information as the chair reasonably requests.*

*(4) The committee shall report its findings and any recommendations to the energy facility site evaluation council and the committees of the legislature with jurisdiction over environment and energy laws by December 1, 2023. Recommendations of the committee may be made by a simple majority of committee members. In the event that the committee does not reach majority-supported recommendations, the committee may report minority findings supported by at least two members of the committee.*

*(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.*

*(a) "Alternative energy" means energy derived from an alternative energy resource specified in RCW 80.50.020(1).*

*(b) "Committee" means the joint committee on energy supply, energy conservation, and energy resilience created in RCW 44.39.010.*

*(6) This section expires June 30, 2024.*

*\*Sec. 22 was vetoed. See message at end of chapter.*

*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, 2022, in the omnibus appropriations act, this act is null and void.*



NEW SECTION. **Sec. 24.** This act takes effect June 30, 2022.

NEW SECTION. **Sec. 25.** The following acts or parts of acts are each repealed:

(1) RCW 80.50.190 (Disposition of receipts from applicants) and 1977 ex.s. c 371 s 15; and

(2) RCW 80.50.904 (Effective date—1996 c 4) and 1996 c 4 s 6.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 25, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2022.

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

"I am returning herewith, without my approval as to Sections 19, 20, 21, and 22, Engrossed Second Substitute House Bill No. 1812 entitled:

"AN ACT Relating to modernizing the energy facility site evaluation council to meet the state's clean energy goals."

Section 19 of Engrossed Second Substitute House Bill 1812 directs the Department of Commerce to conduct a study and stakeholder engagement around rural energy issues; however, the Legislature did not provide funding for this work. Fortunately, there is important study and stakeholder engagement work directed by the Legislature that is underway now, including a stakeholder process looking at how to effectively and responsibly site low-carbon energy. Recommendations from these efforts are due by the end of the year. In addition, the WSU Energy Program is launching a study and stakeholder process for how to site solar energy generation with the least conflicts.

There are significant economic development and job opportunities in clean energy in rural Washington and throughout the state. On our shared path to clean energy and a safe climate, I am committed to learning from and having dialogue with rural communities across the state about clean energy, including project siting, and about how we can support vibrant rural communities as we transition to a clean energy economy. Doing this well will require deep engagement with rural communities. Therefore, I am directing the Department of Commerce to bring forward a proposal for funding in the 2023-25 biennium to conduct a study and stakeholder engagement process for key issues around clean energy and rural communities.

In addition, Sections 20, 21, and 22 amend statutes of an existing joint legislative committee and give it a new charge related to examining energy facility siting. That new charge is intended to be informed by the results of the Department of Commerce study in Section 19. Because that study was not funded, the committee would lack a key information source for their work.

For these reasons I have vetoed Sections 19, 20, 21, and 22 of Engrossed Second Substitute House Bill No. 1812.

With the exception of Sections 19, 20, 21, and 22, Engrossed Second Substitute House Bill No. 1812 is approved."

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## CHAPTER 184

[House Bill 1934]

### DEPARTMENT OF TRANSPORTATION EXCHANGE AGREEMENTS—TRIBAL GOVERNMENT PARTICIPATION

AN ACT Relating to the participation of tribal governments in exchange agreements; and amending RCW 47.12.370.

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

**Sec. 1.** RCW 47.12.370 and 2021 c 333 s 707 are each amended to read as follows:

(1) The department may enter into exchange agreements with local, state, or federal agencies, tribal governments, or private nonprofit nature conservancy corporations as defined in RCW 64.04.130, to convey properties under the jurisdiction of the department that serve as environmental mitigation sites, as full or part consideration for the grantee assuming all future maintenance and operation obligations and costs required to maintain and operate the environmental mitigation site in perpetuity.

~~(2)((a) Except as provided in (b) of this subsection, tribal governments shall only be eligible to participate in an exchange agreement if they:~~

~~(i) Provide the department with a valid waiver of their tribal sovereign immunity from suit. The waiver must allow the department to enforce the terms of the exchange agreement or quitclaim deed in state court; and~~

~~(ii) Agree that the property shall not be placed into trust status.~~

~~(b) During the 2021-2023 fiscal biennium, the restrictions in (a) of this subsection do not apply to any exchange agreement with a tribal government for the acquisition of real property required by the department for the SR 167/SR 509 Puget Sound Gateway project.~~

~~(3))~~ The conveyances must be by quitclaim deed, or other form of conveyance, executed by the secretary of transportation, and must expressly restrict the use of the property to a mitigation site consistent with preservation of the functions and values of the site, and must provide for the automatic reversion to the department if the property is not used as a mitigation site or is not maintained in a manner that complies with applicable permits, laws, and regulations pertaining to the maintenance and operation of the mitigation site.

Passed by the House February 9, 2022.

Passed by the Senate March 2, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

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## CHAPTER 185

[Second Substitute House Bill 1988]

### SALES AND USE TAX—CERTAIN INVESTMENT PROJECTS

AN ACT Relating to tax deferrals for investment projects in clean technology manufacturing, clean alternative fuels production, and renewable energy storage; adding a new chapter to Title 82 RCW; providing an effective date; and providing expiration dates.

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

NEW SECTION. **Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Eligible investment project" means an investment project of at least \$2,000,000 in either qualified buildings or qualified machinery and equipment, or both, for any of the following new, renovated, or expanded:

(a) Manufacturing operations;

(b) Facilities to produce clean fuels, subject to the limitations in subsection (8)(d) of this section, renewable hydrogen, green electrolytic hydrogen, or green hydrogen carriers; or

(c) Storage facilities.

(3) "Green electrolytic hydrogen" means hydrogen produced through electrolysis and does not include hydrogen manufactured using steam reforming or any other conversion technology that produces hydrogen from a fossil fuel feedstock.

(4) "Green hydrogen carrier" means a chemical compound, created using electricity or renewable resources as energy input and without use of fossil fuel as a feedstock, from renewable hydrogen or green electrolytic hydrogen for the purposes of transportation, storage, and dispensing of hydrogen.

(5)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in section 2 of this act; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in section 2 of this act.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the eligible investment project is a phased project, "initiation of construction" applies separately to each phase.

(6) "Investment project" means an investment in either qualified buildings or qualified machinery and equipment, or both, including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacturing" has the same meaning as "to manufacture" in RCW 82.04.120.

(8) "Manufacturing operation" means manufacturing tangible personal property exclusively incorporated as an ingredient or component of or used in the generation of:

(a) Passenger cars, light duty trucks, medium duty passenger vehicles, buses, commercial vehicles as defined in RCW 46.04.140, or motorcycles that emit no exhaust gas from the onboard source of power, other than water vapor;

(b) Charging and fueling infrastructure for electric, hydrogen, or other vehicle types that emits no exhaust gas from the onboard source of power, other than water vapor;

(c) Renewable and green electrolytic hydrogen, including preparing renewable and green electrolytic hydrogen for distribution or converting it to a green hydrogen carrier;

(d) Clean fuel with associated greenhouse gas emissions not exceeding 80 percent of the 2017 levels established under RCW 70A.535.020 or its successor statute under chapter 70A.535 RCW;

(e) Electricity from renewable resources; or

(f) Storage facilities.

(9) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

(10) "Operationally complete" means the eligible investment project is capable of being used for its intended purpose as described in the application.

(11) "Person" has the same meaning as in RCW 82.04.030.

(12) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity, used for manufacturing, including plant offices and warehouses or other buildings for the storage of raw materials or finished goods if the facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing. If a qualified building is used partly for manufacturing and partly for other purposes, the applicable tax deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(13) "Qualified machinery and equipment" means all new industrial fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control, monitor, or operate the machinery.

(14) "Recipient" means a person receiving a tax deferral under this chapter.

(15) "Renewable resource" has the same meaning as in RCW 82.08.816.

(16) "Storage facility" means a facility that:

(a) Accepts electricity as an energy source and uses a chemical, thermal, mechanical, or other process to store energy for subsequent delivery or consumption in the form of electricity; or

(b) Stores renewable hydrogen, green electrolytic hydrogen, or green hydrogen carrier for subsequent delivery or consumption.

**NEW SECTION. Sec. 2.** The lessor or owner of a qualified building is not eligible for a deferral under this chapter unless:

(1) The underlying ownership of the building, machinery, and equipment vests exclusively in the same person; or

(2)(a) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under RCW 82.32.534; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

**NEW SECTION. Sec. 3.** (1) Applications for deferral of taxes under this chapter must be made before initiation of the construction of the eligible

investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the eligible investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the eligible investment project, estimated or actual wages of employees related to the eligible investment project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires January 1, 2033.

**NEW SECTION. Sec. 4.** (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW on each eligible investment project. The certificate may only be used to make purchases of materials and equipment, labor, or services to be incorporated in the eligible investment project at the location listed on the certificate.

(2) No certificate may be issued for an investment project that has already received a deferral under this chapter or chapter 82.60 or 82.85 RCW.

(3) No certificate may be issued for an eligible investment project that has not had an application approved by the department as provided in section 3 of this act.

(4) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium.

(5) This section expires January 1, 2033.

**NEW SECTION. Sec. 5.** (1) The recipient of a deferral certificate under section 4 of this act must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the deferral certificate issued under section 4 of this act is invalid and taxes deferred under this chapter are due immediately.

**NEW SECTION. Sec. 6.** (1) The recipient must begin paying the deferred taxes in the second year after the date certified by the department as the date on which the eligible investment project has been operationally completed. The first payment of 10 percent of the deferred taxes is due on December 31st of the second calendar year after the certified date, with subsequent annual payments of 10 percent of the deferred taxes due on December 31st for each of the following nine years.

(2) The department may authorize an accelerated repayment schedule upon request of the recipient.

(3) Interest may 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.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this chapter because the department has found that a purchase is not eligible for tax deferral.

(5) The debt for deferred taxes are not extinguished by insolvency or other failure of the recipient.

(6) Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

**NEW SECTION. Sec. 7.** (1) The recipient of the deferral under this chapter must receive a reduction of the amount of state sales and use tax to be repaid under section 6 of this act only as follows:

(a) Fifty percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project includes procurement from and contracts with women, minority, or veteran-owned businesses; procurement from and contracts with entities that have a history of complying with federal and state wage and hour laws and regulations; apprenticeship utilization; and preferred entry for workers living in the area where the eligible investment project is being constructed. In the event that an eligible investment project is built without one or more of these standards, and a project developer or its designated principal contractor demonstrates that it has made all good faith efforts to meet the standards but was unable to comply due to lack of availability of qualified businesses or local hires, the department of labor and industries may certify that the developer complied with that standard;

(b) Seventy-five percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project complies with (a) of this subsection and compensates workers at prevailing wage rates determined by local collective bargaining as determined by the department of labor and industries; or

(c) One hundred percent of the state sales and use tax deferred, if the department of labor and industries certifies that the eligible investment project is developed under a community workforce agreement or project labor agreement.

(2)(a) The department of labor and industries must adopt emergency and permanent rules to:

(i) Define and set minimum requirements for all labor standards identified in subsection (1) of this section as well as documentation requirements and a certification process. The certification process and timeline must be designed to prevent undue delay to project development; and

(ii) Set requirements for all good faith efforts under subsection (1)(a) and (b) of this section. Requirements for all good faith efforts must be designed to maximize the likelihood that the project is completed with the standards, and include:

- (A) Proactive outreach to women, minority, and veteran-owned businesses;
- (B) Advertising in local community publications and publications appropriate to identified firms and with the office of minority and women's business enterprises;
- (C) Participating in community job fairs, conferences, and trade shows; and
- (D) Other measures.

(b) The standards for procurement from and contracts with women and minority-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the office of minority and women's business enterprises to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the office of minority and women's business enterprises review to determine compliance with the plan.

(c) The labor standard for procurement from and contracts with veteran-owned businesses under subsection (1)(a) of this section must include a requirement that the recipient of the deferral consult with the department of veterans affairs to develop a plan to meet the standards or good faith efforts. The requirements for good faith efforts must include the department of veterans affairs review to determine compliance with the plan.

(d) The department of labor and industries must consult with the office of minority and women's business enterprises, the department of veterans affairs, and the Washington apprenticeship and training council in setting standards and good faith efforts.

(3) Nothing in this section reduces the amount of local sales and use taxes to be repaid under section 6 of this act. The recipient must repay all local sales and use taxes due under chapters 82.08, 82.12, 82.14, and 81.104 RCW as provided in section 6 of this act.

**NEW SECTION. Sec. 8.** (1) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534. Reports must be filed for the first calendar year after the eligible investment project is operationally complete and continue through the end of the calendar year in which the final repayment occurs. If the economic benefits of the deferral are passed to a lessee, as provided in section 2 of this act, the lessee must file a complete annual tax performance report and the applicant is not required to file a complete annual tax performance report.

(2) If the eligible investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an eligible investment project is used for purposes other than those listed in section 1(2) of this act at any time during the calendar year in which the investment is certified by the department as having been operationally completed, or at any time during any of the repayment period, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	Percent of deferred taxes due
1	100
2	100
3	100
4	90
5	80
6	70

Year in which use occurs	Percent of deferred taxes due
7	60
8	50
9	40
10	30
11	20
12	10

(3) If the economic benefits of a tax deferral under this chapter are passed to a lessee as provided in section 2 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

NEW SECTION. Sec. 9. To the extent not inconsistent with the provisions of this chapter, chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. Sec. 10. RCW 82.32.805 does not apply to this act.

NEW SECTION. Sec. 11. (1) This section is the tax preference performance statement for the tax preference contained in chapter . . . , Laws of 2022 (this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, improve industry competitiveness, and create jobs.

(3) It is the legislature's specific public policy objective to build manufacturing capacity for carbon-free electricity and to financially incentivize the use of high labor standards.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate at least the first five years of available data, reporting its findings to the legislature by December 31, 2028. The review must include evaluation of:

- (i) The average construction wages for eligible projects;
- (ii) The number of jobs created in the clean technology sector;
- (iii) The use of apprenticeship programs, and women, minority, or veteran-owned businesses by eligible projects;
- (iv) The degree to which the preference encouraged manufacturing and component production for technologies that reduce greenhouse gas emissions;
- (v) Whether facilities benefiting from the preference would have been developed without the preference; and
- (vi) Any other relevant metric.

(b) The legislature does not intend to change the expiration of the preference based on the findings of the review.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.



NEW SECTION. **Sec. 12.** Sections 1 through 11 and 13 of this act constitute a new chapter in Title 82 RCW.

NEW SECTION. **Sec. 13.** This act takes effect July 1, 2022.

Passed by the House March 4, 2022.

Passed by the Senate March 10, 2022.

Approved by the Governor March 25, 2022.

Filed in Office of Secretary of State March 28, 2022.

**CHAPTER 186**

[Engrossed Substitute Senate Bill 5689]

**SUPPLEMENTAL TRANSPORTATION BUDGET**

AN ACT Relating to transportation funding and appropriations; amending RCW 47.01.071, 46.01.385, 47.01.505, 70A.205.415, 46.68.410, 46.55.010, 46.55.080, and 47.12.063; amending 2021 c 333 ss 101, 105, 106, 107, 109, 113, 201, 202, 203, 204, 205, 206, 207, 208, 209, 210, 211, 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223, 301, 302, 303, 305, 306, 307, 308, 309, 310, 311, 313, 401, 402, 403, 404, 405, 406, 407, 503, 504, 505, 506, 507, 508, 509, 510, 511, 512, 513, 514, 515, 516, 517, 518, 519, 520, 521, 522, 523, 601, 606, 701, and 719 (uncodified); adding new sections to 2021 c 333 (uncodified); creating a new section; repealing 2021 c 333 ss 526, 527, 528, 529, 530, 531, 532, 533, 534, 535, 536, and 537 (uncodified); making appropriations and authorizing expenditures for capital improvements; providing a contingent effective date; and declaring an emergency.

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

**2021-2023 FISCAL BIENNIUM**

**GENERAL GOVERNMENT AGENCIES—OPERATING**

**Sec. 101.** 2021 c 333 s 101 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF ARCHAEOLOGY AND HISTORIC PRESERVATION**

Motor Vehicle Account—State Appropriation . . . . . ~~(\$546,000)~~  
\$554,000

**Sec. 102.** 2021 c 333 s 105 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF AGRICULTURE**

Motor Vehicle Account—State Appropriation . . . . . ~~(\$1,346,000)~~  
\$1,394,000

**Sec. 103.** 2021 c 333 s 106 (uncodified) is amended to read as follows:

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

Motor Vehicle Account—State Appropriation . . . . . ~~(\$668,000)~~  
\$674,000

**Sec. 104.** 2021 c 333 s 107 (uncodified) is amended to read as follows:

**FOR THE EVERGREEN STATE COLLEGE**

Motor Vehicle Account—State Appropriation . . . . . \$150,000

The appropriation in this section is subject to the following conditions and limitations: The total appropriation in this section is provided solely for the Washington state institute for public policy to conduct a cost-benefit analysis for an exclusive or partial American steel requirement for future transportation contracts and subcontracts authorized in the transportation budget. This cost-benefit analysis must, to the extent feasible: (1) Compare existing types and uses

of steel to made in America steel alternatives including evaluation of quality; (2) examine benefits to Washington workers and the Washington economy; (3) examine lifecycle and embodied carbon greenhouse gas emissions; (4) identify requirements for purchasing American steel that minimize costs and maximize benefits; and (5) evaluate American steel requirements or preferences in other states. The Washington state institute for public policy may solicit input for the analysis from representatives of interested parties to include, but not be limited to, the construction and manufacturing sectors, organized labor in the construction and manufacturing sectors, cities, counties, American steel manufacturing companies, environmental advocacy organizations, and appropriate state agencies. A final report is due to the legislature by December 1, ~~((2021))~~ 2022.

**Sec. 105.** 2021 c 333 s 109 (uncodified) is amended to read as follows:

**FOR THE BOARD OF PILOTAGE COMMISSIONERS**

Pilotage Account—State Appropriation . . . . . ~~((\$5,777,000))~~  
\$6,334,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$2,926,000 of the pilotage account—state appropriation is provided solely for self-insurance liability premium expenditures; however, this appropriation is contingent upon the board:

(a) Annually depositing the first \$150,000 collected through Puget Sound pilotage district pilotage tariffs into the pilotage account; and

(b) Assessing a self-insurance premium surcharge of \$16 per pilotage assignment on vessels requiring pilotage in the Puget Sound pilotage district.

(2) The board of pilotage commissioners shall file the annual report to the governor and chairs of the transportation committees required under RCW 88.16.035(1)(f) by September 1, 2021, and annually thereafter. The report must include the continuation of policies and procedures necessary to increase the diversity of pilots, trainees, and applicants, including a diversity action plan. The diversity action plan must articulate a comprehensive vision of the board's diversity goals and the steps it will take to reach those goals.

**Sec. 106.** 2021 c 333 s 113 (uncodified) is amended to read as follows:

**FOR THE JOINT LEGISLATIVE AUDIT AND REVIEW COMMITTEE**

Puget Sound ~~((Ferry))~~ Capital Construction Account  
~~((Puget Sound Capital Construction Account))~~—State Appropriation . . . . . ~~((\$300,000))~~  
\$450,000

Multimodal Transportation Account—State  
Appropriation. . . . . \$200,000  
TOTAL APPROPRIATION . . . . . ~~((\$500,000))~~  
\$650,000

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

(1) ~~((\$300,000))~~ \$450,000 of the Puget Sound ~~((ferry))~~ capital construction account ~~((Puget Sound capital construction account))~~—state is provided solely for an independent review of the Washington state ferry system's design-build

~~contracting process for ((the)) hybrid-electric ((Olympic-class)) vessels. ((The review must evaluate, at minimum, the department's cost estimation and cost management practices relating to the design and construction of the first hybrid-electric vessel.)) The review must ((include recommendations to benefit the full program for the design and construction of five hybrid-electric vessels)) compare Washington state ferry's policies and practices for design-build contracting to best practices, both domestically and internationally, and recommend best practices that would benefit the Washington state ferry system as well as any updates to existing RCW needed to implement recommendations. The review must evaluate opportunities in the contracting process to decrease vessel construction costs and ensure operational efficiencies. The joint legislative audit and review committee must report to the legislature with the findings by ~~((October 1, 2022))~~ June 30, 2023.~~

(2) \$200,000 of the multimodal transportation account—state appropriation is provided solely for the joint legislative audit and review committee to conduct a review of the method used to determine the rates for leasing state-owned lands and air space to a regional transit authority. As part of this review, the committee must examine and evaluate the accounting and valuation methodology for debits and credits used in the land bank accounting program utilized by the department of transportation and a regional transit authority. The review must also provide an evaluation of the specific type of lease agreements used for air space leasing by the department of transportation with a regional transit authority and the valuation methodology used to determine the lease rate for the property and the cost and benefits of long-term leases based on the periodic land value appraisals under the terms of the land bank agreement. The committee must identify the full cost to the state transportation system if the entire plan for land and air rights leases by a regional transit authority is undertaken at full economic rent, and the difference in costs to the regional transit authority if the leases were to be issued at less than economic rent, including a scenario in which the value of the land and air rights are discounted by the federal share of the funds that were used to acquire or improve the property originally. The committee shall complete the review and provide a report to the transportation committees of the legislature by December 1, 2022.

NEW SECTION. Sec. 107. A new section is added to 2021 c 333 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF ECOLOGY**

Waste Tire Removal Account—State Appropriation . . . . . \$200,000

The appropriation in this section is subject to the following conditions and limitations: The entire waste tire removal account—state appropriation is provided solely for a comprehensive evaluation of the waste tire clean-up program. The evaluation must include, but is not limited to, the following: An inventory of all major tire piles that exist by county and an identification of whether those tire piles are on public or private lands; an assessment of the ability to recover tire clean-up and disposal costs from the responsible parties for each of those sites; and an inventory of major tire piles that were previously placed in marine waters in an attempt to establish artificial reefs, including a review of the environmental and safety issues associated with those marine tire piles. Based on the information gathered, the final report must include

recommendations for the highest and best use of approximately \$2,000,000 in time-limited resources for tire pile clean-up activities and recommendations to improve the department of ecology's current waste tire clean-up program in the future.

NEW SECTION. **Sec. 108.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**FOR THE OFFICE OF THE GOVERNOR**

State Patrol Highway Account—State Appropriation . . . . . \$650,000

The appropriation in this section is subject to the following conditions and limitations:

(1)(a) \$350,000 of the state patrol highway account—state appropriation is provided solely to the state office of equity solely for a contract with an independent consultant to conduct the studies, evaluations, and reporting functions required in chapter . . . (Substitute House Bill No. 2057), Laws of 2022. The state office of equity shall work with the department of enterprise services to conduct broad outreach for the consultant to ensure that the pool of potential consultants demonstrates familiarity with diversity, equity, and inclusion recruitment and retention efforts in law enforcement.

(b) \$100,000 of the state patrol highway account—state appropriation is provided solely to the state office of equity solely for a study to analyze existing state barriers to hiring commissioned officers. The study shall make recommendations to amend current state patrol hiring practices and underlying statutes that may need revision. Recommendations are due to the governor and appropriate committees of the legislature by December 1, 2022.

(c) \$200,000 of the state patrol highway account—state appropriation is provided solely to the state office of equity solely for facilitating long-term policy and system change to achieve equity in Washington state patrol hiring practices, including assisting Washington state patrol in applying an equity lens in all aspects of agency decision making, including program development, policy development, budgeting, and hiring. Activities to support this purpose may include an engagement plan with the communities served by the Washington state patrol and technical assistance to the Washington state patrol to build its internal capacity to sustain meaningful engagement with communities in all aspects of agency decision making.

(2) If chapter . . . (Substitute House Bill No. 2057), Laws of 2022 (strengthening diversity, equity, and inclusion in the state patrol workforce) is not enacted by June 30, 2022, the amount provided in the section lapses.

NEW SECTION. **Sec. 109.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**FOR WASHINGTON STATE UNIVERSITY**

Motor Vehicle Account—State Appropriation . . . . . \$200,000

Multimodal Transportation Account—State  
Appropriation . . . . . \$225,000

TOTAL APPROPRIATION . . . . . \$425,000

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

(1) \$200,000 of the motor vehicle account—state appropriation is provided solely for costs related to chapter . . . (Engrossed Second Substitute House Bill No. 1815), Laws of 2022 (catalytic converter theft). If chapter . . . (Engrossed Second Substitute House Bill No. 1815), Laws of 2022 is not enacted by June 30, 2022, then the amounts provided in this subsection lapse.

(2) \$225,000 of multimodal transportation account—state is provided solely to convene a work group to review the legal findings and holdings by the Washington supreme court in *City of Seattle v. Long* and to make recommendations in amending provisions concerning the towing and impound of vehicles under chapter 46.55 RCW. The work group must include relevant stakeholders including, but not limited to, vehicle resident advocates, nonprofit legal services organizations, tow truck operators or associations, municipal court representatives, fire chiefs and marshals, and representatives from cities and counties. The work group must meet at least three times and evaluate the following: The need to identify additional parties authorized to receive notice of and redeem impounded vehicles used as residences; the most effective and appropriate methods to identify vehicles used as residences before and after impound; the need to modify impound notice periods and forms; the need to modify impound hearing and public auction procedures and timelines for vehicles used as residences; the need to modify retention policies and timelines concerning impounded vehicles used as residences; which factors and considerations are appropriate for courts to evaluate when determining if towing and storage fees are excessive; the appropriate persons or entities and process to reimburse tow truck operators when excessive towing and storage fees are reduced; any other necessary procedural modifications or protections required, including homestead act protections, concerning impounded vehicles used as residences; and any other technical amendments or policy considerations discussed by the work group. The final report, including any work group findings and recommended legislative changes, must be submitted to the appropriate committees of the legislature and the governor by December 1, 2022.

**TRANSPORTATION AGENCIES—OPERATING**

**Sec. 201.** 2021 c 333 s 201 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON TRAFFIC SAFETY COMMISSION**

Highway Safety Account—State Appropriation . . . . .	<del>(\$4,625,000)</del>
	<u>\$5,125,000</u>
Highway Safety Account—Federal Appropriation . . . . .	<del>(\$27,202,000)</del>
	<u>\$27,324,000</u>
Highway Safety Account—Private/Local Appropriation . . . . .	\$60,000
<u>Cooper Jones Active Transportation Safety Account—</u>	
<u>State Appropriation . . . . .</u>	<u>\$400,000</u>
School Zone Safety Account—State Appropriation . . . . .	\$850,000
TOTAL APPROPRIATION . . . . .	<del>(\$32,737,000)</del>
	<u>\$33,759,000</u>

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

(1) The Washington traffic safety commission may oversee a demonstration project in one county, coordinating with a public transportation benefit area

(PTBA) and the department of transportation, to test the feasibility and accuracy of the use of automated enforcement technology for high occupancy vehicle (HOV) lane passenger compliance. All costs associated with the demonstration project must be borne by the participating public transportation benefit area. Any photograph, microphotograph, or electronic images of a driver or passengers are for the exclusive use of the PTBA in the determination of whether an HOV passenger violation has occurred to test the feasibility and accuracy of automated enforcement under this subsection and are not open to the public and may not be used in a court in a pending action or proceeding. All photographs, microphotographs, and electronic images must be destroyed after determining a passenger count and no later than the completion of the demonstration project. No warnings or notices of infraction may be issued under the demonstration project.

For purposes of the demonstration project, an automated enforcement technology device may record an image of a driver and passenger of a motor vehicle. The county and PTBA must erect signs marking the locations where the automated enforcement for HOV passenger requirements is occurring.

The PTBA, in consultation with the Washington traffic safety commission, must provide a report to the transportation committees of the legislature with the number of violations detected during the demonstration project, whether the technology used was accurate and any recommendations for future use of automated enforcement technology for HOV lane enforcement by June 30, ((2022)) 2023.

(2) The Washington traffic safety commission may oversee a pilot program in up to three cities implementing the use of automated vehicle noise enforcement cameras in zones that have been designated by ordinance as "Stay Out of Areas of Racing."

(a) Any programs authorized by the commission must be authorized by December 31, 2022.

(b) If a city has established an authorized automated vehicle noise enforcement camera pilot program under this section, the compensation paid to the manufacturer or vendor of the equipment used must be based upon the value of the equipment and services provided or rendered in support of the system.

(c) Any city administering a pilot program overseen by the traffic safety commission shall use the following guidelines to administer the program:

(i) Automated vehicle noise enforcement camera may record photographs or audio of the vehicle and vehicle license plate only while a violation is occurring. The picture must not reveal the face of the driver or of passengers in the vehicle;

(ii) The law enforcement agency of the city or county government shall install two signs facing opposite directions within 200 feet, or otherwise consistent with the uniform manual on traffic control devices, where the automated vehicle noise enforcement camera is used that state "Street Racing Noise Pilot Program in Progress";

(iii) Cities testing the use of automated vehicle noise enforcement cameras must post information on the city website and notify local media outlets indicating the zones in which the automated vehicle noise enforcement cameras will be used;

(iv) A city may only issue a warning notice with no penalty for a violation detected by automated vehicle noise enforcement cameras in a Stay Out of Areas

of Racing zone. Warning notices must be mailed to the registered owner of a vehicle within fourteen days of the detected violation;

(v) A violation detected through the use of automated vehicle noise enforcement cameras is not part of the registered owner's driving record under RCW 46.52.101 and 46.52.120;

(vi) Notwithstanding any other provision of law, all photographs, videos, microphotographs, audio recordings, or electronic images prepared under this section are for the exclusive use of law enforcement in the discharge of duties under this section and are not open to the public and may not be used in a court in a pending action or proceeding. No photograph, microphotograph, audio recording, or electronic image may be used for any purpose other than the issuance of warnings for violations under this section or retained longer than necessary to issue a warning notice as required under this subsection (2); and

(vii) By June 30, 2023, the participating cities shall provide a report to the commission and appropriate committees of the legislature regarding the use, public acceptance, outcomes, warnings issued, data retention and use, and other relevant issues regarding automated vehicle noise enforcement cameras demonstrated by the pilot projects.

(3) The Washington traffic safety commission shall coordinate with each city that implements a pilot program as authorized in RCW 46.63.170, chapter 224, Laws of 2020 to provide the transportation committees of the legislature with the following information by June 30, 2023:

(a) The number of warnings and infractions issued to first-time violators under the pilot program;

(b) The number of warnings and infractions issued to the registered owners of vehicles that are not registered with an address located in the city conducting the pilot program; and

(c) The frequency with which warnings and infractions are issued on weekdays versus weekend days.

(4) \$400,000 of the Cooper Jones active transportation safety account—state appropriation is provided solely for grant projects or programs for bicycle, pedestrian, and nonmotorist safety improvement administered by the commission in consultation with the Cooper Jones active transportation safety council. However, the funds must be held in unallotted status until the commission submits a spending plan to the transportation committees of the legislature and the governor.

(5) \$485,000 of the highway safety account—state appropriation and \$50,000 of the highway safety account—federal appropriation are provided solely to develop a statewide public awareness campaign to inform and educate Washington citizens about the slow down and move over law, RCW 46.61.212. The educational campaign must include the use of public service announcements and written and digital informative and educational materials distributed by reasonable means. The Washington traffic safety commission and the department of licensing, working independently or in collaboration or both, shall develop the public awareness campaign using any available resources, as well as federal and other grant funds that may, from time to time, become available for this purpose.

**Sec. 202.** 2021 c 333 s 202 (uncodified) is amended to read as follows:  
**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account—State Appropriation . . . . .	(( <del>\$1,134,000</del> ))	<u>\$1,155,000</u>
Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$4,760,000</del> ))	<u>\$4,821,000</u>
County Arterial Preservation Account—State Appropriation . . . . .	(( <del>\$1,669,000</del> ))	<u>\$1,693,000</u>
TOTAL APPROPRIATION . . . . .	(( <del>\$7,563,000</del> ))	<u>\$7,669,000</u>

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

(1) \$2,000,000 of the motor vehicle account—state appropriation is provided solely for deposit into the county road administration board emergency loan account—state account.

(2) Within appropriated funds, the county road administration board may opt in as provided under RCW 70A.02.030 to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.02 RCW. The board shall include in its 2022 annual report to the legislature a progress report on opting into the healthy environment for all act and a status report on diversity, equity, and inclusion within the board's jurisdiction.

Sec. 203. 2021 c 333 s 203 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Transportation Improvement Account—State Appropriation . . . . .	(( <del>\$4,510,000</del> ))	<u>\$4,577,000</u>
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The appropriations in this section are subject to the following conditions and limitations: Within appropriated funds, the transportation improvement board may opt in as provided under RCW 70A.02.030 to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.02 RCW. The board shall include in its 2022 annual report to the legislature a progress report on opting into the healthy environment for all act and a status report on diversity, equity, and inclusion within the board's jurisdiction.

Sec. 204. 2021 c 333 s 204 (uncodified) is amended to read as follows:

**FOR THE JOINT TRANSPORTATION COMMITTEE**

Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$2,679,000</del> ))	<u>\$3,197,000</u>
Multimodal Transportation Account—State Appropriation . . . . .	(( <del>\$420,000</del> ))	<u>\$1,620,000</u>
TOTAL APPROPRIATION . . . . .	(( <del>\$3,099,000</del> ))	<u>\$4,817,000</u>

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

(1)(a) \$250,000 of the motor vehicle account—state appropriation is for the joint transportation committee to convene a vehicle registration payment work group to study and recommend new options for payment of vehicle fees or taxes due at the time of application for vehicle registration.



(b) The work group must consist of, but is not limited to, the following members: A representative of the department of licensing, a representative of county auditors, a representative of subagents, a representative of local taxing authorities imposing a fee or tax due at the time of application for vehicle registration, a representative of a city offering or considering a rebate program for vehicle fees or taxes due at the time of application for vehicle registration, a representative of vehicle owners subject to a motor vehicle excise tax, a representative of vehicle owners subject to an electric car or transportation electrification fee, and an advocate for multimodal transportation options. Work group members are eligible for reimbursement or allowance for expenses pursuant to RCW 43.03.220.

(c) The work group must engage with members of the public who are interested in new options for payment of fees or taxes due at the time of application for vehicle registration, including persons from communities of color, low-income households, vulnerable populations, and displaced communities. Input from members of the public must inform the work group's recommendations. The work group must notify members of the public of opportunities to engage through a variety of communication channels including, but not limited to, the following: Outreach through community organizations, print and broadcast media, and social media.

(d) The work group's recommendations must include, but are not limited to, the following:

(i) Options to provide or encourage rebates to vehicle owners who pay taxes and fees due at the time of application for vehicle registration;

(ii) An agreed upon service fee structure for vehicle registration payment plans;

(iii) An agreed upon service fee revenue allocation method;

(iv) A process to allow agents and subagents to determine if a vehicle owner has paid all taxes and fees due prior to renewal of a vehicle registration;

(v) Options for reducing revenue loss due to missed payments, transfer of the certificate of title, or registration of a vehicle out of state; and

(vi) Options to reduce impacts to communities of color, low-income households, vulnerable populations, and displaced communities.

(e) A report of the work group's findings and recommendations is due to the transportation committees of the legislature by September 30, 2022.

(2) \$50,000 of the motor vehicle account—state appropriation is for the joint transportation committee to contract for a legal consultant to analyze and recommend options for the formation of a bistate bridge authority for the purpose of constructing, financing, operating and maintaining a new replacement bridge over the Columbia River near Hood River connecting Klickitat county in Washington to Hood River county in Oregon. The consultant may confer with the Hood River Bistate Working Group to understand the work and analysis that has been completed.

The Washington interlocal cooperation act, chapter 39.34 RCW, authorizes public agencies to contract with other public agencies via interlocal agreements that enable cooperation among the agencies to perform governmental activities and deliver public services, including agreements with public entities in other states. Such interstate agreements are deemed interstate compacts. The legal analysis must identify and recommend alternative and/or additional statutory

authority that would be necessary to allow for the formation of a local government bistate bridge authority or governance structure for the Hood River Bridge replacement that at a minimum may:

- (a) Issue bonds for bridge construction;
- (b) Collect tolls; and
- (c) Secure and administer state or federal grants and loans.

The legal analysis must be presented to the transportation committees of the legislature by September 30, 2021.

(3) \$220,000 of the multimodal transportation account—state appropriation is for overseeing a consultant study to provide recommendations related to the Washington state department of transportation's role in broadband service expansion efforts as directed in chapter 258, Laws of 2021 (broadband along state highways). If chapter 258, Laws of 2021 (broadband along state highways) is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(4) \$215,000 of the motor vehicle account—state appropriation is provided solely for the joint transportation committee, from amounts set aside out of statewide fuel taxes distributed to cities according to RCW 46.68.110(2), to convene a study on the impacts of current and historical city transportation investments on designated populations, including communities of color, low-income households, vulnerable populations, and displaced communities. The study must identify and measure the true costs of underinvestment of accessible transportation for designated populations, including the secondary impacts to public health, economic opportunity, educational access, and environmental risk factors. The assessment must include specific approaches to addressing existing inequities within cities, as well as recommendations to develop best practices to improve, diversify, and expand city transportation investments. A report must be provided to the office of financial management and the transportation committees of the legislature by December 20, 2022.

(5) \$400,000 of the motor vehicle account—state appropriation is for the development of a workforce plan for the Washington state ferries which addresses recruitment, retention, diversity, training needs, leadership development, succession planning and other elements needed to ensure sufficient and cost-effective crewing and staffing of the ferry system. In developing the scope of work for the plan and throughout plan development, the joint transportation committee must solicit input from representatives of the Washington state ferries division and the human resources division of the Washington state department of transportation. Represented employee groups must also be consulted as part of plan development. The plan must include a roadmap for Washington state ferries to comprehensively address persistent staffing challenges and strategically position itself for its future workforce needs. The joint transportation committee must issue an interim report identifying short-term strategies to reduce reliance on overtime for staffing day-to-day ferry service. The interim report is due to the transportation committees of the legislature by January 1, 2022. The final report is due to the transportation committees of the legislature by December 20, 2022.

(6) \$200,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to update the Washington State Short Line Rail Inventory and Needs Assessment, prepared in 2015, and to facilitate a stakeholder process to assess the effectiveness of state support for short line rail

infrastructure based on current and future short line rail infrastructure needs. This assessment must include consideration of current state grant and loan programs, including state investment in nonstate owned short lines, the state's role and investments in the Palouse River and Coulee City (PCC) rail system, and any other ongoing state activities related to short line rail infrastructure. The joint transportation committee must solicit input from all regions of the state from representatives of: Short line rail infrastructure owners, short line rail operators, short line rail customers from representative industries, ports served by short line rail infrastructure, the Washington state department of transportation, the utilities and transportation commission, and other relevant stakeholders as identified by the joint transportation committee. A report with recommendations to enhance the state's support for short line rail infrastructure is due to the transportation committees of the legislature by January 1, 2022.

(7)(a) \$200,000 of the motor vehicle account—state appropriation is for the joint transportation committee to develop a truck parking action plan with recommendations for immediate next steps for near-term and lasting change in the availability of truck parking for short-haul and long-distance commercial vehicle drivers who require reasonable accommodations for parking commercial motor vehicles, obtaining adequate services, and complying with federal rest requirements. For each opportunity identified, the action plan must:

- (i) Assess the magnitude of potential impact;
- (ii) Assess the potential difficulty level of implementation; and
- (iii) Explain barriers to success and specific steps required to overcome them.

(b) The action plan must focus on approaches that would be most impactful and feasible and may include, but not be limited to:

- (i) Specific cooperative private sector and government actions;
- (ii) Legal and regulatory frameworks at the state level to drive private and/or public-sector action;
- (iii) Incentive-based government programs to spur private sector innovation and investment; and
- (iv) Direct government action at the state, regional, and/or local level.

(c) The action plan must identify specific, promising projects and approaches, and provide a clear roadmap to what is needed to drive real, substantial improvements in truck parking.

(d) Outreach for action plan input, including on the feasibility of each opportunity evaluated, must include outreach to representatives of: The trucking industry; truck labor organizations; the shipping industry; truck stop owners; commercial freight delivery recipients, including warehouse and retail recipients; the association of Washington cities; the Washington state association of counties; the Washington state department of transportation; the Washington state patrol; and an academic or research institution that can provide input on technical components of the plan.

(e) A concise action plan with specific recommended next steps is due to the transportation committees of the legislature by January 1, 2022.

(8) \$400,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to conduct a study to determine how many nondrivers are in Washington state and the demographics of this population. The joint transportation committee is directed to conduct a survey,

conduct research, develop a dataset, and conduct analysis on the nondriving population of Washington state. The analysis must include, but is not limited to: (a) Reasons for not driving; (b) demographics of who is not driving to include age, disability status, rural or urban residence, and other available demographic information; and (c) availability of transportation options for nondrivers and the impact those options have on their access to services, economic opportunity, recreation, education, and other aspects of community life. A report must be provided to the transportation committees of the legislature by February 1, 2023.

(9) \$250,000 of multimodal transportation account—state appropriation is for a comprehensive evaluation of the Washington state patrol's fleet of Cessna aircraft. The evaluation must include, but is not limited to, the following: (a) An assessment of the current use and performance, including outcomes measures, associated with the aircraft; (b) the timing of any needed replacement of the aircraft; (c) the feasibility, cost, and benefits associated with replacing the aircraft with ones powered by alternative fuel; and (d) a review of innovative technologies, including unmanned aerial aircraft, to achieve the desired outcomes. The final report must be submitted by December 1, 2022.

(10) \$400,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to conduct an independent review of an ultra high-speed ground transportation corridor between Portland, Oregon and Vancouver, British Columbia. The review should include an assessment of the assumptions included in the studies overseen by the Washington state department of transportation: A 2017 to 2018 feasibility study; a 2019 business case analysis; and a 2020 report with recommendations for a governance framework, strategic engagement plan, and financial strategy. The joint transportation committee shall provide a report with its findings to the transportation committees of the legislature by June 30, 2023.

(11) \$150,000 of the multimodal transportation account—state appropriation is for the joint transportation committee to examine options and provide recommendations for a state program to assist with the establishment of powered micromobility device lending libraries. The purpose of the powered micromobility device lending libraries is to provide low-cost or no-cost, reliable, and healthier modes of transportation to vulnerable communities. It is anticipated that the powered micromobility device lending libraries would be managed by community nonprofit organizations, local governments, higher education institutions, school districts, or federally recognized tribal governments. The options that should be examined include, but are not limited to: A state-funded grant program for the purchase of powered micromobility devices to be used in powered micromobility device lending libraries, direct technical assistance for establishing community-based powered micromobility device lending libraries, and direct-to-consumer incentives to applicants to purchase powered micromobility. Recommendations must specify how to prioritize program benefits for vulnerable populations and overburdened communities, including tribes, seniors, low-income populations, and communities with high environmental burdens. Powered micromobility devices to be examined by this study are devices that do not exceed product speed of 30 miles per hour or product weight of 100 pounds and include electric bicycles, electric cargo bikes, electric standing scooters, and other mobility devices under 50 pounds in weight that do not use fossil fuels. The joint transportation

committee shall provide a report with its findings to the transportation committees of the legislature by June 30, 2023.

(12)(a) Within existing resources the joint transportation committee must convene a work group to discuss, collaborate, and develop recommendations to the committee on the distribution of federal-aid highway formula program funding from the infrastructure investment and jobs act to state and local government in future biennia. In addition to the executive committee of the joint transportation committee the work group shall include the governor's office, governor's staff from the office of financial management as well as one representative of each of the following:

(i) The Washington state association of counties;

(ii) Metropolitan planning organizations;

(iii) Regional transportation planning organizations;

(iv) The association of Washington cities;

(v) Tribes;

(vi) The Washington state department of transportation;

(vii) The Washington public ports association; and

(viii) The Washington state transit association.

(b) The Washington state department of transportation shall provide technical overviews, information, and updates on federal requirements, regulations and guidance from the United States department of transportation on spending federal-aid highway formula program funding.

(c) As the work group develops recommendations, Washington state department of transportation staff shall provide technical review of the recommendations to ensure federal requirements, including federal performance measures, can be met.

(d) Work group meetings shall be open to interested stakeholders and include opportunities for public comment.

(e) Following the meetings of the work group, the joint transportation committee shall consult with the governor's office prior to the committee recommending a distribution of federal aid highway formula program funding.

(f) The joint transportation committee, with recognition of the state's history of collaboration and open discussion, shall provide recommendations to the legislature on the allocation of the infrastructure investment and jobs act funding by September 30, 2022.

(13) \$450,000 of the motor vehicle account—state appropriation is for the joint transportation committee to conduct a study to assess opportunities to encourage high-consumption fuel users, including users of diesel fuel and gasoline, as well as in consideration of fleet usage, to switch to electric vehicles, where any zero-emissions vehicle is considered an electric vehicle. The purpose of the study is to significantly advance policymakers' understanding of the dynamics impacting consumer decisions to transition from a fossil-fueled vehicle to an electric vehicle, and to evaluate potential policies to help encourage this transition, including related to the availability of electric vehicle recharging infrastructure. A report on the study must be submitted to the transportation committees of the legislature and the governor by July 1, 2023. The legislature intends for the study to result in the collection of data to determine, at a minimum, the following:

(a) Which high-consumption users of fuel can switch to electric vehicles for a high percentage of their driving needs;

(b) How much money can high-consumption fuel users save by switching to electric vehicles;

(c) How many gallons of fuel are displaced by high-consumption fuel users switching to electric vehicles;

(d) What policies, including related to electric vehicle charging infrastructure, would encourage high-consumption fuel users to make the switch to electric vehicles;

(e) What high-consumption fuel users' attitudes and perceptions about electric vehicles are;

(f) What barriers, concerns, and viewpoints are held by high-consumption fuel users in relation to electric vehicles; and

(g) What messages are most effective for transitioning high-consumption fuel users to electric vehicles.

Sec. 205. 2021 c 333 s 205 (uncodified) is amended to read as follows:

**FOR THE TRANSPORTATION COMMISSION**

Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$2,438,000</del> ))
	<u>\$3,804,000</u>
Interstate 405 and State Route Number 167 Express	
Toll Lanes Account—State Appropriation . . . . .	\$127,000
State Route Number 520 Corridor Account—State	
Appropriation. . . . .	\$276,000
Tacoma Narrows Toll Bridge Account—State	
Appropriation. . . . .	\$180,000
Alaskan Way Viaduct Replacement Project Account—	
State Appropriation . . . . .	\$172,000
TOTAL APPROPRIATION . . . . .	(( <del>\$3,193,000</del> ))
	<u>\$4,559,000</u>

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

(1)(a) The commission shall reconvene the road usage charge steering committee, with the same membership described in chapter 297, Laws of 2018, and shall periodically report to the steering committee with updates on activities undertaken in accordance with the federal grant awarded July 2020 ("Forward Drive"). A year-end update on the status of any federally-funded project for which federal funding is secured must be provided to the governor's office and the transportation committees of the legislature by January 1, 2022, and by January 1, 2023. Any legislative vacancies on the steering committee must be appointed by the speaker of the house of representatives for a house of representatives member vacancy, and by the president of the senate for a senate member vacancy.

(b) The commission shall coordinate with the department of transportation to jointly seek federal funds available through the federal strategic innovations in revenue collection grant program, applying toll credits for meeting match requirements. One or more grant applications may be developed that, at a minimum, propose to:

(i) Assess the impact of a road usage charge, incentives, and other factors on consumer purchase of electric vehicles and conduct a test with drivers to fully assess impacts;

(ii) Assess delivery vehicle fleets and how a road usage charge may be applied, identifying potential impacts to fleet operations and costs, and state transportation revenues, and conducting a pilot test to further inform the identification of potential impacts from a road usage charge;

(iii) Review the process for changing vehicle ownership and determine the considerations and possible implications with a road usage charge system, identifying the processes and structure needed for reconciling a road usage charge owed between sellers and purchasers of used vehicles; and

(iv) Identify opportunities for achieving large-scale data integration to support road usage charge service provisions that could be offered by private-sector service providers, conducting a pilot test to determine the ability of such service providers to support automated mileage reporting and periodic payment services.

~~((3))~~ (2) \$127,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$276,000 of the state route number 520 corridor account—state appropriation, \$180,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$172,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the transportation commission's proportional share of time spent supporting tolling operations for the respective tolling facilities.

(3) \$1,500,000 of the motor vehicle account—state appropriation is provided solely for the commission to conduct a full planning-level traffic and revenue study of the Hood River Bridge to determine the viability of toll revenues to support future financing of improvements and possible replacement of the bridge, considering prior work and studies conducted. The commission shall coordinate this work with the department of transportation, the Port of Hood River, the Oregon department of transportation, and other entities as needed. The results of the assessment must be submitted to the house and senate transportation committees by June 30, 2023.

**Sec. 206.** 2021 c 333 s 206 (uncodified) is amended to read as follows:  
**FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**  
Freight Mobility Investment Account—State  
Appropriation. . . . . ((~~\$831,000~~))  
\$843,000

The appropriations in this section are subject to the following conditions and limitations: Within appropriated funds, the freight mobility strategic investment board may opt in as provided under RCW 70A.02.030 to assume all of the substantive and procedural requirements of covered agencies under chapter 70A.02 RCW. The board shall include in its 2022 annual report to the legislature a progress report on opting into the healthy environment for all act and a status report on diversity, equity, and inclusion within the board's jurisdiction.

**\*Sec. 207.** 2021 c 333 s 207 (uncodified) is amended to read as follows:  
**FOR THE WASHINGTON STATE PATROL**  
State Patrol Highway Account—State Appropriation . . . . . ((~~\$517,391,000~~))

	<u>\$524,348,000</u>
State Patrol Highway Account—Federal Appropriation . . . . .	(( <del>\$15,838,000</del> ))
	<u>\$16,433,000</u>
State Patrol Highway Account—Private/Local Appropriation. . . . .	(( <del>\$4,267,000</del> ))
	<u>\$4,314,000</u>
Highway Safety Account—State Appropriation. . . . .	(( <del>\$1,214,000</del> ))
	<u>\$1,292,000</u>
Ignition Interlock Device Revolving Account—State Appropriation. . . . .	(( <del>\$5,053,000</del> ))
	<u>\$2,243,000</u>
Multimodal Transportation Account—State Appropriation. . . . .	(( <del>\$288,000</del> ))
	<u>\$293,000</u>
State Route Number 520 Corridor Account—State Appropriation. . . . .	\$433,000
Tacoma Narrows Toll Bridge Account—State Appropriation. . . . .	\$77,000
I-405 and SR 167 Express Toll Lanes Account—State Appropriation. . . . .	\$1,348,000
TOTAL APPROPRIATION . . . . .	(( <del>\$545,909,000</del> ))
	<u>\$550,781,000</u>

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

(1) Washington state patrol officers engaged in off-duty uniformed employment providing traffic control services to the department of transportation or other state agencies may use state patrol vehicles for the purpose of that employment, subject to guidelines adopted by the chief of the Washington state patrol. The Washington state patrol must be reimbursed for the use of the vehicle at the prevailing state employee rate for mileage and hours of usage, subject to guidelines developed by the chief of the Washington state patrol.

(2) \$580,000 of the state patrol highway account—state appropriation is provided solely for the operation of and administrative support to the license investigation unit to enforce vehicle registration laws in southwestern Washington. The Washington state patrol, in consultation with the department of revenue, shall maintain a running estimate of the additional vehicle registration fees, sales and use taxes, and local vehicle fees remitted to the state pursuant to activity conducted by the license investigation unit. Beginning October 1, 2021, and quarterly thereafter, the Washington state patrol shall submit a report detailing the additional revenue amounts generated since January 1, 2021, to the director of the office of financial management and the transportation committees of the legislature. At the end of the calendar quarter in which it is estimated that more than \$625,000 in state sales and use taxes have been remitted to the state since January 1, 2021, the Washington state patrol shall notify the state treasurer and the state treasurer shall transfer funds pursuant to section 406 ~~((of this act))~~, chapter 333, Laws of 2021.



(3) \$4,000,000 of the state patrol highway account—state appropriation is provided solely for a third arming and a third trooper basic training class. The cadet class is expected to graduate in June 2023.

(4) By December 1st of each year during the 2021-2023 biennium, the Washington state patrol must report to the house and senate transportation committees on the status of recruitment and retention activities as follows:

- (a) A summary of recruitment and retention strategies;
- (b) The number of transportation funded staff vacancies by major category;
- (c) The number of applicants for each of the positions by these categories;
- (d) The composition of workforce;
- (e) Other relevant outcome measures with comparative information with recent comparable months in prior years; and

(f) Activities related to the implementation of the agency's workforce diversity plan, including short-term and long-term, specific comprehensive outreach and recruitment strategies to increase populations underrepresented within both commissioned and noncommissioned employee groups.

(5) \$493,000 of the state patrol highway account—state appropriation is provided solely for aerial criminal investigation tools, including software licensing and maintenance, and annual certification, and is subject to the conditions, limitations, and review requirements of section 701 (~~of this act~~), chapter 333, Laws of 2021.

(6) (~~(\$7,962,000)~~) \$6,422,000 of the state patrol highway account—state appropriation is provided solely for the land mobile radio system replacement, upgrade, and other related activities. Beginning January 1, 2022, the Washington state patrol must report semiannually to the office of the state chief information officer on the progress related to the projects and activities associated with the land mobile radio system, including the governance structure, outcomes achieved in the prior six month time period, and how the activities are being managed holistically as recommended by the office of the chief information officer. At the time of submittal to the office of the state chief information officer, this report shall be transmitted to the office of financial management and the house and senate transportation committees.

(7) \$510,000 of the ignition interlock device revolving account—state appropriation is provided solely for the ignition interlock program at the Washington state patrol to provide funding for two staff to work and provide support for the program in working with manufacturers, service centers, technicians, and participants in the program.

(8) \$1,348,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$433,000 of the state route number 520 corridor account—state appropriation, and \$77,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely for the Washington state patrol's proportional share of time spent supporting tolling operations and enforcement for the respective tolling facilities.

(9) \$289,000 of the state patrol highway account—state appropriation is provided solely for the replacement of 911 workstations.

(10) \$35,000 of the state patrol highway account—state appropriation is provided solely for the replacement of bomb response equipment.

(11) \$713,000 of the state patrol highway account—state appropriation is provided solely for information technology infrastructure maintenance.

(12) The Washington state patrol must provide a report to the office of financial management and the house and senate transportation committees on its plan for implementing a transition to cloud computing and storage with its 2023-2025 budget submittal.

(13) \$945,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter 329, Laws of 2021 (custodial interrogations). ~~((If chapter 329, Laws of 2021 (custodial interrogations) is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(14) \$46,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter 320, Laws of 2021 (peace officer tactics). ~~((If chapter 320, Laws of 2021 (peace officer tactics) is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(15) \$46,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter 324, Laws of 2021 (use of force by officers). ~~((If chapter 324, Laws of 2021 (use of force by officers) is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(16)(a) The legislature finds that the water connection extension constructed by the Washington state patrol from the city of Shelton's water facilities to the Washington state patrol academy was necessary to meet the water supply needs of the academy. The legislature also finds that the water connection provides an ongoing water supply that is necessary to the operation of the training facility, that the state is making use of the water connection for these public activities, and that any future incidental use of the municipal infrastructure put in place to support these activities will not impede the Washington state patrol's ongoing use of the water connection extension.

(b) \$2,220,000 of the transfer from the waste tire removal account to the motor vehicle fund, as required under RCW 70A.205.425, reimburses the motor vehicle fund for the portion of the water project costs assigned by the agreement to properties, other than the Washington state patrol academy, that make use of the water connection while the agreement remains in effect. This reimbursement to the motor vehicle fund is intended to address any possibility that the termination of this agreement could be determined to result in the unconstitutional use of 18th amendment designated funds for nonhighway purposes under the constitution of the state of Washington; however, this transfer is not intended to indicate that the incidental use of this infrastructure by these properties necessarily requires such reimbursement under the state Constitution. Immediately following the transfer of funds, Washington state patrol and the city of Shelton shall meet to formally update the terms of their "Agreement for Utility Connection and Reimbursement of Water Extension Expenses" executed on June 12, 2017, to reflect the intent of the proviso.

(17) The appropriations in this section provide sufficient funding for state patrol staffing assuming vacancy savings which may change over time. Funding for staffing will be monitored and adjusted in the ~~((2022))~~ 2023 supplemental budget to restore funding as authorized staffing levels are achieved.

(18) \$331,000 of the state patrol highway account—state appropriation is provided solely for the state patrol's diversity, equity, and inclusion program and a contract with an external psychologist to perform exams. If chapter . . . (Substitute House Bill No. 2057), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(19) \$793,000 of the state patrol highway account—state appropriation is provided solely for the tenant improvements and higher than expected equipment costs for the toxicology lab in Federal Way, and preparing a report on the current cost recovery mechanisms and opportunities for expanding these cost recovery mechanisms in the future. The report must be submitted to the governor and the transportation committees of the legislature by November 1, 2022.

(20) \$14,788,000 of the state patrol highway account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of commissioned and noncommissioned staff vacancies. Potential uses of the funding include, but are not limited to, the following: Operating a miniacademy and training opportunities for lateral transfers from other agencies; increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the state patrol must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection. The report must also include a description of the miniacademy training, including the number of lateral transfers that entered the training, the number which completed training, the cost of the miniacademy, and a comparison of how the training was different from a conventional academy class.

(21) \$122,000 of the state patrol highway account—state appropriation, \$1,000 of the highway safety account—state appropriation, and \$4,000 of the ignition interlock account—state appropriation are provided solely for implementation of chapter . . . (House Bill No. 1804), Laws of 2022 (interruptive military service credit for members of the state retirement systems). If chapter . . . (House Bill No. 1804), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(22) \$250,000 of the state patrol highway account—state appropriation is provided solely for implementation of chapter . . . (Engrossed Substitute House Bill No. 2037), Laws of 2022 (peace officers/use of force). If chapter . . . (Engrossed Substitute House Bill No. 2037), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(23) \$949,000 of the state patrol highway account—state is provided solely for vehicle identification number inspection staff to reduce the backlog of inspections and a study of how to incorporate best practices into the program, including the timeliness of inspections.

*(24) The Washington state patrol shall oversee a pilot program whereby registered tow truck operators may respond to a regional transit authority's request for impoundment of unauthorized vehicles. Under the pilot program, in order for an unauthorized vehicle to be subject to impoundment at the regional transit authority's request, the vehicle must be left unattended within the right-of-way used by a regional transit authority for high capacity transportation where the vehicle constitutes an obstruction to the operation of high capacity transportation vehicles or jeopardizes public safety. By July 1, 2023, the state patrol shall submit a report to the governor and the transportation committees of the legislature regarding the outcomes of the pilot program, and recommendations on whether the pilot program should continue or be enacted on a permanent basis.*

*\*Sec. 207 was partially vetoed. See message at end of chapter.*

**Sec. 208.** 2021 c 333 s 208 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING**

Marine Fuel Tax Refund Account—State Appropriation . . . . .	\$34,000
Motorcycle Safety Education Account—State Appropriation. . . . .	<del>(\$4,894,000)</del> <u>\$5,016,000</u>
Limited Fish and Wildlife Account—State Appropriation. . . . .	<del>(\$917,000)</del> <u>\$922,000</u>
Highway Safety Account—State Appropriation. . . . .	<del>(\$241,868,000)</del> <u>\$242,712,000</u>
Highway Safety Account—Federal Appropriation . . . . .	\$1,294,000
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$73,327,000)</del> <u>\$80,449,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	<del>(\$150,000)</del> <u>\$400,000</u>
Motor Vehicle Account—Private/Local Appropriation . . . . .	<del>(\$6,600,000)</del> <u>\$1,336,000</u>
Ignition Interlock Device Revolving Account—State Appropriation. . . . .	<del>(\$6,071,000)</del> <u>\$6,123,000</u>
Department of Licensing Services Account—State Appropriation. . . . .	<del>(\$8,157,000)</del> <u>\$7,964,000</u>
License Plate Technology Account—State Appropriation . . . . .	<del>(\$4,250,000)</del> <u>\$4,092,000</u>
Abandoned Recreational Vehicle Account—State Appropriation. . . . .	<del>(\$3,066,000)</del> <u>\$3,078,000</u>
Limousine Carriers Account—State Appropriation . . . . .	\$110,000
Electric Vehicle Account—State Appropriation. . . . .	<del>(\$405,000)</del> <u>\$425,000</u>
DOL Technology Improvement & Data Management Account—State Appropriation . . . . .	<del>(\$748,000)</del> <u>\$874,000</u>
Agency Financial Transaction Account—State Appropriation. . . . .	<del>(\$21,257,000)</del> <u>\$22,257,000</u>
<del>(Driver Licensing Technology Support Account— State Appropriation . . . . .</del>	<del>\$1,373,000)</del>
TOTAL APPROPRIATION . . . . .	<del>(\$374,521,000)</del> <u>\$377,086,000</u>

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

(1) \$1,100,000 of the highway safety account—state appropriation is provided solely for the department to provide an interagency transfer to the

department of social and health services, children's administration division for the purpose of providing driver's license support to a larger population of foster youth than is already served within existing resources. Support services include reimbursement of driver's license issuance costs, fees for driver training education, and motor vehicle liability insurance costs.

(2) The appropriations in this section assume implementation by the department of cost recovery mechanisms to recoup at least \$21,257,000 during the 2021-2023 biennium in credit card and other financial transaction costs as part of charges imposed for driver and vehicle fee transactions. During the 2021-2023 fiscal biennium, the department must report any amounts recovered to the office of financial management and appropriate committees of the legislature on a quarterly basis.

(3)(a) For the 2021-2023 biennium, the department shall charge ~~(\$6,600,000)~~ \$1,336,000 for the administration and collection of a motor vehicle excise tax on behalf of a regional transit authority, as authorized under RCW 82.44.135. The amount in this subsection must be deducted before distributing any revenues to a regional transit authority.

(b) \$100,000 of the motor vehicle account—state appropriation is provided solely for the department to work with the regional transit authority imposing a motor vehicle excise tax pursuant to RCW 81.104.160 and transportation benefit districts imposing vehicle fees pursuant to RCW 82.80.140, and other relevant parties, to determine cost recovery options for the administration and collection of the taxes and fees. The options must include:

(i) Full cost recovery for the direct and indirect expenses by the department of licensing, subagents, and counties;

(ii) Marginal cost recovery for the direct and indirect expenses by the department of licensing, subagents, and counties;

(iii) The estimated costs if the regional transit authority or transportation benefit districts had to contract out the entire collection and administrative activity with a nongovernmental entity.

(4) \$12,000 of the motorcycle safety education account—state appropriation, \$2,000 of the limited fish and wildlife account—state appropriation, \$728,000 of the highway safety account—state appropriation, \$238,000 of the motor vehicle account—state appropriation, \$10,000 of the ignition interlock device revolving account—state appropriation, and \$10,000 of the department of licensing services account—state appropriation are provided solely for the department to redesign and improve its online services and website, and are subject to the conditions, limitations, and review requirements of section 701 ~~(of this act)~~, chapter 333, Laws of 2021.

(5) \$28,636,000 of the highway safety account—state appropriation is provided solely for costs necessary to accommodate increased demand for enhanced drivers' licenses and enhanced identicards. The department shall report on a quarterly basis on the use of these funds, associated workload, and information with comparative information with recent comparable months in prior years. The report must include detailed statewide and by licensing service office information on staffing levels, average monthly wait times, the number of enhanced drivers' licenses and enhanced identicards issued/renewed, and the number of primary drivers' licenses and identicards issued/renewed. Within the amounts provided in this subsection, the department shall implement efficiency

measures to reduce the time for licensing transactions and wait times including, but not limited to, the installation of additional cameras at licensing service offices that reduce bottlenecks and align with the "keep your customer" initiative.

(6) \$500,000 of the highway safety account—state appropriation is provided solely for communication and outreach activities necessary to inform the public of federally acceptable identification options including, but not limited to, enhanced drivers' licenses and enhanced identicards. The department shall continue the outreach plan that includes informational material that can be effectively communicated to all communities and populations in Washington. To accomplish this work, the department shall contract with an external vendor with demonstrated experience and expertise in outreach and marketing to underrepresented communities in a culturally responsive fashion.

(7) \$523,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 158, Laws of 2021 (DOL issued documents). ~~((If chapter 158, Laws of 2021 is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(8) ~~(\$1,373,000)~~ \$929,000 of the ~~((driver licensing technology support))~~ highway safety account—state appropriation is provided solely for the implementation of chapter 240, Laws of 2021 (suspension of licenses for traffic infractions). ~~((If chapter 240, Laws of 2021 is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(9) \$23,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter 10 ~~((Engrossed Substitute House Bill No. 1078))~~, Laws of 2021 (restoring voter eligibility after felony conviction).

(10) \$3,074,000 of the abandoned recreational vehicle disposal account—state appropriation is provided solely for providing reimbursements in accordance with the department's abandoned recreational vehicle disposal reimbursement program. It is the intent of the legislature that the department prioritize this funding for allowable and approved reimbursements and not to build a reserve of funds within the account. During the 2021-2023 fiscal biennium, the department must report any amounts recovered to the office of financial management and appropriate committees of the legislature on a quarterly basis.

(11)(a) \$54,000 of the motor vehicle account—state appropriation is provided solely for the issuance of nonemergency medical transportation vehicle decals to implement the high occupancy vehicle lane access pilot program established in section 216 ~~((of this act))~~, chapter 333, Laws of 2021. A for hire nonemergency medical transportation vehicle is a vehicle that is a "for hire vehicle" under RCW 46.04.190 that provides nonemergency medical transportation, including for life-sustaining transportation purposes, to meet the medical transportation needs of individuals traveling to medical practices and clinics, cancer centers, dialysis facilities, hospitals, and other care providers.

(b) As part of this pilot program, the owner of a for hire nonemergency medical transportation vehicle may apply to the department, county auditor or other agent, or subagent appointed by the director, for a high occupancy vehicle exempt decal for a for hire nonemergency medical transportation vehicle. The high occupancy vehicle exempt decal allows the for hire nonemergency medical

transportation vehicle to use a high occupancy vehicle lane as specified in RCW 46.61.165 and 47.52.025 during the 2021-2023 fiscal biennium.

(c) For the exemption in this subsection to apply to a for hire nonemergency medical transportation vehicle, the decal:

(i) Must be displayed on the vehicle so that it is clearly visible from outside the vehicle;

(ii) Must identify that the vehicle is exempt from the high occupancy vehicle requirements; and

(iii) Must be visible from the rear of the vehicle.

(d) The owner of a for hire nonemergency medical transportation vehicle or the owner's representative must apply for a high occupancy vehicle exempt decal on a form provided or approved by the department. The application must include:

(i) The name and address of the person who is the owner of the vehicle;

(ii) A full description of the vehicle, including its make, model, year, and the vehicle identification number;

(iii) The purpose for which the vehicle is principally used;

(iv) An attestation signed by the vehicle's owner or the owner's representative that the vehicle's owner has a minimum of one contract or service agreement to provide for hire transportation services for medical purposes with one or more of the following entities: A health insurance company; a hospital, clinic, dialysis center, or other medical institution; a day care center, retirement home, or group home; a federal, state, or local agency or jurisdiction; or a broker who negotiates these services on behalf of one or more of these entities; and

(v) Other information as required by the department upon application.

(e) The department, county auditor or other agent, or subagent appointed by the director shall collect the fee required under (f) of this subsection when issuing a high occupancy vehicle exempt decal.

(f) The department, county auditor or other agent, or subagent, is required to collect a \$5 fee when issuing a decal under this subsection, in addition to any other fees and taxes required by law.

(g) A high occupancy vehicle exempt decal expires June 30, 2023, and must be marked to indicate its expiration date. The decal may be renewed if the pilot program is continued past the date of a decal's expiration. The status as an exempt vehicle continues until the high occupancy vehicle exempt decal is suspended or revoked for misuse, the vehicle is no longer used as a for hire nonemergency medical transportation vehicle, or the pilot program established in section 216 (~~of this act~~), chapter 333, Laws of 2021 is terminated.

(h) The department may adopt rules to implement this subsection.

(12) \$434,000 of the highway safety account—state appropriation is provided solely for the implementation of the Thurston county superior court order in *Pierce et al. v. Department of Licensing*.

(13) The department shall consult with the department of corrections and state board for community and technical colleges to develop a pilot program that allows incarcerated individuals who are not prohibited by state or federal law from receiving a commercial driver's license upon release to participate in a prerelease commercial driver training program. The department must submit a report to the legislature by June 30, 2023, detailing the status of the program.

(14) \$100,000 of the highway safety account—state appropriation is provided solely for the department to lead a study on the potential impacts that current licensing requirements, including required training hours, and testing requirements may have on the shortage of commercial drivers, and whether adjustments to these requirements may be warranted to help alleviate the shortage. In completing the study, the department must consult with the workforce training board, state board for community and technical colleges, federal motor carrier safety officials, organizations representing veterans, organizations representing commercial drivers, and organizations representing businesses or government entities that rely on commercial drivers. The report must be submitted to the governor and the transportation committees of the legislature by December 1, 2022.

(15) \$965,000 of the motor vehicle account—state appropriation is provided solely for the increased costs associated with delays in the production of license plates, and to provide a report detailing license plate inventory practices and whether those practices should be changed to guard against potential future plate production delays. The report must be submitted to the governor and the transportation committees of the legislature by December 1, 2022.

(16) \$28,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Senate Bill No. 5750), Laws of 2022 (state leadership board) and making improvements to the annual information submitted by special license plate sponsoring organizations pursuant to RCW 46.18.120(2). The improvements must include, but are not limited to, the following: An annual budget for the sponsoring organization's activities in the preceding year; information regarding private and other governmental support for the activities of the sponsoring organization; and a description of the number of people served or services delivered, as appropriate, by the sponsoring organization in the preceding year. If chapter . . . (Substitute Senate Bill No. 5750), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(17) \$268,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Senate Bill No. 5054), Laws of 2022 (impaired driving). If chapter . . . (Engrossed Senate Bill No. 5054), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(18) \$113,000 of the highway safety account—state appropriation is provided solely for the implementation of chapter . . . (Substitute Senate Bill No. 5631), Laws of 2022 (human trafficking disqualification for a commercial driver's license). If chapter . . . (Substitute Senate Bill No. 5631), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(19) \$18,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute Senate Bill No. 5741), Laws of 2022 (Patches pal special license plates). If chapter . . . (Substitute Senate Bill No. 5741), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(20) \$350,000 of the highway safety account—state appropriation is provided solely to expand driver's license assistance and support services in King county with an existing provider that is already providing these services to low-income immigrant and refugee women. By March 1, 2023, the contracted



provider must submit information on the annual budget in the preceding year; information regarding private and other governmental support for the activities of the provider; and a description of the number of people served, services delivered, and outcome measures.

(21) \$6,139,000 of the highway safety account—state appropriation, \$1,849,000 of the motor vehicle account—state appropriation, \$203,000 of the department of licensing services account—state appropriation, and \$105,000 of the department of licensing technology improvement and data management account—state appropriation are provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies and agency operations and customer service levels. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department shall submit a report to the governor and the legislative transportation committees detailing the specific expenditures made from the contingency funding provided in this subsection.

(22) \$28,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Second Substitute House Bill No. 1181), Laws of 2022 (veterans and military suicide). If chapter . . . (Engrossed Second Substitute House Bill No. 1181), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(23) \$83,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1984), Laws of 2022 (vehicle registration certificate addresses). If chapter . . . (Substitute House Bill No. 1984), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(24) \$57,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (House Bill No. 2074), Laws of 2022 (off-road vehicles fees). If chapter . . . (House Bill No. 2074), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(25) \$18,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Engrossed Substitute House Bill No. 1530), Laws of 2022 (wine special license plate). If chapter . . . (Engrossed Substitute House Bill No. 1530), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(26) \$316,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter . . . (Substitute House Bill No. 1790), Laws of 2022 (temporary license plates). If chapter . . . (Substitute House Bill No. 1790), Laws of 2022 is not enacted by June 30, 2022, the amount provided in this subsection lapses.

(27) \$251,000 of the highway safety account—state appropriation is provided solely for the department to: (a) Provide each driver's license, identicard, instruction permit, intermediate license, and commercial driver's license applicant with written materials regarding the contents and requirements of RCW 46.61.212, the slow down and move over law, at the completion of the applicant's licensing transaction; (b) place signage in each of the licensing service offices that provide background on the written materials that the

applicant will receive regarding the slow down and move over law; and (c) initiate the development of an appropriate training module relating to the requirements of RCW 46.61.212, for inclusion in all new driver training curricula.

Sec. 209. 2021 c 333 s 209 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TOLL OPERATIONS AND MAINTENANCE—PROGRAM B**

State Route Number 520 Corridor Account—State

Appropriation . . . . .((~~\$53,689,000~~))  
\$58,356,000

State Route Number 520 Civil Penalties Account—State

Appropriation . . . . .((~~\$4,122,000~~))  
\$4,163,000

Tacoma Narrows Toll Bridge Account—State

Appropriation . . . . .((~~\$29,809,000~~))  
\$31,102,000

Alaskan Way Viaduct Replacement Project Account—

State Appropriation . . . . .((~~\$20,840,000~~))  
\$21,806,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State Appropriation . . . . .((~~\$23,910,000~~))  
\$24,647,000

TOTAL APPROPRIATION . . . . .((~~\$132,370,000~~))  
\$140,074,000

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

(1) \$1,300,000 of the Tacoma Narrows toll bridge account—state appropriation and \$12,484,000 of the state route number 520 corridor account—state appropriation are provided solely for the purposes of addressing unforeseen operations and maintenance costs on the Tacoma Narrows bridge and the state route number 520 bridge, respectively. The office of financial management shall place the amounts provided in this subsection, which represent a portion of the required minimum fund balance under the policy of the state treasurer, in unallotted status. The office may release the funds only when it determines that all other funds designated for operations and maintenance purposes have been exhausted.

(2) As long as the facility is tolled, the department must provide annual reports to the transportation committees of the legislature on the Interstate 405 express toll lane project performance measures listed in RCW 47.56.880(4). These reports must include:

(a) Information on the travel times and travel time reliability (at a minimum, average and 90th percentile travel times) maintained during peak and nonpeak periods in the express toll lanes and general purpose lanes for both the entire corridor and commonly made trips in the corridor including, but not limited to, northbound from Bellevue to Rose Hill, state route number 520 at NE 148th to Interstate 405 at state route number 522, Bellevue to Bothell (both NE 8th to state route number 522 and NE 8th to state route number 527), and a trip internal to the corridor (such as NE 85th to NE 160th) and similar southbound trips;

(b) A month-to-month comparison of travel times and travel time reliability for the entire corridor and commonly made trips in the corridor as specified in (a) of this subsection since implementation of the express toll lanes and, to the extent available, a comparison to the travel times and travel time reliability prior to implementation of the express toll lanes;

(c) Total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane (i) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, on this segment of Interstate 405 prior to implementation of the express toll lanes and (ii) compared to total express toll lane and total general purpose lane traffic volumes, as well as per lane traffic volumes for each type of lane, from month to month since implementation of the express toll lanes; and

(d) Underlying congestion measurements, that is, speeds, that are being used to generate the summary graphs provided, to be made available in a digital file format.

(3)(a) ~~(((\$708,000))~~ \$1,189,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, ~~(((\$1,651,000))~~ \$2,783,000 of the state route number 520 corridor account—state appropriation, ~~(((\$709,000))~~ \$1,218,000 of the Tacoma Narrows toll bridge account—state appropriation, and ~~(((\$932,000))~~ \$1,568,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the reappropriation of unspent funds on the new tolling back office system from the 2019-2021 biennium ~~(, and are subject to the conditions, limitations, and review provided in section 701 of this act.~~

~~(b) The department shall continue to work with the office of financial management, office of the chief information officer, and the transportation committees of the legislature on the project management plan that includes a provision for independent verification and validation of contract deliverables from the successful bidder and a provision for quality assurance that includes reporting independently to the office of the chief information officer on an ongoing basis during system implementation).~~

~~((+))~~ (b) The office of financial management shall place the amounts provided in this subsection in unallotted status until the department submits a detailed progress report on the progress of the new tolling back office system. The director of the office of financial management or their designee shall consult with the chairs and ranking members of the transportation committees of the legislature prior to making a decision to allot these funds.

(4) ~~((Out of funding appropriated in this section,))~~ \$121,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$288,000 of the state route number 520 corridor account—state appropriation, \$128,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$163,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely for the department ((shall)) to contract with the state auditor's office for a performance audit of the department's project to replace its electronic toll collection system. The audit should include an evaluation of the department's project planning, vendor procurement, contract management and project oversight. The final report is to be issued by December

31, 2022. The state auditor will transmit copies of the report to the jurisdictional committees of the legislature and the department.

(5) The department shall make detailed annual reports to the transportation committees of the legislature and the public on the department's web site on the following:

(a) The use of consultants in the tolling program, including the name of the contractor, the scope of work, the type of contract, timelines, deliverables, any new task orders, and any extensions to existing consultant contracts;

(b) The nonvendor costs of administering toll operations, including the costs of staffing the division, consultants, and other personal service contracts required for technical oversight and management assistance, insurance, payments related to credit card processing, transponder purchases and inventory management, facility operations and maintenance, and other miscellaneous nonvendor costs;

(c) The vendor-related costs of operating tolled facilities, including the costs of the customer service center, cash collections on the Tacoma Narrows bridge, electronic payment processing, and toll collection equipment maintenance, renewal, and replacement;

(d) The toll adjudication process, including a summary table for each toll facility that includes:

(i) The number of notices of civil penalty issued;

(ii) The number of recipients who pay before the notice becomes a penalty;

(iii) The number of recipients who request a hearing and the number who do not respond;

(iv) Workload costs related to hearings;

(v) The cost and effectiveness of debt collection activities; and

(vi) Revenues generated from notices of civil penalty; and

(e) A summary of toll revenue by facility on all operating toll facilities and express toll lane systems, and an itemized depiction of the use of that revenue.

(6) During the 2021-2023 fiscal biennium, the department plans to issue a request for proposals as the first stage of a competitive procurement process that will replace the toll equipment and select a new tolling operator for the Tacoma Narrows Bridge. The request for proposals and subsequent competitive procurement must incorporate elements that prioritize the overall goal of lowering costs per transaction for the facility, such as incentives for innovative approaches which result in lower transactional costs, requests for efficiencies on the part of the bidder that lower operational costs, and incorporation of technologies such as self-serve credit card machines or other point-of-payment technologies that lower costs or improve operational efficiencies.

(7) \$19,908,000 of the Alaskan Way viaduct replacement project account—state appropriation is provided solely for the new state route number 99 tunnel toll facility's expected share of collecting toll revenues, operating customer services, and maintaining toll collection systems. The legislature expects to see appropriate reductions to the other toll facility accounts once tolling on the new state route number 99 tunnel toll facility stabilizes and any previously incurred costs for start-up of the new facility are charged back to the Alaskan Way viaduct replacement project account. The office of financial management shall closely monitor the application of the cost allocation model and ensure that the new state route number 99 tunnel toll facility is adequately sharing costs and the

other toll facility accounts are not being overspent or subsidizing the new state route number 99 tunnel toll facility.

(8) The department shall submit a plan to the legislature for the Interstate 405 and state route number 167 express toll lanes account detailing how bond proceeds can cover the proposed construction plan on the Interstate 405 and state route number 167 express toll lane corridor outlined on LEAP Transportation Document 2021-1 as developed April 23, 2021, by January 1, 2022.

(9) ~~(\$1,516,000)~~ \$4,554,000 of the state route number 520 corridor account—state appropriation ~~((is))~~ and \$580,000 of the Tacoma Narrows toll bridge account—state appropriation are provided solely for the increased costs of insurance for the state route number 520 floating bridge and the Tacoma Narrows bridge, respectively. The department shall conduct an evaluation of the short and long-term costs and benefits including risk mitigation of self-insurance as compared to the commercial insurance option for the state route number 520 floating bridge, as allowed under the terms of the state route number 520 master bond resolution. By December 15, 2021, the department shall report to the legislature on the results of this evaluation.

(10) As part of the department's 2023-2025 biennial budget request, the department shall update the cost allocation recommendations that assign appropriate costs to each of the toll funds for services provided by relevant Washington state department of transportation programs, the Washington state patrol, and the transportation commission. The recommendations shall be based on updated traffic and toll transaction patterns and other relevant factors.

(11) All amounts provided for operations and maintenance expenses on the SR 520 facility from the state route number 520 corridor account during the 2021-2023 fiscal biennium in this act, up to a maximum of \$59,567,000, are derived from the receipt of federal American rescue plan act of 2021 funds and not toll revenues.

(12) \$14,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation, \$32,000 of the state route number 520 corridor account—state appropriation, \$22,000 of the Tacoma Narrows toll bridge account—state appropriation, and \$27,000 of the Alaskan Way viaduct replacement project account—state appropriation are provided solely to implement chapter . . . (Substitute House Bill No. 1790), Laws of 2022 (temporary license plates). If chapter . . . (Substitute House Bill No. 1790), Laws of 2022 is not enacted by June 30, 2022, the amounts provided in this subsection lapse.

**Sec. 210.** 2021 c 333 s 210 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—INFORMATION TECHNOLOGY—PROGRAM C**

Transportation Partnership Account—State

Appropriation. . . . . ~~(\$1,377,000)~~  
\$1,461,000

Motor Vehicle Account—State Appropriation . . . . . ~~(\$97,026,000)~~  
\$101,010,000

Puget Sound Ferry Operations Account—State

Appropriation. . . . . ~~(\$263,000)~~  
\$307,000

Multimodal Transportation Account—State

Appropriation . . . . .	(((\$6,986,000))
	<u>\$7,013,000</u>
Transportation 2003 Account (Nickel Account)—State	
Appropriation . . . . .	(((\$1,393,000))
	<u>\$1,461,000</u>
TOTAL APPROPRIATION . . . . .	(((\$107,045,000))
	<u>\$111,252,000</u>

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

(1) \$4,273,000 of the multimodal transportation account—state appropriation and \$4,273,000 of the motor vehicle account—state appropriation are provided solely for the department's cost related to the one Washington project, and is subject to the conditions, limitations, and review requirements of section 701 ~~((of this act))~~, chapter 333, Laws of 2021.

(2) \$2,404,000 of the motor vehicle account—state appropriation and \$119,000 of the multimodal transportation account—state appropriation are provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

**Sec. 211.** 2021 c 333 s 211 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—FACILITY MAINTENANCE, OPERATIONS, AND CONSTRUCTION—PROGRAM D—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	(((\$35,574,000))
	<u>\$36,843,000</u>
State Route Number 520 Corridor Account—State	
Appropriation . . . . .	\$34,000
TOTAL APPROPRIATION . . . . .	(((\$35,608,000))
	<u>\$36,877,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$780,000 of the motor vehicle account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

NEW SECTION. **Sec. 212.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
TRANSPORTATION EQUIPMENT FUND—PROGRAM E**

Motor Vehicle Account—State Appropriation . . . . . \$12,396,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$10,396,000 of the motor vehicle account—state appropriation is provided solely for the department's costs related to replacing obsolete transportation equipment. The appropriations to the department in this section must be expended to maximize the amount of obsolete equipment replaced in the 2021-2023 biennium.

(2) \$2,000,000 of the motor vehicle account—state appropriation is provided solely for the department's costs related to replacing snow removal equipment. The appropriations to the department in this section must be expended to maximize the amount of snow removal equipment replaced in the 2021-2023 biennium.

**Sec. 213.** 2021 c 333 s 212 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—  
PROGRAM F**

Aeronautics Account—State Appropriation . . . . . ~~(\$8,055,000)~~  
\$8,127,000

Aeronautics Account—Federal Appropriation . . . . . \$3,916,000

Aeronautics Account—Private/Local Appropriation . . . . . \$60,000

Multimodal Transportation Account—State  
Appropriation . . . . . \$150,000

TOTAL APPROPRIATION . . . . . ~~(\$12,031,000)~~  
\$12,253,000

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

(1) \$2,888,000 of the aeronautics account—state appropriation is provided solely for the airport aid grant program, which provides competitive grants to public use airports for pavement, safety, maintenance, planning, and security.

(2) \$257,000 of the aeronautics account—state appropriation is provided solely for supporting the commercial aviation coordinating commission, pursuant to section 718 ~~((of this act))~~, chapter 333, Laws of 2021.

(3) \$280,000 of the aeronautics account—state appropriation is provided solely for the implementation of chapter 131, Laws of 2021 (unpiloted aircraft system state coordinator). If chapter 131, Laws of 2021 is not enacted by June 30, 2021, the amount provided in this subsection lapses.

(4)(a) \$150,000 of the multimodal transportation account—state appropriation is provided solely for the aviation program to continue the community engagement associated with the work of the commercial aviation coordinating commission to increase aviation capacity and provide a single preferred location for a new primary commercial aviation facility by June 15, 2023. The work of the commission shall include, but is not limited to, recommendations to the legislature on future Washington state long-range commercial aviation facility needs including possible additional aviation facilities or expansion of current aviation facilities.

(b) Community engagement efforts may include:

(i) Raising awareness among aviation stakeholders and the public on the complex issues that must be addressed by the commission;

(ii) Obtaining input from a representative cross section of the public on the construction of a new airport and the expansion of existing airports to meet future aviation demand;

(iii) Keeping people informed as the commission's work progresses, including diverse communities that are often underrepresented in processes to inform decision making;

(iv) Providing opportunities for members of the public to provide direct input to the commission during the pandemic that limits opportunities for direct social contact;

(v) Using surveys, open houses, focus groups, translation services, informational handouts, advertisements, social media, and other appropriate means of communicating with the public; and

(vi) Providing a focus on the demographics or people in the geographical areas most impacted by expanding aviation capacity or developing a new aviation facility.

(c) The department may use a communications consultant or community-based organizations to assist with community engagement efforts in (b) of this subsection.

Sec. 214. 2021 c 333 s 213 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—PROGRAM DELIVERY MANAGEMENT AND SUPPORT—PROGRAM H**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$59,138,000)</del>
	<u>\$58,254,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$500,000
Multimodal Transportation Account—State Appropriation. . . . .	\$758,000
TOTAL APPROPRIATION . . . . .	<del>(\$60,396,000)</del>
	<u>\$59,512,000</u>

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

(1) The legislature recognizes that the trail known as the Rocky Reach Trail, and its extensions, serve to separate motor vehicle traffic from pedestrians and bicyclists, increasing motor vehicle safety on state route number 2 and the coincident section of state route number 97. Consistent with chapter 47.30 RCW and pursuant to RCW 47.12.080, the legislature declares that transferring portions of WSDOT Inventory Control (IC) No. 2-09-04686 containing the trail and associated buffer areas to the Washington state parks and recreation commission is consistent with the public interest. The legislature directs the department to transfer the property to the Washington state parks and recreation commission.

(a) The department must be paid fair market value for any portions of the transferred real property that is later abandoned, vacated, or ceases to be publicly maintained for trail purposes.

(b) Prior to completing the transfer in this subsection (1), the department must ensure that provisions are made to accommodate private and public utilities and any facilities that predate the department's acquisition of the property, at no



cost to those entities. Prior to completing the transfer, the department shall also ensure that provisions, by fair market assessment, are made to accommodate other private and public utilities and any facilities that have been legally allowed by permit or other instrument.

(c) The department may sell any adjoining property that is not necessary to support the Rocky Reach Trail and adjacent buffer areas only after the transfer of trail-related property to the Washington state parks and recreation commission is complete. Adjoining property owners must be given the first opportunity to acquire such property that abuts their property, and applicable boundary line or other adjustments must be made to the legal descriptions for recording purposes.

(2) With respect to Parcel 12 of the real property conveyed by the state of Washington to the city of Mercer Island under that certain quitclaim deed, dated April 19, 2000, recorded in King county under recording no. 20000425001234, the requirement in the deed that the property be used for road/street purposes only will be deemed satisfied by the department of transportation so long as commuter parking, as part of the vertical development of the property, is one of the significant uses of the property.

~~(3) ((\$1,600,000 of the motor vehicle account—state appropriation is provided solely for real estate services activities. Consistent with RCW 47.12.120 and during the 2021-2023 fiscal biennium, when initiating, extending, or renewing any rent or lease agreements with a regional transit authority, consideration of value must be equivalent to one hundred percent of economic or market rent.~~

~~(4))~~ The department shall report to the transportation committees of the legislature by December 1, 2021, on the status of its efforts to consolidate franchises for broadband facilities across the state, including plans for increasing the number of consolidated franchises in the future.

~~((5))~~ (4) During the 2021-2023 biennium, if the department takes possession of the property situated in the city of Edmonds for which a purchase agreement was executed between Unocal and the department in 2005 (Tax Parcel Number 262703-2-003-0009), and if the department confirms that the property is still no longer needed for transportation purposes, the department shall provide the city of Edmonds with the right of first purchase at fair market value in accordance with RCW 47.12.063(3) for the city's intended use of the property to rehabilitate near-shore habitat for salmon and related species.

~~((6) \$300,000))~~ (5) \$535,000 of the motor vehicle account—state appropriation is provided solely for the implementation of chapter 217, Laws of 2021 (noxious weeds). ~~((If chapter 217, Laws of 2021 (noxious weeds) is not enacted by June 30, 2021, the amount provided in this subsection lapses.~~

~~(7) \$500,000))~~ (6) \$1,026,000 of the multimodal transportation account—state appropriation is provided solely for the implementation of chapter 314, Laws of 2021 (environmental justice task force). ~~((If chapter 314, Laws of 2021 (environmental justice task force) is not enacted by June 30, 2021, the amount provided in this subsection lapses.))~~

(7) \$2,399,000 of the motor vehicle account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate

service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

(8) The department shall offer to sell the northern parcel of site 14 on the Puget Sound Gateway Program SR 509 Completion Project Surplus Property list, located immediately south of S. 216th Street and adjacent to the Barnes Creek Nature Trail in Des Moines, to Seattle Goodwill Industries, a nonprofit organization with tax ID 91-05688708, located at 700 Dearborn Place S., Seattle, WA 98144, in accordance with RCW 47.12.063 at fair market value because the legislature finds it in the public interest to do so for the public benefit that will result from Goodwill's redevelopment of the property it owns at Rainier Ave. South and South Dearborn Street to increase the supply of affordable housing.

**Sec. 215.** 2021 c 333 s 214 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC-PRIVATE PARTNERSHIPS—PROGRAM K**

Motor Vehicle Account—State Appropriation . . . . .	(( <del>\$675,000</del> ))
	\$685,000
Electric Vehicle Account—State Appropriation . . . . .	(( <del>\$9,900,000</del> ))
	\$11,900,000
Multimodal Transportation Account—State	
Appropriation . . . . .	\$3,290,000
TOTAL APPROPRIATION . . . . .	(( <del>\$13,865,000</del> ))
	\$15,875,000

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

(1) The public-private partnerships program must continue to explore retail partnerships at state-owned park and ride facilities, as authorized in RCW 47.04.295.

(2) ((~~\$8,900,000~~)) \$10,900,000 of the electric vehicle account—state appropriation is provided solely for the clean alternative fuel vehicle charging and refueling infrastructure program in chapter 287, Laws of 2019 (advancing green transportation adoption).

(3) \$2,400,000 of the multimodal transportation account—state appropriation is provided solely for the pilot program established under chapter 287, Laws of 2019 (advancing green transportation adoption) to provide clean alternative fuel vehicle use opportunities to underserved communities and low to moderate income members of the workforce not readily served by transit or located in transportation corridors with emissions that exceed federal or state emissions standards. Consistent with the geographical diversity element described in RCW 47.04.355(4), the legislature strongly encourages the department to consider implementing the pilot in both urban and rural communities if possible, to obtain valuable information on the needs of underserved communities located in different geographical locations in Washington.

(4) \$1,000,000 of the electric vehicle account—state appropriation and \$500,000 of the multimodal transportation account—state appropriation are provided solely for a colocated DC fast charging and hydrogen fueling station

near the Wenatchee or East Wenatchee area near a state route or near or on a publicly owned facility to service passenger, light-duty and heavy-duty vehicles. The hydrogen fueling station must include a DC fast charging station collocated at the hydrogen fueling station site. Funds may be used for one or more fuel cell electric vehicles that would utilize the fueling stations. The department must contract with a public utility district that produces hydrogen in the area to own and/or manage and provide technical assistance for the design, planning, permitting, construction, maintenance and operation of the hydrogen fueling station. The department and public utility district are encouraged to collaborate with and seek contributions from additional public and private partners for the fueling station.

(5) \$140,000 of the multimodal transportation account—state appropriation is provided solely for the purpose of conducting an assessment of options for the development, including potential features and costs, for a publicly available mapping and forecasting tool that provides locations and essential information of charging and refueling infrastructure to support forecasted levels of electric vehicle adoption, travel, and usage across Washington state as described in chapter 300, Laws of 2021 (preparedness for a zero emissions transportation future).

(6) \$250,000 of the multimodal transportation account—state appropriation is provided solely to fund the design of an electric charging mega-site project at Mount Vernon library commons.

\*Sec. 216. 2021 c 333 s 215 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M**

Motor Vehicle Account—State Appropriation . . . . .	(((\$496,925,000))
	<u>\$505,015,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$7,000,000
Motor Vehicle Account—Local Appropriation . . . . .	\$17,000
State Route Number 520 Corridor Account—State Appropriation. . . . .	(((\$4,082,000))
	<u>\$4,657,000</u>
Tacoma Narrows Toll Bridge Account—State Appropriation. . . . .	(((\$1,479,000))
	<u>\$1,560,000</u>
Alaskan Way Viaduct Replacement Project Account— State Appropriation . . . . .	(((\$8,157,000))
	<u>\$8,611,000</u>
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation . . . . .	(((\$2,545,000))
	<u>\$2,594,000</u>
Waste Tire Removal Account—State Appropriation . . . . .	\$5,000,000
TOTAL APPROPRIATION . . . . .	(((\$520,188,000))
	<u>\$534,454,000</u>

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

(1) \$7,529,000 of the motor vehicle account—state appropriation is provided solely for utility fees assessed by local governments as authorized

under RCW 90.03.525 for the mitigation of stormwater runoff from state highways. Plan and reporting requirements as required in chapter 435, Laws of 2019 (Local Stormwater Charges) shall be consistent with the January 2012 findings of the Joint Transportation Committee Report for Effective Cost Recovery Structure for WSDOT, Jurisdictions, and Efficiencies in Stormwater Management.

(2) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for a contingency pool for snow and ice removal. The department must notify the office of financial management and the transportation committees of the legislature when they have spent the base budget for snow and ice removal and will begin using the contingency pool funding.

(3) \$1,025,000 of the motor vehicle account—state appropriation is provided solely for the department to implement safety improvements and debris clean up on department-owned rights-of-way in the city of Seattle at levels above that being implemented as of January 1, 2019, to be administered in conjunction with subsection (9) of this section. The department must maintain a crew dedicated solely to collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist to the traveling public, department employees, or people encamped upon department-owned rights-of-way. The department may request assistance from the Washington state patrol as necessary in order for both agencies to provide enhanced safety-related activities regarding the emergency hazards along state highway rights-of-way in the Seattle area.

(4) \$1,015,000 of the motor vehicle account—state appropriation is provided solely for a partnership program between the department and the city of Tacoma, to be administered in conjunction with subsection (9) of this section. The program shall address the safety and public health problems created by homeless encampments on the department's property along state highways within the city limits. \$570,000 is for dedicated department maintenance staff and associated clean-up costs. The department and the city of Tacoma shall enter into a reimbursable agreement to cover up to \$445,000 of the city's expenses for clean-up crews and landfill costs.

(5) The department must continue a pilot program for the 2021-2023 fiscal biennium at the four highest demand safety rest areas to create and maintain an online calendar for volunteer groups to check availability of weekends for the free coffee program. The calendar must be updated at least weekly and show dates and times that are, or are not, available to participate in the free coffee program. The department must submit a report to the legislature on the ongoing pilot by December 1, 2022, outlining the costs and benefits of the online calendar pilot, and including surveys from the volunteer groups and agency staff to determine its effectiveness.

(6) \$686,000 of the motor vehicle account—state appropriation is provided solely for reimbursing the Oregon department of transportation (ODOT) for the department's share of increased maintenance costs of six highway bridges over the Columbia River that are maintained by ODOT.

(7) \$8,290,000 of the motor vehicle account—state appropriation is provided solely for increased costs of highway maintenance materials.

(8) \$5,816,000 of the motor vehicle account—state appropriation is provided solely for a contingency pool for repairing damages to highways caused by known and unknown third parties. The department must notify the office of financial management and the transportation committees of the legislature when they have spent the base budget for third-party damage repair and will begin using the contingency pool funding.

(9)(a) ~~\$3,000,000 of the motor vehicle account—state appropriation ((is) and \$5,000,000 of the waste tire removal account—state appropriation are~~ provided solely for the department to address the risks to safety and public health associated with homeless encampments on department owned rights-of-way. The department must coordinate and work with local government officials and social service organizations who provide services and direct people to housing alternatives that are not in highway rights-of-way to help prevent future encampments from forming on highway rights-of-way, and may reimburse the organizations doing this outreach assistance who transition people into treatment or housing ~~((that is not on the rights-of-way))~~ or for debris clean up on highway rights-of-way. ~~((The department may))~~ A minimum of \$2,000,000 of this appropriation must be used to provide more frequent removal of litter on the highway rights-of-way that is generated by unsheltered people and may be used to hire crews specializing in collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist to the traveling public and department employees. The department may use these funds to either reimburse local law enforcement costs or the Washington state patrol if they are ((participating as part of a state or local government agreement to provide)) providing enhanced safety ((related activities along state)) to department staff during debris cleanup or during efforts to prevent future encampments from forming on highway rights-of-way.

(b) Beginning ~~((October 1, 2021))~~ November 1, 2022, and semiannually thereafter, the Washington state patrol and the department of transportation must jointly submit a report to the governor and the house and senate transportation committees of the legislature on the status of these efforts, including:

(i) A detailed breakout of the size, location, risk level categorization, and number of encampments on or near department-owned rights-of-way, compared to the levels during the quarter being reported;

(ii) A summary of the activities in that quarter related to addressing these encampments, including information on arrangements with local governments or other entities related to these activities;

(iii) A description of the planned activities in the ensuing quarter to further address the emergency hazards and risks along state highway rights-of-way; and

(iv) Recommendations for executive branch or legislative action to achieve the desired outcome of reduced emergency hazards and risks along state highway rights-of-way.

(10)(a) \$2,000,000 of the motor vehicle account—state appropriation is provided solely for the department to contract with the city of Fife to address the risks to safety and public health associated with homeless encampments on department-owned rights-of-way along the SR 167/SR 509 Puget Sound Gateway project corridor in and adjacent to the city limits.

(b) The city must coordinate and work with the department and local governments and social service organizations who provide services and direct

people to housing alternatives that are not in highway rights-of-way to help prevent future encampments from forming on highway rights-of-way. State funds may be used to reimburse the organizations doing this outreach assistance who transition people into treatment or housing that is not on the rights-of-way or for debris clean up on highway rights-of-way.

(c) The department may hire crews specializing in collecting and disposing of garbage, clearing debris or hazardous material, and implementing safety improvements where hazards exist to the traveling public and department employees.

(d) Funds may also be used to reimburse local law enforcement costs or the Washington state patrol if they are participating as part of a state or local government agreement to provide enhanced safety related activities along state highway rights-of-way.

(e) It is the intent of the legislature that the city and collaborating partners should place particular emphasis on utilizing available funds for addressing large scale and multiple homeless encampments that impact public safety and health. Funding for initiatives associated with such encampments may include targeted assistance to local governments and social service organizations, directing moneys toward not only initial efforts to clear encampments, clean up debris and restore sightlines, but to ongoing work, monitoring, and maintenance of efforts to place individuals in housing, treatment and services, and to better ensure individuals experiencing homelessness receive needed assistance while sites remain safe and secure for the traveling public.

(11) \$12,096,000 of the motor vehicle account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

(12) \$5,400,000 of the motor vehicle account—state appropriation is provided solely for replacement of traffic signs and to increase the visibility of road pavement markings. Investments must replace traffic signs that do not meet the department's standards or that are faded, lacking in reflectivity, cracked, illegible, or damaged. Investments must also increase the visibility of road pavement markings during periods of low light conditions and during precipitation with pavement marking products that contain all-weather optical reflectivity capability. The request for proposals and subsequent competitive procurement for the signs shall be performed following state specifications and standards.

(13) \$17,000 of the motor vehicle account—local appropriation is provided solely to update existing signs along Interstate 5 in the vicinity of Seattle center. The department must install new Seattle center logos with a redesigned logo that recognizes climate pledge arena, but is not responsible for design or fabrication of the logo or new sign.

(14) \$100,000 of the motor vehicle account—state appropriation is provided solely for the department to install fencing to delineate between the privately

leased property owned by the department and the public right-of-way property maintained by the city of Seattle. The parameters of the adjacent properties located under the Interstate 5 corridor, south of milepost 165, are south Jackson street and south King street going north and south, and 8th avenue south and 9th avenue south going west to east in the international district.

(15)(a) \$2,500,000 of the motor vehicle account—state appropriation is provided solely for:

(i) Additional resources for operations, maintenance, facility replacements, security, and upgrades to safety rest areas to ensure that safety rest areas owned and operated by the department are open for use except for seasonal closures or cleaning, maintenance, and repair; and

(ii) Reconfiguration of maintenance operations pursuant to chapter . . . (Substitute House Bill No. 1655), Laws of 2022 (safety rest areas).

(b) The department may use the funds for additional labor, services, materials, or equipment needed to allow commercial vehicle parking stalls to remain open when rest areas might otherwise be closed.

(c) It is the intent of the legislature that these funds are additional resources for the department and not meant to supplant underlying resources for the maintenance and operations of safety rest areas.

(d) The department must make a report to the transportation committees of the legislature regarding the additional operations and maintenance activities made at safety rest areas to ensure that rest areas stayed open by January 15, 2023. The report must include the status per safety rest area of openings and closures that were impacted by the additional activities; the additional activities, including security efforts, that were performed at the rest areas; and an update on the status and a review of the safety rest area strategic plan.

(16)(a) \$50,000 of the motor vehicle account—state appropriation is provided solely for the department to install and inspect monthly human trafficking informational posters in every rest room in every safety rest area owned and operated by the department.

(b) In developing the informational posters, the department shall consult with human trafficking victim advocates to determine content.

(c) The posters must:

(i) Be printed in a variety of languages;

(ii) Include contact information for seeking help, which may include toll-free telephone numbers a person may call for assistance, including the number for the national human trafficking resource center and the number for the Washington state office of crime victims advocacy; and

(iii) Be made of durable material and permanently affixed.

(d) The department shall install the informational posters in every restroom at every safety rest area owned and operated by the department by December 31, 2022.

(e) Beginning January 1, 2023, or one month after installation of informational posters, whichever is sooner, the department shall inspect the informational posters as part of its monthly maintenance activities to ensure that the posters are in fair condition and remain legible.

(f) The department must make a report to the transportation committees of the legislature regarding the installation of informational posters at safety rest areas by January 15, 2023. The report must include the number of informational

posters installed, the location of the poster installations, and the completion date of the poster installations.

(17) During the 2021-2023 fiscal biennium, the department shall conduct a pilot program authorizing commercial motor vehicles, as defined in RCW 46.25.010, that are used in commerce solely to transport property to park in areas designated by the department as chain up and chain off areas along United States route number 2 and Interstate 90 between May 1st and November 1st of each calendar year of the biennium. Under the pilot program, parking is permitted for up to an hour beyond federally mandated rest periods when signage posted by the department authorizes the parking of these commercial motor vehicles. Beginning January 1, 2023, the department shall post and maintain signage authorizing the parking of these commercial motor vehicles in chain up and chain off areas that it determines: (a) Have sufficient space to accommodate commercial motor vehicles parking for an extended period of time; and (b) where other safety concerns have been addressed. The department shall notify the Washington state patrol and the transportation committees of the legislature when it posts signage authorizing commercial motor vehicle parking in a chain up or chain off area.

\*Sec. 216 was partially vetoed. See message at end of chapter.

Sec. 217. 2021 c 333 s 216 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	(\$74,406,000)	
		\$73,760,000
Motor Vehicle Account—Federal Appropriation . . . . .		\$2,050,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	(\$250,000)	
		\$295,000
State Route Number 520 Corridor Account—State Appropriation. . . . .		\$225,000
Tacoma Narrows Toll Bridge Account—State Appropriation. . . . .		\$40,000
Alaskan Way Viaduct Replacement Project Account— State Appropriation . . . . .		\$1,112,000
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation . . . . .		\$20,000
Agency Financial Transaction Account—State Appropriation. . . . .		\$100,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>(\$78,103,000)</b>	<b>\$77,602,000</b>

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

(1) \$6,000,000 of the motor vehicle account—state appropriation is provided solely for low-cost enhancements. The department shall give priority to low-cost enhancement projects that improve safety or provide congestion relief. By December 15th of each odd-numbered year, the department shall provide a report to the legislature listing all low-cost enhancement projects completed in the prior fiscal biennium.



(2)(a) During the 2021-2023 fiscal biennium, the department shall continue a pilot program that expands private transportation providers' access to high occupancy vehicle lanes. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, the following vehicles must be authorized to use the reserved portion of the highway if the vehicle has the capacity to carry eight or more passengers, regardless of the number of passengers in the vehicle: (i) Auto transportation company vehicles regulated under chapter 81.68 RCW; (ii) passenger charter carrier vehicles regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; (iii) private nonprofit transportation provider vehicles regulated under chapter 81.66 RCW; and (iv) private employer transportation service vehicles. For purposes of this subsection, "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees. Nothing in this subsection is intended to authorize the conversion of public infrastructure to private, for-profit purposes or to otherwise create an entitlement or other claim by private users to public infrastructure.

(b) The department shall expand the high occupancy vehicle lane access pilot program to vehicles that deliver or collect blood, tissue, or blood components for a blood-collecting or distributing establishment regulated under chapter 70.335 RCW. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, blood-collecting or distributing establishment vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(c) The department shall expand the high occupancy vehicle lane access pilot program to organ transport vehicles transporting a time urgent organ for an organ procurement organization as defined in RCW 68.64.010. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, organ transport vehicles that are clearly and identifiably marked as such on all sides of the vehicle are considered emergency vehicles and must be authorized to use the reserved portion of the highway.

(d) The department shall expand the high occupancy vehicle lane access pilot program to private, for hire vehicles regulated under chapter 81.72 RCW that have been specially manufactured, designed, or modified for the transportation of a person who has a mobility disability and uses a wheelchair or other assistive device. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, wheelchair-accessible taxicabs that are clearly and identifiably marked as such on all sides of the vehicle are considered public transportation vehicles and must be authorized to use the reserved portion of the highway.

(e) The department shall expand the high occupancy vehicle lane access pilot program to for hire nonemergency medical transportation vehicles, when in use for medical purposes, as described in section 208 (~~of this act~~), chapter 333, Laws of 2021. Under the pilot program, when the department reserves a portion of a highway based on the number of passengers in a vehicle, nonemergency medical transportation vehicles that meet the requirements identified in section

208 (~~of this act~~), chapter 333, Laws of 2021 must be authorized to use the reserved portion of the highway.

(f) Nothing in this subsection (2) is intended to exempt these vehicles from paying tolls when they do not meet the occupancy requirements established by the department for express toll lanes.

(3) \$2,574,000 of the motor vehicle account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

(4) The appropriations in this section assume implementation of additional cost recovery mechanisms to recoup at least \$100,000 in credit card and other financial transaction costs related to the collection of fees imposed under RCW 46.44.0941 for driver and vehicle fee transactions beginning January 1, 2023. The department may recover transaction fees incurred through credit card transactions. At the direction of the office of financial management, the department shall develop a method of tracking the additional amount of credit card and other financial cost-recovery revenues. In consultation with the office of financial management, the department shall notify the office of the state treasurer of these amounts and the state treasurer must deposit these revenues in the agency financial transaction account created in RCW 46.01.385 on a quarterly basis. The department shall also submit, as part of its 2023-2025 budget submittal, an overview of the credit card cost recovery approach, including fee rates and the amount of revenue expected to be generated in the 2021-2023 and 2023-2025 biennia.

(5) The department shall promote safety messages encouraging drivers to slow down and move over and pay attention when emergency lights are flashing on the side of the road and other suitable safety messages on electronic message boards the department operates across the state. The messages must be promoted multiple times each month through June 30, 2023. The department may coordinate such messaging with any statewide public awareness campaigns being developed by the department of licensing or the Washington state traffic safety commission or both.

**Sec. 218.** 2021 c 333 s 217 (uncodified) is amended to read as follows:

<b>FOR THE DEPARTMENT OF TRANSPORTATION—</b>	
<b>TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S</b>	
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$37,361,000)</del>
	<u>\$37,365,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$780,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$500,000
<u>Puget Sound Ferry Operations Account—State</u>	
<u>Appropriation. . . . .</u>	<u>\$266,000</u>
Multimodal Transportation Account—State	
Appropriation. . . . .	\$5,129,000
State Route Number 520 Corridor Account—State	

Appropriation.....	\$186,000
Tacoma Narrows Toll Bridge Account—State	
Appropriation.....	\$150,000
Alaskan Way Viaduct Replacement Project Account—	
State Appropriation .....	\$121,000
Interstate 405 and State Route Number 167 Express	
Toll Lanes Account—State Appropriation .....	\$77,000
TOTAL APPROPRIATION .....	<del>(\$44,304,000)</del>
	<u>\$44,574,000</u>

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

(1) ~~\$4,000,000~~ of the multimodal transportation account—state appropriation is provided solely for efforts to increase diversity in the transportation construction workforce through: ~~((1))~~ (a) The preapprenticeship support services (PASS) program, which aims to increase diversity in the highway construction workforce and prepare individuals interested in entering the highway construction workforce. In addition to the services allowed by RCW 47.01.435, the PASS program may provide housing assistance for youth aging out of the foster care and juvenile rehabilitation systems in order to support the participation of these youth in a transportation-related preapprenticeship program; ~~((2))~~ (b) assisting minority and women-owned businesses to perform work in the highway construction industry. This assistance shall include technical assistance, business training, counseling, guidance, prime to subcontractor relationship building, and a capacity building mentorship program. At a minimum, \$1,000,000 of the total appropriation in this subsection shall be directed toward the efforts outlined in (b) of this subsection ~~((2) of this section))~~. The provider(s) chosen to complete the work in this subsection shall be selected through a competitive bidding process. The program shall be administered by the Washington state department of transportation's office of equal opportunity.

(2) \$1,446,000 of the motor vehicle account—state appropriation is provided solely for contingency funding to address emergent issues related to mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

(3) \$774,000 of the motor vehicle account—state appropriation and \$266,000 of the Puget Sound ferry operations account—state appropriation are provided solely for the department to hire a workforce development consultant to develop, track, and monitor the progress of community workforce agreements, and to hire staff to assist with the development and implementation of internal diversity, equity, and inclusion efforts and serve as subject matter experts on federal and state civil rights provisions. The department shall engage with relevant stakeholders, and provide a progress report on the implementation

of efforts under this subsection to the transportation committees of the legislature and the governor by December 1, 2022.

(4) For Washington state department of transportation small works roster projects under RCW 39.04.155, the department may only allow firms certified as small business enterprises, under 49 C.F.R. 26.39, to bid on the contract, unless the department determines there would be insufficient bidders for a particular project. The department shall report on the effectiveness of this policy to the transportation committees of the legislature by January 31, 2023.

Sec. 219. 2021 c 333 s 218 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
TRANSPORTATION PLANNING, DATA, AND RESEARCH—  
PROGRAM T**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$27,057,000)</del>
	<u>\$26,483,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$34,865,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$400,000
Multimodal Transportation Account—State Appropriation. . . . .	<del>(\$919,000)</del>
	<u>\$1,902,000</u>
Multimodal Transportation Account—Federal Appropriation. . . . .	\$2,809,000
Multimodal Transportation Account—Private/Local Appropriation. . . . .	\$100,000
State Route Number 520 Corridor Account—State Appropriation. . . . .	<del>(\$406,000)</del>
	<u>\$451,000</u>
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation . . . . .	\$2,879,000
<b>TOTAL APPROPRIATION . . . . .</b>	<del>(\$69,435,000)</del>
	<u>\$69,889,000</u>

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

(1) \$4,080,000 of the motor vehicle account—federal appropriation is provided solely for the Forward Drive road usage charge research project overseen by the transportation commission using a portion of the amount of the federal grant award. The purpose of the Forward Drive road usage charge research project is to advance research in key policy areas related to road usage charge including assessing impacts of future mobility shifts on road usage charge revenues, conducting an equity analysis, updating and assessing emerging mileage reporting methods, determining opportunities to reduce cost of collection, conducting small-scale pilot tests, and identifying a long-term, detailed phase-in plan.

(2) \$2,879,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for completion of updating the state route number 167 master plan.

(3) ~~(\$250,000)~~ \$500,000 of the multimodal transportation account—state appropriation is provided solely for the department to partner with the department of commerce in developing vehicle miles traveled targets for the

counties in Washington state with (a) a population density of at least 100 people per square mile and a population of at least 200,000; or (b) a population density of at least 75 people per square mile and an annual growth rate of at least 1.75 percent as determined by the office of financial management. Given land use patterns are key factors in travel demand and should be taken into consideration when developing the targets, the department and the department of commerce shall partner with local jurisdictions, regional transportation planning organizations and other stakeholders to inventory existing laws and rules that promote transportation and land use, identify gaps and make recommendations for changes in laws, rules and agency guidance, and establish a framework for considering underserved and rural communities in the evaluation. The department and the department of commerce shall provide an initial technical report by December 31, 2021, an interim report by June 22, 2022, and a final report to the governor and appropriate committees of the legislature by June 30, 2023, that includes a process for establishing vehicle miles traveled reduction targets, a recommended suite of options for local jurisdictions to achieve the targets, and funding requirements for state and local jurisdictions.

(4) (~~(\$406,000)~~) \$451,000 of the state route number 520 corridor account—state appropriation is provided solely for the department to contract with the University of Washington department of mechanical engineering, to study measures to reduce noise impacts from the state route number 520 bridge expansion joints. The field testing shall be scheduled during existing construction, maintenance, or other scheduled closures to minimize impacts. The testing must also ensure safety of the traveling public. The study shall examine testing methodologies and project timelines and costs. A (~~final~~) draft report must be submitted to the transportation committees of the legislature and the governor by March 1, 2022. A final report must be submitted to the transportation committees of the legislature and the governor by December 31, 2022.

(5) \$5,900,000 of the motor vehicle account—federal appropriation and \$400,000 of the motor vehicle account—private/local appropriation are provided solely for delivery of the department's state planning and research work program and pooled fund research projects(~~(, provided that the department may not expend any amounts provided in this section on a long range plan or corridor scenario analysis for I-5 from Tumwater to Marysville. This is not intended to reference or impact: The existing I-5 corridor from Mounds road to Tumwater design and operations alternatives analysis; design studies related to HOV lanes or operations; or where it is necessary to continue design and operations analysis related to projects already under development))~~).

(6) \$800,000 of the motor vehicle account—state appropriation is provided solely for WSDOT to do a corridor study of SR 302 (Victor Area) to recommend safety and infrastructure improvements to address current damage and prevent future roadway collapse and landslides that have caused road closures.

(7) \$1,000,000 of the motor vehicle account—state appropriation is provided solely for a study on the need for additional connectivity in the area between SR 161, SR 7, SR 507, and I-5 in South Pierce County.

(8) \$1,654,000 of the motor vehicle account—state appropriation and \$108,000 of the multimodal transportation account—state appropriation are provided solely for contingency funding to address emergent issues related to

mitigating negative impacts of the high level of staff vacancies. Potential uses of the funding include, but are not limited to, the following: Increased overtime, travel, and other related costs; increased contracting to maintain adequate service levels; and unanticipated facility and equipment needs. By January 1, 2023, the department must submit a report to the governor and the transportation committees of the legislature detailing the specific expenditures made from the contingency funding provided in this subsection.

(9) \$450,000 of the motor vehicle account—state appropriation is provided solely for the department to complete a performance-based project evaluation model based on the initial work done for section 218(7), chapter 219, Laws of 2020, in a way that operationalizes the six transportation policy goals in RCW 47.04.280. This work should first include clarification of the transportation policy goals through development of objectives and criteria that reflect system priorities based on outcomes of community engagement. After a framework is established by which goals can be more directly related to outcomes, the project evaluation model should leverage the department's existing experts and best practices used for prioritizing programmatic funds to develop procedures by which evaluators could consistently score and rank all types of projects. The department must issue a report by June 30, 2023, summarizing the new project evaluation model, and provide recommendations for how this process could be implemented in coordination with the legislative work cycle.

(10)(a) \$250,000 of the multimodal transportation account—state appropriation is provided solely for Thurston regional planning council (TRPC) to conduct a study examining options for multimodal high capacity transportation (HCT) to serve travelers on the I-5 corridor between central Thurston county (Olympia area) and Pierce county.

(b) The study will include an assessment of travelsheds and ridership potential and identify and provide an evaluation of options to enhance connectivity and accessibility for the greater south Puget Sound region with an emphasis on linking to planned or existing commuter or regional light rail. The study must account for previous and ongoing efforts by transit agencies and the department. The study will emphasize collaboration with a diverse community of interests, including but not limited to transit, business, public agencies, tribes, and providers and users of transportation who because of age, income, or ability may face barriers and challenges. TRPC will provide to the transportation committees of the legislature a study outline and recommendations of deliverables by December 1, 2022.

(11) \$600,000 of the multimodal transportation account—state appropriation is provided solely for the city of Seattle's office of planning and community development to support an equitable development initiative to reconnect the South Park neighborhood, currently divided by State Route 99.

(a) The support work must include:

(i) A public engagement and visioning process led by a neighborhood-based, community organization; and

(ii) A feasibility study of decommissioning SR 99 in the South Park neighborhood to include, but not be limited to, traffic studies, environmental impact analysis, and development of alternatives, including the transfer of the land to a neighborhood-led community land trust.

(b) The support work must be conducted in coordination and partnership with neighborhood residents, neighborhood industrial and commercial representatives, the state department of transportation, and other entities and neighborhoods potentially impacted by changes to the operation of SR 99.

(c) The city must provide a report on the plan that includes recommendations to the Seattle city council, state department of transportation, and the transportation committees of the legislature by January 1, 2025.

Sec. 220. 2021 c 333 s 219 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U**

Aeronautics Account—State Appropriation . . . . .	\$1,000
Transportation Partnership Account—State Appropriation. . . . .	(((\$23,000)) \$25,000
Motor Vehicle Account—State Appropriation . . . . .	(((\$99,515,000)) \$101,849,000
Puget Sound Ferry Operations Account—State Appropriation. . . . .	(((\$220,000)) \$244,000
State Route Number 520 Corridor Account—State Appropriation. . . . .	\$26,000
Connecting Washington Account—State Appropriation . . . . .	(((\$184,000)) \$203,000
Multimodal Transportation Account—State Appropriation. . . . .	(((\$4,795,000)) \$4,968,000
Tacoma Narrows Toll Bridge Account—State Appropriation. . . . .	\$19,000
Alaskan Way Viaduct Replacement Project Account— State Appropriation . . . . .	\$14,000
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation . . . . .	\$15,000
TOTAL APPROPRIATION . . . . .	(((\$104,812,000)) \$107,364,000

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

(1) Consistent with existing protocol and practices, for any negotiated settlement of a claim against the state for the department that exceeds five million dollars, the department, in conjunction with the attorney general and the department of enterprise services, shall notify the director of the office of financial management and the transportation committees of the legislature.

(2) Beginning October 1, 2021, and semiannually thereafter, the department, in conjunction with the attorney general and the department of enterprise services, shall provide a report with judgments and settlements dealing with the Washington state ferry system to the director of the office of financial management and the transportation committees of the legislature. The report must include information on: (a) The number of claims and settlements by type; (b) the average claim and settlement by type; (c) defense costs associated with

those claims and settlements; and (d) information on the impacts of moving legal costs associated with the Washington state ferry system into the statewide self-insurance pool.

(3) Beginning October 1, 2021, and semiannually thereafter, the department, in conjunction with the attorney general and the department of enterprise services, shall provide a report with judgments and settlements dealing with the nonferry operations of the department to the director of the office of financial management and the transportation committees of the legislature. The report must include information on: (a) The number of claims and settlements by type; (b) the average claim and settlement by type; and (c) defense costs associated with those claims and settlements.

(4) When the department identifies significant legal issues that have potential transportation budget implications, the department must initiate a briefing for appropriate legislative members or staff through the office of the attorney general and its legislative briefing protocol.

Sec. 221. 2021 c 333 s 220 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V**

State Vehicle Parking Account—State Appropriation . . . . .	\$784,000
Regional Mobility Grant Program Account—State Appropriation. . . . .	(( <del>\$104,478,000</del> ))
	<u>\$115,488,000</u>
Rural Mobility Grant Program Account—State Appropriation. . . . .	(( <del>\$33,168,000</del> ))
	<u>\$33,283,000</u>
Multimodal Transportation Account—State Appropriation. . . . .	(( <del>\$131,150,000</del> ))
	<u>\$134,754,000</u>
Multimodal Transportation Account—Federal Appropriation. . . . .	\$3,574,000
Multimodal Transportation Account—Local Appropriation. . . . .	\$100,000
TOTAL APPROPRIATION . . . . .	(( <del>\$273,254,000</del> ))
	<u>\$287,983,000</u>

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

(1) \$67,821,000 of the multimodal transportation account—state appropriation is provided solely for a grant program for special needs transportation provided by transit agencies and nonprofit providers of transportation. Of this amount:

(a) \$15,568,000 of the multimodal transportation account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost effectiveness of trips provided. Fuel type may not be a factor in the grant selection process.

(b) \$52,253,000 of the multimodal transportation account—state appropriation is provided solely for grants to transit agencies to transport



persons with special transportation needs. To receive a grant, the transit agency must, to the greatest extent practicable, have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2019 as reported in the "Summary of Public Transportation - 2019" published by the department of transportation. No transit agency may receive more than thirty percent of these distributions. Fuel type may not be a factor in the grant selection process.

(2) (~~(\$33,168,000)~~) \$33,283,000 of the rural mobility grant program account—state appropriation is provided solely for grants to aid small cities in rural areas as prescribed in RCW 47.66.100. Fuel type may not be a factor in the grant selection process.

(3) \$2,000,000 of the multimodal transportation account—state appropriation is provided solely for a (~~vanpool~~) public transit rideshare grant program for: (a) Public transit agencies to add (~~vanpools~~) or replace (~~vans~~) rideshare vehicles; and (b) incentives (~~for employers~~) and outreach to increase (~~employee vanpool~~) rideshare use. The grant program for public transit agencies may cover capital costs only; operating costs for public transit agencies are not eligible for funding under this grant program. Additional employees may not be hired from the funds provided in this section for the vanpool grant program, and supplanting of transit funds currently funding vanpools is not allowed. The department shall encourage grant applicants and recipients to leverage funds other than state funds. Fuel type may not be a factor in the grant selection process.

(4) (~~(\$26,800,000)~~) \$37,809,000 of the regional mobility grant program account—state appropriation is reappropriated and provided solely for the regional mobility grant projects identified in LEAP Transportation Document (~~(2021-2)~~) 2022-2 ALL PROJECTS as developed (~~(April 23, 2021)~~) March 9, 2022, Program - Public Transportation Program (V).

(5)(a) \$77,679,000 of the regional mobility grant program account—state appropriation is provided solely for the regional mobility grant projects identified in LEAP Transportation Document (~~(2021-2)~~) 2022-2 ALL PROJECTS as developed (~~(April 23, 2021)~~) March 9, 2022, Program - Public Transportation Program (V). The department shall review all projects receiving grant awards under this program at least semiannually to determine whether the projects are making satisfactory progress. Any project that has been awarded funds, but does not report activity on the project within one year of the grant award, must be reviewed by the department to determine whether the grant should be terminated. The department shall promptly close out grants when projects have been completed, and any remaining funds must be used only to fund projects identified in the LEAP transportation document referenced in this subsection. The department shall provide annual status reports on December 15, 2021, and December 15, 2022, to the office of financial management and the transportation committees of the legislature regarding the projects receiving the grants. It is the intent of the legislature to appropriate funds through the regional mobility grant program only for projects that will be completed on schedule. A grantee may not receive more than twenty-five percent of the amount appropriated in this subsection. Additionally, when allocating funding for the

2023-2025 biennium, no more than thirty percent of the total grant program may directly benefit or support one grantee unless all other funding is awarded. The department shall not approve any increases or changes to the scope of a project for the purpose of a grantee expending remaining funds on an awarded grant. Fuel type may not be a factor in the grant selection process.

(b) In order to be eligible to receive a grant under (a) of this subsection during the 2021-2023 fiscal biennium, a transit agency must establish a process for private transportation providers to apply for the use of park and ride facilities. For purposes of this subsection, (i) "private transportation provider" means: An auto transportation company regulated under chapter 81.68 RCW; a passenger charter carrier regulated under chapter 81.70 RCW, except marked or unmarked stretch limousines and stretch sport utility vehicles as defined under department of licensing rules; a private nonprofit transportation provider regulated under chapter 81.66 RCW; or a private employer transportation service provider; and (ii) "private employer transportation service" means regularly scheduled, fixed-route transportation service that is offered by an employer for the benefit of its employees.

(6) Funds provided for the commute trip reduction (CTR) program may also be used for the growth and transportation efficiency center program.

(7) \$6,500,000 of the multimodal transportation account—state appropriation and \$784,000 of the state vehicle parking account—state appropriation are provided solely for CTR grants and activities. Fuel type may not be a factor in the grant selection process. Of this amount:

(a) \$30,000 of the state vehicle parking account—state appropriation is provided solely for the STAR pass program for state employees residing in Mason and Grays Harbor Counties. Use of the pass is for public transportation between Mason County and Thurston County, and Grays Harbor and Thurston County. The pass may also be used within Grays Harbor County. The STAR pass commute trip reduction program is open to any state employee who expresses intent to commute to his or her assigned state worksite using a public transit system currently participating in the STAR pass program.

(b) \$800,000 of the multimodal transportation account—state appropriation is provided solely for continuation of the first mile/last mile connections grant program. Eligible grant recipients include cities, businesses, nonprofits, and transportation network companies with first mile/last mile solution proposals. Transit agencies are not eligible. The commute trip reduction board shall develop grant parameters, evaluation criteria, and evaluate grant proposals. The commute trip reduction board shall provide the transportation committees of the legislature a report on the effectiveness of this grant program and best practices for continuing the program.

(8)(a) Except as provided otherwise in this subsection, (~~(\$28,263,000)~~) \$29,030,000 of the multimodal transportation account—state appropriation is provided solely for connecting Washington transit projects identified in LEAP Transportation Document (~~(2021-2)~~) 2022-2 ALL PROJECTS as developed (~~(April 23, 2021)~~) March 9, 2022. It is the intent of the legislature that entities identified to receive funding in the LEAP document referenced in this subsection receive the amounts specified in the time frame specified in that LEAP document. If an entity has already completed a project in the LEAP document

referenced in this subsection before the time frame identified, the entity may substitute another transit project or projects that cost a similar or lesser amount.

(b) Within the amount provided in this subsection, \$900,000 of the multimodal transportation account—state appropriation is provided solely to complete work on Martin Luther King Way, Rainier Ave improvements (G2000040).

(9) The department shall not require more than a ten percent match from nonprofit transportation providers for state grants.

(10) (~~(\$21,858,000)~~) \$23,349,000 of the multimodal transportation account—state appropriation is provided solely for the green transportation capital grant program established in chapter 287, Laws of 2019 (advancing green transportation adoption).

(11) \$555,000 of the multimodal transportation account—state appropriation is provided solely for an interagency transfer to the Washington State University extension energy program to establish and administer a technical assistance and education program for public agencies on the use of alternative fuel vehicles. The Washington State University extension energy program shall prepare a report regarding the utilization of the program and provide this report to the transportation committees of the legislature by November 15, 2021.

(12) The department must provide telework assistance to employers as part of its CTR activities. The objectives of telework assistance include improving transportation system performance, supporting economic vitality, and increasing equity and access to opportunity.

(13) \$150,000 of the multimodal transportation account—state appropriation is provided solely for Intercity Transit for the Dash shuttle program.

(14)(a) \$500,000 of the multimodal transportation account—state appropriation is provided solely for King county metro to develop a pilot program to place teams including human services personnel along routes that are enduring significant public safety issues and various disruptive behavior in south King county. The team would be available to deescalate disruptions, provide immediate access to transit resources, and refer customers to community resources to break cycles of inappropriate behavior. The teams must be individuals trained in deescalation and outreach. The function and duties should be cocreated with community stakeholders.

(b) King county metro must provide a report to the transportation committees of the legislature by June 30, 2023, regarding the effectiveness of the program, any suggestions for improving its efficacy, and any modifications that might be necessary for other transit providers to institute similar programs.

(c) If King county metro does not provide at least \$500,000 to develop the pilot program funded by this subsection, the amount provided in this subsection lapses.

(15)(a) \$250,000 of the multimodal transportation account—state appropriation is provided solely for the department, in consultation with the joint transportation committee, to conduct a study of statewide transit service benchmarks. Elements of the study include:

(i) Development of definitions of frequent fixed route transit and accessible frequent fixed route transit; and

(ii) Identification of, to the extent possible using existing data, current gaps in frequent fixed route transit and accessible walking routes to frequent fixed route transit stops.

(b) An initial report is due by December 15, 2022, that proposes a definition of frequent transit and documents how many people in Washington live within one half mile walk of frequent transit. A final report is due by June 30, 2023, that identifies gaps in accessible frequent transit, analyzed for disparities in race, age, and disability, and develops funding scenarios to address the identified gaps.

(16) Within existing resources, the department shall prepare a report regarding the funding, implementation, and operation of the grant management system or systems utilized by the public transportation division. In preparing this report, the department must survey and report on all grant recipients experience with the operation of this system or systems. The department shall provide this report to the transportation committees of the legislature by November 15, 2022.

Sec. 222. 2021 c 333 s 221 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—MARINE—PROGRAM X**

Puget Sound Ferry Operations Account—State

Appropriation. . . . .((~~\$416,614,000~~))  
\$430,388,000

Puget Sound Ferry Operations Account—Federal

Appropriation. . . . .((~~\$124,000,000~~))  
\$156,789,000

Puget Sound Ferry Operations Account—Private/Local

Appropriation. . . . . \$121,000

TOTAL APPROPRIATION . . . . .((~~\$540,735,000~~))  
\$587,298,000

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

(1) The office of financial management budget instructions require agencies to recast enacted budgets into activities. The Washington state ferries shall include a greater level of detail in its 2021-2023 supplemental and 2023-2025 omnibus transportation appropriations act requests, as determined jointly by the office of financial management, the Washington state ferries, and the transportation committees of the legislature. This level of detail must include the administrative functions in the operating as well as capital programs. The data in the tables in the report must be supplied in a digital file format.

(2) For the 2021-2023 fiscal biennium, the department may enter into a distributor controlled fuel hedging program and other methods of hedging approved by the fuel hedging committee, which must include a representative of the department of enterprise services.

(3) ((~~\$17,000,000~~)) \$32,905,000 of the Puget Sound ferry operations account—federal appropriation and \$53,794,000 of the Puget Sound ferry operations account—state appropriation are provided solely for auto ferry vessel operating fuel in the 2021-2023 fiscal biennium, which reflect cost savings from a reduced biodiesel fuel requirement and, therefore, is contingent upon the enactment of section 703 of this act. The amount provided in this subsection represents the fuel budget for the purposes of calculating any ferry fare fuel

surcharge. The department shall review future use of alternative fuels and dual fuel configurations, including hydrogen.

(4) \$500,000 of the Puget Sound ferry operations account—state appropriation is provided solely for operating costs related to moving vessels for emergency capital repairs. Funds may only be spent after approval by the office of financial management.

(5) ~~\$2,400,000 of the Puget Sound ferry operations account—state appropriation ((is)) and \$2,000,000 of the Puget Sound ferry operations account—federal appropriation are~~ provided solely for staffing and overtime expenses incurred by engine and deck crewmembers. The department must provide updated staffing cost estimates for fiscal years 2022 and 2023 with its annual budget submittal and updated estimates by January 1, 2022.

(6) \$688,000 of the Puget Sound ferry operations account—state appropriation (~~is~~) ~~and \$697,000 of the Puget Sound ferry operations account—federal appropriation are~~ provided solely for new employee training. The department must work to increase its outreach and recruitment of populations underrepresented in maritime careers and continue working to expand apprenticeship and internship programs, with an emphasis on programs that are shown to improve recruitment for positions with the state ferry system.

(7) The department must request reimbursement from the federal transit administration for the maximum amount of ferry operating expenses eligible for reimbursement under federal law.

(8) ~~(((\$1,978,000 of the Puget Sound ferry operations account—state appropriation is provided solely for restoration of service to reflect increased ridership, availability of crewing and available revenues. Expenditures may be made to resume service to Sidney, British Columbia, including any service to the San Juans; to provide Saturday service on the Fauntleroy-Vashon-Southworth route; and to resume late night service on other routes in the system.~~

(9) ~~Within amounts provided in this section,)) \$484,000 of the Puget Sound ferry operations account—federal is provided solely for the department ((shall)) to contract ((with uniformed officers)) for additional traffic control assistance at the Kingston ferry terminal during peak ferry travel times, with a particular focus on Sundays and holiday weekends. Traffic control methods should include, but not be limited to, holding traffic on the shoulder at Lindvog Road until space opens for cars at the tollbooths and dock, and management of traffic on Highway 104 in order to ensure Kingston residents and business owners have access to businesses, roads, and driveways.~~

~~(((\$10))~~ (9) \$336,000 of the Puget Sound ferry operations account—state appropriation is provided solely for evacuation slide training.

~~(((\$11))~~ (10) \$336,000 of the Puget Sound ferry operations account—state appropriation is provided solely for fall restraint labor and industries inspections.

~~(((\$12))~~ (11) \$735,000 of the Puget Sound ferry operations account—state appropriation (~~is~~) ~~and \$410,000 of the Puget Sound ferry operations account—federal appropriation are~~ provided solely for familiarization for new assignments of engine crew and terminal staff.

~~(((\$13))~~ (12) \$160,000 of the Puget Sound ferry operations account—state appropriation is provided solely for electronic navigation training.

(13) \$250,000 of the Puget Sound ferry operations account—state appropriation is provided solely for Washington State Ferries to conduct a study of passenger demographics. The study must include:

(a) Information on age, race, gender, income level of passengers by route in summer and winter seasons;

(b) Composition of passengers by travel purpose, such as commute, tourism, or commerce; and

(c) Frequency of passenger trips by mode and fare products utilized.

The study may be included as part of a larger origin and destination study. The department shall report study results to the transportation committees of the legislature by December 1, 2023.

(14)(a) \$8,419,000 of the Puget Sound ferry operations account—federal appropriation is provided solely for Washington state ferries to:

(i) Continuously recruit and hire deck, engine, and terminal staff;

(ii) Contract with an external recruitment firm to increase recruitment efforts both locally and nationally with an emphasis on attracting maritime workers from communities underrepresented in the ferry system;

(iii) Enhance employee retention by standardizing on-call worker schedules;

(iv) Increase training and development opportunities for employees; and

(v) Make improvements to hiring processes by establishing additional positions to support timely hiring of employees.

(b) It is the intent of the legislature to continue funding for the activities outlined in this section as part of the move ahead WA package.

(15) \$248,000 of the Puget Sound ferry operations account—federal appropriation is provided solely for labor at the Vashon terminal.

(16) \$194,000 of the Puget Sound ferry operations account—federal appropriation is provided solely for operating costs at the Mukilteo terminal.

(17) \$294,000 of the Puget Sound ferry operations account—federal appropriation is provided solely for deck and engine internships.

(18) By December 1, 2022, the department must report on the status of efforts to increase training and development opportunities for employees. The report must include a description of the new training and career advancement programs for able-bodied sailors, mates, and engineers; the numbers of employees participating in each program; the number of employees completing each program; the number of open positions that the program is designed to fill; and the anticipated number of employee promotions as a result of program completion. The department must provide the report to the office of financial management and the transportation committees of the legislature.

(19) For the Mukilteo multimodal terminal, the department must submit a report showing for a 12-month period, on a monthly basis, how much electricity is generated by solar power generated on-site, electricity usage, and actual electricity cost savings. The report is due to the transportation committees of the legislature by June 30, 2023.

(20) \$93,000 of the Puget Sound ferry operations account—state appropriation is provided solely for Washington state ferries to partner with local community colleges and universities to secure housing for workforce training sessions and to pay in advance for the costs of transportation worker identification credentials for incoming ferry system employees and trainees.

(21)(a) \$300,000 of the Puget Sound ferry operations account—state appropriation is provided solely for the department, in consultation with the joint transportation committee, to oversee a consultant study to identify and recommend cost-effective strategies to maximize walk-on passenger ridership of the Anacortes - San Juan ferry routes. The study must also identify available public funding sources to support these strategies. Reducing the need for passengers to bring their cars on the ferries will increase the capacity of each ferry run to transport more people.

(b) The evaluated options may include, but not be limited to:

(i) Increased public funding or other support for transit or shuttle service between ferry landings on Orcas, Lopez, San Juan, and Anacortes and nearby major town centers or connecting transit hubs;

(ii) Options to increase availability of taxi and rideshare services at each of the landings;

(iii) Short-term electric vehicle rentals at ferry landings, including electric bicycles and scooters;

(iv) Public funding or other support to increase the available locations for additional parking and reduce the cost for short-term parking near each landing;

(v) Marketing of the availability of options through the Washington state ferries reservation system website, on ferries and at ferry landings and ticketing facilities.

(c) Outreach for the study, including on the feasibility and effectiveness of each strategy evaluated, must include outreach to representatives of:

(i) Washington state ferries;

(ii) San Juan county council;

(iii) Anacortes and San Juan Islands ferry advisory committee members;

(iv) San Juan economic development council;

(v) City of Anacortes;

(vi) City of Friday Harbor;

(vii) Skagit transit;

(viii) Skagit RTPO;

(ix) Eastsound;

(x) Lopez Village;

(xi) Transit dependent populations; and

(xii) Others as deemed appropriate by the committee.

(d) A report with recommendations on the most feasible and cost-effective strategies to maximize walk-on passenger ridership of the Anacortes - San Juan and Anacortes - Sidney ferry routes is due to the transportation committees of the legislature by January 6, 2023.

(22)(a) During negotiations of the 2023-2025 collective bargaining agreements, the department must conduct a review and analysis of the collective bargaining agreements governing state ferry employees, to identify provisions that create barriers for, or contribute to creating a disparate impact on, newly hired ferry employees, including those who are women, people of color, veterans, and other employees belonging to communities that have historically been underrepresented in the workforce. The review and analysis must include, but not be limited to, provisions regarding seniority, work assignments, and work shifts. The review and analysis must also include consultation with the

governor's office of labor relations, the governor's office of equity, and the attorney general's office.

(b) For future negotiations or modifications of the collective bargaining agreements, it is the intent of the legislature that the collective bargaining representatives for the state and ferry employee organizations may consider the findings of the review and analysis required in (a) of this subsection and negotiate in a manner to remove identified barriers and address identified impacts so as not to perpetuate negative impacts.

(23) To the extent that an activity funded by federal funds in this section is not eligible for federal reimbursement, the department may transfer expenditure authority between state and federal appropriations provided in this section.

Sec. 223. 2021 c 333 s 222 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—OPERATING**

Multimodal Transportation Account—State

Appropriation. . . . .((~~\$80,704,000~~))  
\$68,430,000

Multimodal Transportation Account—Private/Local

Appropriation. . . . . \$46,000

Multimodal Transportation Account—Federal

Appropriation. . . . . \$500,000

TOTAL APPROPRIATION . . . . .((~~\$81,250,000~~))  
\$68,976,000

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

(1) The department is directed to continue to pursue efforts to reduce costs, increase ridership, and review Amtrak Cascades fares and fare schedules. Within thirty days of each annual cost/revenue reconciliation under the Amtrak service contract, the department shall report annual credits to the office of financial management and the legislative transportation committees. Annual credits from Amtrak to the department including, but not limited to, credits due to higher ridership, reduced level of service, and fare or fare schedule adjustments, must be used to offset corresponding amounts of the multimodal transportation account—state appropriation, which must be placed in reserve.

(2) Consistent with the ongoing planning and service improvement for the intercity passenger rail program, \$500,000 of the multimodal transportation account—state is provided solely for the Cascades service development plan. This funding is to be used to analyze current and future market conditions and to develop a structured assessment of service options and goals based on anticipated demand and the results of the state and federally required 2019 state rail plan, including identifying implementation alternatives to meet the future service goals for the Amtrak Cascades route. The work must be consistent with federal railroad administration guidance and direction on developing service development plans. It must also leverage the \$500,000 in federal funding appropriated for development of a service development plan and comply with the planning and grant award obligations of the consolidated rail infrastructure and safety improvements (CRISI) program. A status report must be provided to the transportation committees of the legislature by June 30, 2022.



(3) \$4,000,000 of the multimodal transportation account—state appropriation is provided solely for the continued coordination, engagement, and planning for a new ultra high-speed ground transportation corridor with participation from Washington, Oregon, and British Columbia. This funding is contingent on meaningful financial contributions for this effort by Oregon or British Columbia. "Ultra high-speed" means a maximum testing speed of at least 250 miles per hour. These efforts are to support and advance activities and must abide by the memorandum of understanding signed by the governors of Washington and Oregon, and the premier of the province of British Columbia in November 2021. The department shall establish a policy committee with participation from Washington, Oregon, and British Columbia, including representation from the two largest caucuses of each chamber of the Washington state legislature, and coordinate the activities of the policy committee to include:

(a) Developing an organizational framework that facilitates input in decision-making from all parties;

(b) Developing a public engagement approach with a focus on equity, inclusion, and meaningful engagement with communities, businesses, federal, state, provincial, and local governments including indigenous communities;

(c) Developing and leading a collaborative approach to prepare and apply for potential future federal, state, and provincial funding opportunities, including development of strategies for incorporating private sector participation and private sector contributions to funding, including through the possible use of public-private partnerships;

(d) Beginning work on scenario analysis addressing advanced transportation technologies, land use and growth assumptions, and an agreed to and defined corridor vision statement; and

(e) Developing a recommendation on the structure and membership of a formal coordinating entity that will be responsible for advancing the project through the project initiation stage to project development and recommended next steps for establishment of the coordinating entity. Project development processes must include consideration of negative and positive impacts on communities of color, low-income households, indigenous peoples, and other disadvantaged communities.

By June 30, 2023, the department shall provide to the governor and the transportation committees of the legislature a report detailing the work conducted by the policy committee and recommendations for establishing a coordinating entity. The report must also include an assessment of current activities and results relating to stakeholder engagement, planning, and any federal funding application. As applicable, the assessment should also be sent to the executive and legislative branches of government in Oregon and appropriate government bodies in the province of British Columbia.

(4) The department shall consider applying for federal grant opportunities that support the development of the Amtrak Cascades service. Grant submittals must align with the department's federally required service development plan and state rail plans and partnership agreements with Amtrak as the service provider and BNSF Railway as the host railroad.

**Sec. 224.** 2021 c 333 s 223 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—OPERATING**

Motor Vehicle Account—State Appropriation . . . . .	(((\$11,954,000))
	<u>\$12,451,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	\$2,567,000
Multiuise Roadway Safety Account—State Appropriation. . . . .	\$900,000
<u>Multimodal Transportation Account—State</u>	
<u>Appropriation. . . . .</u>	<u>\$250,000</u>
TOTAL APPROPRIATION . . . . .	(((\$15,421,000))
	<u>\$16,168,000</u>

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

(1) The entire multiuse roadway safety account—state appropriation is provided solely for grants under RCW 46.09.540, subject to the following limitations:

(a) Twenty-five percent of the amounts provided are reserved for counties that each have a population of fifteen thousand persons or less; and

(b)(i) Seventy-five percent of the amounts provided are reserved for counties that each have a population exceeding fifteen thousand persons; and

(ii) No county that receives a grant or grants under (a) of this subsection may receive more than sixty thousand dollars in total grants.

(2) \$1,023,000 of the motor vehicle account—state appropriation is provided solely for the department, from amounts set aside out of statewide fuel taxes distributed to counties according to RCW 46.68.120(3), to contract with the Washington state association of counties to:

(a) In coordination with stakeholders, identify county-owned fish passage barriers, and assess which barriers share the same stream system as state-owned fish passage barriers;

(b) Streamline and update the county road administration board's data dashboard, county reporting systems, and program management software to provide a more detailed, more transparent, and user-friendly platform for data management, reporting, and research by the public and other interested parties; and

(c) Conduct a study of the use of county road right-of-way as a potential source of revenue for county road operating and maintenance needs with recommendations on their feasibility statewide.

~~((3)(a) By October 1, 2021, the department must report to the office of financial management and the transportation committees with recommendations regarding:~~

~~(i) Modifications to the agreement with Wahkiakum county regarding future state reimbursement for the Wahkiakum ferry operating and maintenance deficit; and~~

~~(ii) Cost-sharing models for operating and maintenance costs, which recognize the benefit of the ferry route to both Washington and Oregon.~~

~~(b) The reimbursement recommendations must reflect a mutual agreement with Wahkiakum county, which considers future county ferry operating loss projections. The report may address the importance of the ferry route to the state highway system and whether there is a need for an increased role for the state department of transportation in the finance or operation of the ferry route.)~~

**TRANSPORTATION AGENCIES—CAPITAL**

**Sec. 301.** 2021 c 333 s 301 (uncodified) is amended to read as follows:  
**FOR THE FREIGHT MOBILITY STRATEGIC INVESTMENT BOARD**

Freight Mobility Investment Account—State	
Appropriation. . . . .	(\$16,577,000)
	<u>\$17,769,000</u>
Freight Mobility Multimodal Account—State	
Appropriation. . . . .	(\$15,195,000)
	<u>\$14,004,000</u>
TOTAL APPROPRIATION . . . . .	(\$31,772,000)
	<u>\$31,773,000</u>

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

(1) Except as otherwise provided in this section, the entire appropriations in this section are provided solely for the projects by amount, as listed in the LEAP Transportation Document ((2021-2)) 2022-2 ALL PROJECTS as developed ((April 23, 2021)) March 9, 2022, Freight Mobility Strategic Investment Board (FMSIB).

(2) Until directed by the legislature, the board may not initiate a new call for projects.

(3) It is the intent of the legislature to continue to make strategic investments in a statewide freight mobility transportation system with the help of the freight mobility strategic investment board, including projects that mitigate the impact of freight movement on local communities. To that end, and in coordination with WSDOT as it updates its federally-compliant freight plan, the board is directed to identify the highest priority freight investments for the state, across freight modes, state and local jurisdictions, and regions of the state. By December 1, 2021, the board must submit a preliminary report providing a status update on the process and methodology for identifying and prioritizing investments. By December 1, 2022, the board must submit a prioritized list of freight investments that are geographically balanced across the state and can proceed to construction in a timely manner. The prioritized freight project list for the state portion of national highway freight program funds must first address shortfalls in funding for connecting Washington act projects.

(4)(a) For the 2021-2023 project appropriations, unless otherwise provided in this act, the director of the office of financial management may authorize a transfer of appropriation authority between projects managed by the freight mobility strategic investment board in order for the board to manage project spending and support the efficient and timely delivery of all projects in the program. The office of financial management may authorize a transfer of appropriation authority between projects under the following conditions and limitations:

(i) Transfers from a project may not be made as a result of the reduction of the scope of a project or be made to support increases in the scope of a project;

(ii) Each transfer between projects may only occur if the director of the office of financial management finds that any resulting change will not hinder the completion of the projects on ((the)) LEAP Transportation Document

((2021-2)) 2022-2 ALL ((PROJECT list)) PROJECTS as developed March 9, 2022;

(iii) Transfers between projects may be made by the board without the formal written approval provided under this subsection (3)(a), provided that the transfer amount does not exceed \$250,000 or 10 percent of the total project, whichever is less. These transfers must be reported to the director of the office of financial management and the chairs of the house of representatives and senate transportation committees; and

(iv) Except for transfers made under (a)(iii) of this subsection, transfers may only be made in fiscal year 2023.

(b) At the time the board submits a request to transfer funds under this section, a copy of the request must be submitted to the chairs and ranking members of the transportation committees of the legislature.

(c) Before approval, the office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers in a timely manner and consider any concerns raised by the chairs and ranking members of the transportation committees.

(d) No fewer than 10 days after the receipt of a project transfer request, the director of the office of financial management must provide written notification to the board of any decision regarding project transfers, with copies submitted to the transportation committees of the legislature.

**Sec. 302.** 2021 c 333 s 302 (uncodified) is amended to read as follows:

**FOR THE WASHINGTON STATE PATROL**

State Patrol Highway Account—State Appropriation . . . . .~~(\$4,196,000)~~  
\$4,803,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$695,000 of the state patrol highway account—state appropriation is provided solely for roof replacement.

(2) \$3,501,000 of the state patrol highway account—state appropriation is provided solely for the following projects:

- (a) \$250,000 for emergency repairs;
- (b) \$350,000 for fuel tank decommissioning;
- (c) \$750,000 for generator and electrical replacement;
- (d) \$195,000 for the exterior envelope of the Yakima office;
- (e) \$466,000 for equipment shelters;
- (f) \$650,000 for the weatherization projects;
- (g) \$200,000 for roof replacements reappropriation; and
- (h) \$640,000 for water and fire suppression systems reappropriation and \$607,000 for additional water and fire suppression systems.

(3) The Washington state patrol may transfer funds between projects specified in this subsection to address cash flow requirements. If a project specified in this subsection is completed for less than the amount provided, the remainder may be transferred to another project specified in this subsection not to exceed the total appropriation provided in this subsection.

**Sec. 303.** 2021 c 333 s 303 (uncodified) is amended to read as follows:

**FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Rural Arterial Trust Account—State Appropriation . . . . .	\$55,028,000
Motor Vehicle Account—State Appropriation . . . . .	\$1,456,000
County Arterial Preservation Account—State Appropriation. . . . .	<del>(\$37,379,000)</del>
	<u>\$44,653,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$93,863,000)</del>
	<u>\$101,137,000</u>

**Sec. 304.** 2021 c 333 s 305 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—FACILITIES—  
PROGRAM D—(DEPARTMENT OF TRANSPORTATION-ONLY  
PROJECTS)—CAPITAL**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$10,852,000)</del>
	<u>\$16,076,000</u>
Connecting Washington Account—State Appropriation . . . . .	<del>(\$3,289,000)</del>
	<u>\$3,667,000</u>
TOTAL APPROPRIATION . . . . .	<del>(\$14,141,000)</del>
	<u>\$19,743,000</u>

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

(1) \$3,289,000 of the connecting Washington account—state appropriation is provided solely for a new Olympic region maintenance and administration facility to be located on the department-owned site at the intersection of Marvin Road and 32nd Avenue in Lacey, Washington.

(2)(a) \$4,325,000 of the motor vehicle account—state appropriation is provided solely for payments of a financing contract issued pursuant to chapter 39.94 RCW for the department facility located at 15700 Dayton Ave N in Shoreline.

(b) Payments from the department of ecology pursuant to the agreement with the department to pay a share of the financing contract in (a) of this subsection must be deposited into the motor vehicle account.

**Sec. 305.** 2021 c 333 s 306 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—  
IMPROVEMENTS—PROGRAM I**

Transportation 2003 Account (Nickel Account)—State Appropriation. . . . .	<del>(\$149,000)</del>
	<u>\$482,000</u>
Transportation Partnership Account—State Appropriation. . . . .	<del>(\$119,053,000)</del>
	<u>\$232,566,000</u>
Motor Vehicle Account—State Appropriation . . . . .	<del>(\$89,717,000)</del>
	<u>\$246,948,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	<del>(\$388,903,000)</del>
	<u>\$251,835,000</u>
Coronavirus State Fiscal Recovery Fund—Federal Appropriation. . . . .	\$400,000,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	<del>(\$48,628,000)</del>
	<u>\$56,192,000</u>
Connecting Washington Account—State Appropriation . . . . .	<del>(\$2,881,033,000)</del>

	<u>\$2,063,783,000</u>
Special Category C Account—State Appropriation . . . . .	(( <del>\$105,363,000</del> ))
	<u>\$86,198,000</u>
Multimodal Transportation Account—State Appropriation . . . . .	(( <del>\$10,784,000</del> ))
	<u>\$10,792,000</u>
<u>Puget Sound Gateway Facility Account—State</u> <u>Appropriation . . . . .</u>	<u>\$8,400,000</u>
State Route Number 520 Corridor Account—State Appropriation . . . . .	(( <del>\$15,940,000</del> ))
	<u>\$70,886,000</u>
Interstate 405 and State Route Number 167 Express Toll Lanes Account—State Appropriation . . . . .	(( <del>\$30,308,000</del> ))
	<u>\$217,282,000</u>
<u>Move Ahead WA Account—State Appropriation . . . . .</u>	<u>\$10,771,000</u>
<u>Move Ahead WA Account—Federal Appropriation . . . . .</u>	<u>\$7,200,000</u>
TOTAL APPROPRIATION . . . . .	(( <del>\$4,089,878,000</del> ))
	<u>\$3,663,335,000</u>

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

(1) Except as provided otherwise in this section, the entire connecting Washington account—state appropriation and the entire transportation partnership account—state appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document ((2021-1)) 2022-1 as developed ((April 23, 2021)) March 9, 2022, Program - Highway Improvements Program (I). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 601 ((~~of this act~~)), chapter 333, Laws of 2021.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document ((2021-2)) 2022-2 ALL PROJECTS as developed ((April 23, 2021)) March 9, 2022, Program - Highway Improvements Program (I). Any federal funds gained through efficiencies, adjustments to the federal funds forecast, or the federal funds redistribution process must then be applied to highway and bridge preservation activities or fish passage barrier corrections (0BI4001), as long as the application of the funds is not inconsistent with subsection (26) of this section.

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act. Ten days prior to any transfer, the department must submit its request to the office of financial management and the transportation committees of the legislature and consider any concerns raised. The department shall submit a report on fiscal year funds transferred in the prior fiscal year using this subsection as part of the department's annual budget submittal.

(4) The connecting Washington account—state appropriation includes up to ~~(((\$2,230,636,000))~~ \$326,594,000 in proceeds from the sale of bonds authorized in RCW 47.10.889.

(5) The special category C account—state appropriation includes up to ~~(((\$82,475,000))~~ \$51,460,000 in proceeds from the sale of bonds authorized in RCW 47.10.812.

(6) The transportation partnership account—state appropriation includes up to ~~(((\$28,411,000))~~ \$124,629,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(7) ~~(((\$60,450,000))~~ \$161,792,000 of the transportation partnership account—state appropriation, ~~(((\$2,258,000))~~ \$3,882,000 of the motor vehicle account—private/local appropriation, \$9,000,000 of the motor vehicle account—state appropriation, \$1,000 of the transportation 2003 account (nickel account)—state appropriation, and ~~(((\$984,000))~~ \$985,000 of the multimodal transportation account—state appropriation are provided solely for the SR 99/Alaskan Way Viaduct Replacement project (809936Z). It is the intent of the legislature that any legal damages paid to the state as a result of a lawsuit related to contractual provisions for construction and delivery of the Alaskan Way viaduct replacement project be used to repay project cost increases paid from the transportation partnership account—state funds and motor vehicle account—state funds.

(8) ~~(((\$193,699,000))~~ \$186,820,000 of the connecting Washington account—state appropriation ~~((is))~~ and \$488,000 of the motor vehicle account—local appropriation are provided solely for the US 395 North Spokane Corridor project (M00800R). If the department expects the original scope of this project to be completed under budget when a final design is approved for the interchange with I-90 and nearby on ramp access, then the scope of work for this project must also include constructing a land bridge in the vicinity of Liberty Park in Spokane, if appropriations are sufficient. It is the intent of the legislature, consistent with the move ahead WA proposal, to advance future funding for this project in order to accelerate delivery by up to two years.

(9)(a) ~~(((\$14,827,000))~~ \$177,982,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation is provided solely for the I-405/SR 522 to I-5 Capacity Improvements project (L2000234) for activities related to adding capacity on Interstate 405 between state route number 522 and Interstate 5, with the goals of increasing vehicle throughput and aligning project completion with the implementation of bus rapid transit in the vicinity of the project.

(b) The department may advance the I-405/SR 522 to I-5 Capacity Improvements project (L2000234) and construct the project earlier than is scheduled in the LEAP transportation document referenced in subsection (2) of this section if additional funding is identified and submitted through the existing unanticipated receipts process by September 1, 2021. The department and the state treasurer shall pursue alternatives to toll revenue funding including but not limited to federal loan and grant programs. The department shall explore phasing and modifying the project to attempt to align project completion with the anticipated deployment of bus rapid transit on the corridor in the 2023-2025 biennium. The department shall report back to the transportation committees of the legislature on this work by September 15, 2021.

(10)(a) (~~(\$492,349,000)~~) \$329,681,000 of the connecting Washington account—state appropriation, \$70,886,000 of the state route number 520 corridor account—state appropriation, and (~~(\$355,000)~~) \$1,021,000 of the motor vehicle account—private/local appropriation are provided solely for the SR 520 Seattle Corridor Improvements - West End project (M00400R).

(b) Upon completion of the Montlake Phase of the West End project (current anticipated contract completion of 2023), the department shall sell that portion of the property not used for permanent transportation improvements and initiate a process to convey that surplus property to a subsequent owner.

(c) Of the amounts provided in this subsection (10), \$100,000 of the state route number 520 corridor account—state appropriation is provided solely for noise mitigation activities. It is the intent of the legislature to provide an additional \$1,000,000 for noise mitigation activities over the course of the 16-year move ahead WA funding package.

(11) (~~(\$382,880,000)~~) \$361,296,000 of the connecting Washington account—state appropriation, \$4,800,000 of the multimodal transportation account—state appropriation, (~~(\$17,869,000)~~) \$13,725,000 of the motor vehicle account—private/local appropriation, \$7,200,000 of the move ahead WA account—federal appropriation, \$8,400,000 of the Puget Sound Gateway facility account—state appropriation, and (\$82,165,000) \$85,015,000 of the motor vehicle account—federal appropriation are provided solely for the SR 167/SR 509 Puget Sound Gateway project (M00600R).

(a) Any savings on the project must stay on the Puget Sound Gateway corridor until the project is complete.

(b) In making budget allocations to the Puget Sound Gateway project, the department shall implement the project's construction as a single corridor investment. The department shall continue to collaborate with the affected stakeholders as it implements the corridor construction and implementation plan for state route number 167 and state route number 509. Specific funding allocations must be based on where and when specific project segments are ready for construction to move forward and investments can be best optimized for timely project completion. Emphasis must be placed on avoiding gaps in fund expenditures for either project.

(c) ~~It is the legislature's intent that the department shall ((construct a full single-point urban))~~ consult with the joint executive committee and joint steering committee to determine the most appropriate interchange at the junction of state route number 161 (Meridian avenue) and state route number 167 ((and a full directional interchange at the junction of state route number 509 and 188th Street. If the department receives additional funds from an outside source for this project after the base project is fully funded, the funds must first be applied toward the completion of these two interchanges)).

(d) Of the amounts provided in this subsection, \$2,300,000 of the multimodal transportation account—state appropriation is provided solely for the design phase of the Puyallup to Tacoma multiuse trail along the SR 167 right-of-way acquired for the project to connect a network of new and existing trails from Mount Rainier to Point Defiance Park.

(e) Of the amounts provided in this subsection, \$2,500,000 of the multimodal transportation account—state appropriation is provided solely for segment 2 of the state route number 167 completion project shared-use path to



provide connections to the interchange of state route number 167 at 54th to the intersection of state route number 509 and Taylor Way in Tacoma.

(12)(a) (~~(\$26,928,000)~~) \$25,378,000 of the motor vehicle account—state appropriation and (~~(\$1,671,000)~~) \$413,000 of the motor vehicle account—private/local appropriation are provided solely to support a project office and the continued work toward the I-5 Interstate Bridge Replacement project (L2000370).

(b) The project office must also study the possible different governance structures for a bridge authority that would provide for the joint administration of the bridges over the Columbia river between Oregon and Washington. As part of this study, the project office must examine the feasibility and necessity of an interstate compact in conjunction with the national center for interstate compacts.

(c) During the 2021-2023 biennium, the department shall have as a goal to:

- (i) Conduct all work necessary to prepare and publish a draft SEIS;
- (ii) Coordinate with regulatory agencies to begin the process of obtaining environmental approvals and permits;
- (iii) Identify a locally preferred alternative; and
- (iv) Begin preparing a final SEIS.

The department shall aim to provide progress reports on these activities to the governor and the transportation committees of the legislature by December 1, 2021, June 1, 2022, and December 1, 2022.

(13)(a) \$400,000,000 of the coronavirus state fiscal recovery fund—federal appropriation, (~~(\$529,577,000)~~) \$25,327,000 of the connecting Washington account—state appropriation, (~~(\$194,959,000)~~) \$35,263,000 of the motor vehicle account—federal appropriation, \$5,618,000 of the motor vehicle account—local appropriation, \$9,016,000 of the transportation partnership account—state appropriation, and (~~(\$1,849,000)~~) \$149,776,000 of the motor vehicle account—state appropriation are provided solely for the Fish Passage Barrier Removal project (OBI4001) with the intent of fully complying with the federal *U.S. v. Washington* court injunction by 2030. (~~(Of the amounts provided in this subsection, \$400,000,000 of the connecting Washington account—state appropriation must be initially placed in unallotted status during the 2021-2023 fiscal biennium, and may only be released by the office of financial management for allotment by the department if it is determined that the Fish Passage Barrier Removal project (OBI4001) is not an eligible use of amounts received by the state pursuant to the federal American rescue plan act of 2021.)~~)

(b) The department shall coordinate with the Brian Abbott fish passage barrier removal board to use a watershed approach by replacing both state and local culverts guided by the principle of providing the greatest fish habitat gain at the earliest time. The department shall deliver high habitat value fish passage barrier corrections that it has identified, guided by the following factors: Opportunity to bundle projects, tribal priorities, ability to leverage investments by others, presence of other barriers, project readiness, culvert conditions, other transportation projects in the area, and transportation impacts. The department and Brian Abbott fish barrier removal board must provide updates on the implementation of the statewide culvert remediation plan to the legislature by November 1, 2021, and June 1, 2022.

(c) The department must keep track of, for each barrier removed: (i) The location; (ii) the amount of fish habitat gain; and (iii) the amount spent to comply with the injunction.

(d) Of the amount provided in this subsection, \$142,923,000 of the motor vehicle account—federal appropriation reflects the department's portion of the unrestricted funds from the coronavirus response and relief supplemental appropriations act of 2021. If the final amount from this act changes while the legislature is not in session, the department shall follow the existing unanticipated receipt process and adjust the list referenced in subsection (1) of this section accordingly, supplanting state funds with federal funds if possible as directed in section 601 ~~((of this act))~~, chapter 333, Laws of 2021.

(14) ~~((\$14,669,000))~~ \$14,367,000 of the connecting Washington account—state appropriation, ~~\$311,000~~ \$311,000 of the motor vehicle account—state appropriation, and ~~((\$3,037,000))~~ \$3,149,000 of the motor vehicle account—private/local appropriation are provided solely for the I-90/Barker to Harvard - Improve Interchanges & Local Roads project (L2000122). The connecting Washington account appropriation for the improvements that fall within the city of Liberty Lake may only be expended if the city of Liberty Lake agrees to cover any project costs within the city of Liberty Lake above the \$20,900,000 of state appropriation provided for the total project on the list referenced in subsection (1) of this section.

(15) ~~((\$15,189,000))~~ \$16,984,000 of the motor vehicle account—federal appropriation, ~~((\$259,000))~~ \$269,000 of the motor vehicle account—state appropriation, and ~~((\$15,481,000))~~ \$17,900,000 of the Interstate 405 and state route number 167 express toll lanes account—state appropriation are provided solely for the SR 167/SR 410 to SR 18 - Congestion Management project (316706C).

(16) ~~((\$18,914,000))~~ \$18,915,000 of the Special Category C account—state appropriation is provided solely for the SR 18 Widening - Issaquah/Hobart Rd to Raging River project (L1000199) for improving and widening state route number 18 to four lanes from Issaquah-Hobart Road to Raging River.

(17) ~~((\$1,000,000))~~ \$2,500,000 of the connecting Washington account—state appropriation is provided solely for the North Lewis County transportation study. The study shall examine new, alternate routes for vehicular and truck traffic at the Harrison interchange (Exit 82) in North Centralia and shall allow for a site and configuration to be selected and feasibility to be conducted for final design, permitting, and construction of the I-5/North Lewis county Interchange project (L2000204). It is the intent of the legislature to advance future funding for this project to accelerate delivery by up to two years.

(18) ~~((\$1,090,000))~~ \$1,237,000 of the motor vehicle account—state appropriation is provided solely for the US 101/East Sequim Corridor Improvements project (L2000343).

(19) ~~((\$12,139,000))~~ \$2,197,000 of the motor vehicle account—state appropriation and ~~((\$9,104,000))~~ \$749,000 of the connecting Washington account—state appropriation are provided solely for the SR 522/Paradise Lk Rd Interchange & Widening on SR 522 (Design/Engineering) project (NPARADI).

(20) ~~((\$1,378,000))~~ \$1,455,000 of the motor vehicle account—federal appropriation is provided solely for the US 101/Morse Creek Safety Barrier project (L1000247).

(21) (~~(\$915,000)~~) \$1,000,000 of the motor vehicle account—state appropriation is provided solely for the SR 162/410 Interchange Design and Right of Way project (L1000276).

(22) (~~(\$6,581,000)~~) \$7,185,000 of the connecting Washington account—state appropriation is provided solely for the US Hwy 2 Safety project (N00200R).

(23) The department shall itemize all future requests for the construction of buildings on a project list and submit them through the transportation executive information system as part of the department's annual budget submittal. It is the intent of the legislature that new facility construction must be transparent and not appropriated within larger highway construction projects.

(24) Any advisory group that the department convenes during the 2021-2023 fiscal biennium must consider the interests of the entire state of Washington.

(25) The legislature continues to prioritize the replacement of the state's aging infrastructure and recognizes the importance of reusing and recycling construction aggregate and recycled concrete materials in our transportation system. To accomplish Washington state's sustainability goals in transportation and in accordance with RCW 70.95.805, the legislature reaffirms its determination that recycled concrete aggregate and other transportation building materials are natural resource construction materials that are too valuable to be wasted and landfilled, and are a commodity as defined in WAC 173-350-100.

Further, the legislature determines construction aggregate and recycled concrete materials substantially meet widely recognized international, national, and local standards and specifications referenced in American society for testing and materials, American concrete institute, Washington state department of transportation, Seattle department of transportation, American public works association, federal aviation administration, and federal highway administration specifications, and are described as necessary and desirable products for recycling and reuse by state and federal agencies.

As these recyclable materials have well established markets, are substantially a primary or secondary product of necessary construction processes and production, and are managed as an item of commercial value, construction aggregate and recycled concrete materials are exempt from chapter 173-350 WAC.

(26) \$2,738,000 of the motor vehicle account—state appropriation is provided solely for the US 97 Wildlife Crossing Improvements project (L2021117). It is the intent of the legislature that, to the extent possible, the department use this funding as match for competitive federal funding to make additional wildlife crossing improvements on the corridor. The department must report to the transportation committees of the legislature with additional corridors that could benefit from wildlife crossing improvements and that are likely to successfully compete for federal funding.

(27) \$12,635,000 of the connecting Washington account—state appropriation is provided solely for the SR 3 Freight Corridor (T30400R) project. The legislature intends to provide a total of \$78,910,000 for this project, including an increase of \$12,000,000 in future biennia to safeguard against inflation and supply/labor interruptions and ensure that:

(a) The northern terminus remains at Lake Flora Road and the southern terminus at the intersection of SR 3/SR 302;

(b) Multimodal safety improvements at the southern terminus remain in the project to provide connections to North Mason school district and provide safe routes to schools; and

(c) Intersections on the freight corridor are constructed at Romance Hill and Log Yard road.

(28) \$450,000 of the motor vehicle account—state appropriation is provided solely for the SR 900 Safety Improvements project (L2021118). The department must: (a) Work in collaboration with King county and Skyway coalition to align community assets, transportation infrastructure needs, and initial design for safety improvements along SR 900; and (b) work with the Skyway coalition to lead community planning engagement and active transportation activities.

(29) \$5,694,000 of the connecting Washington account—state appropriation is provided solely for the I-5/Chamber Way Interchange Vicinity Improvements project.

(30) \$500,000 of the motor vehicle account—state appropriation is provided solely for SR 162/SR 161 Additional Connectivity in South Pierce County project (L1000312) to conduct a study on the need for additional connectivity in the area between SR 162, south of Military Road East and north of Orting, and SR 161 in South Pierce county.

Sec. 306. 2021 c 333 s 307 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—  
PRESERVATION—PROGRAM P**

Recreational Vehicle Account—State Appropriation . . . . . \$1,520,000

Transportation 2003 Account (Nickel Account)—State

Appropriation. . . . . ((~~\$49,105,000~~))  
\$53,911,000

Transportation Partnership Account—State

Appropriation. . . . . ((~~\$15,183,000~~))  
\$21,441,000

Motor Vehicle Account—State Appropriation . . . . . ((~~\$85,444,000~~))

\$111,174,000

Motor Vehicle Account—Federal Appropriation . . . . . ((~~\$489,602,000~~))

\$545,560,000

Motor Vehicle Account—Private/Local Appropriation . . . . . ((~~\$10,792,000~~))

\$13,735,000

Connecting Washington Account—State Appropriation . . . . . ((~~\$159,043,000~~))

\$224,342,000

State Route Number 520 Corridor Account—State

Appropriation. . . . . ((~~\$1,891,000~~))  
\$2,143,000

Tacoma Narrows Toll Bridge Account—State

Appropriation. . . . . ((~~\$9,730,000~~))  
\$5,676,000

Alaskan Way Viaduct Replacement Project Account—

State Appropriation . . . . . ((~~\$314,000~~))  
\$391,000

Interstate 405 and State Route Number 167 Express

Toll Lanes Account—State Appropriation . . . . .	..( <del>\$26,039,000</del> )
	<u>\$12,830,000</u>
TOTAL APPROPRIATION . . . . .	..( <del>\$848,663,000</del> )
	<u>\$992,723,000</u>

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

(1) Except as provided otherwise in this section, the entire connecting Washington account—state appropriation and the entire transportation partnership account—state appropriation are provided solely for the projects and activities as listed by fund, project, and amount in LEAP Transportation Document (~~(2021-1)~~) 2022-1 as developed (~~(April 23, 2021)~~) March 9, 2022, Program - Highway Preservation Program (P). However, limited transfers of specific line-item project appropriations may occur between projects for those amounts listed subject to the conditions and limitations in section 601 (~~(of this act)~~), chapter 333, Laws of 2021.

(2) Except as provided otherwise in this section, the entire motor vehicle account—state appropriation and motor vehicle account—federal appropriation are provided solely for the projects and activities listed in LEAP Transportation Document (~~(2021-2)~~) 2022-2 ALL PROJECTS as developed (~~(April 23, 2021)~~) March 9, 2022, Program - Highway Preservation Program (P). Any federal funds gained through efficiencies, adjustments to the federal funds forecast, or the federal funds redistribution process must then be applied to highway and bridge preservation activities or fish passage barrier corrections (OB14001), as long as the application of the funds is not inconsistent with subsection (10) of this section.

(3) Within the motor vehicle account—state appropriation and motor vehicle account—federal appropriation, the department may transfer funds between programs I and P, except for funds that are otherwise restricted in this act. Ten days prior to any transfer, the department must submit its request to the office of financial management and the transportation committees of the legislature and consider any concerns raised. The department shall submit a report on fiscal year funds transferred in the prior fiscal year using this subsection as part of the department's annual budget submittal.

(4) (~~(\$5,166,000)~~) \$8,531,000 of the connecting Washington account—state appropriation is provided solely for the land mobile radio upgrade (G2000055) and is subject to the conditions, limitations, and review provided in section 701 (~~(of this act)~~), chapter 333, Laws of 2021. The land mobile radio project is subject to technical oversight by the office of the chief information officer. The department, in collaboration with the office of the chief information officer, shall identify where existing or proposed mobile radio technology investments should be consolidated, identify when existing or proposed mobile radio technology investments can be reused or leveraged to meet multiagency needs, increase mobile radio interoperability between agencies, and identify how redundant investments can be reduced over time. The department shall also provide quarterly reports to the technology services board on project progress.

(5) \$5,000,000 of the motor vehicle account—state appropriation is provided solely for extraordinary costs incurred from litigation awards, settlements, or dispute mitigation activities not eligible for funding from the self-

insurance fund (L2000290). The amount provided in this subsection must be held in unallotted status until the department submits a request to the office of financial management that includes documentation detailing litigation-related expenses. The office of financial management may release the funds only when it determines that all other funds designated for litigation awards, settlements, and dispute mitigation activities have been exhausted. No funds provided in this subsection may be expended on any legal fees related to the SR 99/Alaskan Way viaduct replacement project (809936Z).

(6) \$11,679,000 of the motor vehicle account—federal appropriation is provided solely for preservation projects within project L1100071 that ensure the reliable movement of freight on the national highway freight system. The department shall give priority to those projects that can be advertised by September 30, 2021.

(7) The appropriation in this section includes funding for starting planning, engineering, and construction of the Elwha River bridge replacement. To the greatest extent practicable, the department shall maintain public access on the existing route.

(8) Within the connecting Washington account—state appropriation, the department may transfer funds from Highway System Preservation (L1100071) to other preservation projects listed in the LEAP transportation document identified in subsection (1) of this section, if it is determined necessary for completion of these high priority preservation projects. The department's next budget submittal after using this subsection must appropriately reflect the transfer.

(9) \$1,700,000 of the motor vehicle account—state appropriation is provided solely for the SR 109/88 Corner Roadway project (G2000106).

Sec. 307. 2021 c 333 s 308 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q—CAPITAL**

Motor Vehicle Account—State Appropriation . . . . .	<del>(\$8,273,000)</del>
	\$9,618,000
Motor Vehicle Account—Federal Appropriation . . . . .	<del>(\$5,289,000)</del>
	\$11,215,000
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$500,000
Interstate 405 and State Route Number 167 Express	
Toll Lanes Account—State Appropriation . . . . .	\$900,000
TOTAL APPROPRIATION . . . . .	<del>(\$14,962,000)</del>
	\$22,233,000

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

(1) \$579,000 of the motor vehicle account—state appropriation is provided solely for the SR 99 Aurora Bridge ITS project (L2000338).

(2) ~~(\$1,000,000)~~ \$1,001,000 of the motor vehicle account—state appropriation ~~(is)~~ and \$2,060,000 of the motor vehicle account—federal appropriation are provided solely for the Challenge Seattle project (000009Q). The department shall provide a progress report on this project to the transportation committees of the legislature by January 15, 2022.

Sec. 308. 2021 c 333 s 309 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Puget Sound Capital Construction Account—State	
Appropriation.....	..(( <del>\$128,759,000</del> ))
	<u>\$167,533,000</u>
Puget Sound Capital Construction Account—Federal	
Appropriation.....	..(( <del>\$139,188,000</del> ))
	<u>\$180,571,000</u>
Puget Sound Capital Construction Account—	
Private/Local Appropriation .....	..(( <del>\$312,000</del> ))
	<u>\$2,181,000</u>
Transportation Partnership Account—State	
Appropriation.....	..(( <del>\$8,410,000</del> ))
	<u>\$9,432,000</u>
Connecting Washington Account—State Appropriation .....	
	..(( <del>\$75,640,000</del> ))
	<u>\$99,141,000</u>
Capital Vessel Replacement Account—State	
Appropriation.....	..(( <del>\$152,453,000</del> ))
	<u>\$45,668,000</u>
<u>Motor Vehicle Account—State Appropriation.....</u>	
	<u>\$1,000</u>
<u>Transportation 2003 Account (Nickel Account)—State</u>	
Appropriation.....	..\$987,000
TOTAL APPROPRIATION .....	
	..(( <del>\$504,762,000</del> ))
	<u>\$505,514,000</u>

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

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed in LEAP Transportation Document ((~~2021-2~~)) 2022-2 ALL PROJECTS as developed ((~~April 23, 2021~~)) March 9, 2022, Program - Washington State Ferries Capital Program (W).

(2) For the 2021-2023 biennium, the marine division shall provide to the office of financial management and the legislative transportation committees the following reports on ferry capital projects:

(a) On a semiannual basis the report must include a status update on projects with funding provided in subsections (4), (5), (6), and (8) of this section including, but not limited to, the following:

- (i) Anticipated cost increases and cost savings;
- (ii) Anticipated cash flow and schedule changes; and
- (iii) Explanations for the changes.

(b) On an annual basis the report must include a status update on vessel and terminal preservation and improvement plans including, but not limited to, the following:

- (i) What work has been done;
- (ii) How have schedules shifted; and
- (iii) Associated changes in funding among projects, accompanied by explanations for the changes.

(c) On an annual basis the report must include an update on the implementation of the maintenance management system with recommendations for using the system to improve the efficiency of project reporting under this subsection.

(3) (~~(\$5,000,000)~~) \$12,232,000 of the Puget Sound capital construction account—state appropriation is provided solely for emergency capital repair costs (999910K). Funds may only be spent after approval by the office of financial management.

(4) (~~(\$1,277,000)~~) \$2,385,000 of the Puget Sound capital construction account—state appropriation is provided solely for the ORCA card next generation project (L2000300). The ferry system shall work with Washington technology solutions and the tolling division on the development of a new, interoperable ticketing system.

(5) (~~(\$24,750,000)~~) \$28,134,000 of the Puget Sound capital construction account—state appropriation is provided solely for the conversion of up to two Jumbo Mark II vessels to electric hybrid propulsion (G2000084). The department shall seek additional funds for the purposes of this subsection. The department may spend from the Puget Sound capital construction account—state appropriation in this section only as much as the department receives in Volkswagen settlement funds for the purposes of this subsection.

(6) (~~(\$152,453,000)~~) \$45,668,000 of the capital vessel replacement account—state appropriation is provided solely for the acquisition of a 144-car hybrid-electric vessel (L2000329). In 2019 the legislature amended RCW 47.60.810 to direct the department to modify an existing vessel construction contract to provide for an additional five ferries. As such, it is the intent of the legislature that the department award the contract for the hybrid electric Olympic class vessel #5(L2000329) in a timely manner. In addition, the legislature intends to minimize costs and maximize construction efficiency by providing sufficient funding for construction of all five vessels, including funding for long lead time materials procured at the lowest possible prices. The commencement of construction of new vessels for the ferry system is important not only for safety reasons, but also to keep skilled marine construction jobs in the Puget Sound region and to sustain the capacity of the region to meet the ongoing construction and preservation needs of the ferry system fleet of vessels. The legislature has determined that the current vessel procurement process must move forward with all due speed, balancing the interests of both the taxpayers and shipyards. To accomplish construction of vessels in accordance with RCW 47.60.810, the prevailing shipbuilder, for vessels initially funded after July 1, 2020, is encouraged to follow the historical practice of subcontracting the construction of ferry superstructures to a separate nonaffiliated contractor located within the Puget Sound region, that is qualified in accordance with RCW 47.60.690. If the department elects not to execute a new modification to an existing option contract for one or more additional 144-auto ferries under RCW 47.60.810(4), the department shall proceed with development of a new design-build request for proposals in accordance with RCW 47.60.810, 47.60.812, 47.60.814, 47.60.815, 47.60.816, 47.60.818, 47.60.820, 47.60.822, 47.60.824, and 47.60.8241. Of the amounts provided in this section, \$200,000 is provided solely for hiring an independent owner's representative to perform quality oversight, manage the change order process, and ensure contract compliance.



(7) The capital vessel replacement account—state appropriation includes up to ~~(((\$152,453,000))~~ \$45,468,000 in proceeds from the sale of bonds authorized in RCW 47.10.873.

(8) ~~\$4,200,000 of the connecting Washington account—state appropriation ((and \$2,200,000 of the Puget Sound operating account [Puget Sound capital construction account]—federal appropriation are))~~ is provided solely for ferry vessel and terminal preservation (L2000110). The funds provided in this subsection must be used for unplanned preservation needs before shifting funding from other preservation projects.

**Sec. 309.** 2021 c 333 s 310 (uncodified) is amended to read as follows:  
**FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y—CAPITAL**

Essential Rail Assistance Account—State	
Appropriation. . . . .	(((\$550,000)) <u>\$1,108,000</u> )
Transportation Infrastructure Account—State	
Appropriation. . . . .	(((\$5,456,000)) <u>\$6,218,000</u> )
Multimodal Transportation Account—State	
Appropriation. . . . .	(((\$82,493,000)) <u>\$118,320,000</u> )
Multimodal Transportation Account—Federal	
Appropriation. . . . .	(((\$41,219,000)) <u>\$6,567,000</u> )
<u>Multimodal Transportation Account—Private/Local</u>	
<u>Appropriation. . . . .</u>	<u>\$13,000</u>
<u>Motor Vehicle Account—State Appropriation. . . . .</u>	<u>\$1,810,000</u>
TOTAL APPROPRIATION . . . . .	(((\$129,718,000)) <u>\$134,036,000</u> )

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

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document ~~((2021-2))~~ 2022-2 ALL PROJECTS as developed ~~((April 23, 2021))~~ March 9, 2022, Program - Rail Program (Y).

(2) \$5,089,000 of the transportation infrastructure account—state appropriation is provided solely for new low-interest loans approved by the department through the freight rail investment bank (FRIB) program. The department shall issue FRIB program loans with a repayment period of no more than ten years, and charge only so much interest as is necessary to recoup the department's costs to administer the loans. The department shall report annually to the transportation committees of the legislature and the office of financial management on all FRIB loans issued. FRIB program loans may be recommended by the department for 2022 supplemental transportation appropriations up to the amount provided in this appropriation that has not been provided for the projects listed in 2021-2 ALL PROJECTS, as referenced in subsection (1) of this section. The department shall submit a prioritized list for

any loans recommended to the office of financial management and the transportation committees of the legislature by November 15, 2021.

(3) (~~(\$6,817,000)~~) \$7,041,000 of the multimodal transportation account—state appropriation is provided solely for new statewide emergent freight rail assistance projects identified in the LEAP transportation document referenced in subsection (1) of this section.

(4) \$367,000 of the transportation infrastructure account—state appropriation and \$1,100,000 of the multimodal transportation account—state appropriation are provided solely to reimburse Highline Grain, LLC for approved work completed on Palouse River and Coulee City (PCC) railroad track in Spokane county between the BNSF Railway Interchange at Cheney and Geiger Junction and must be administered in a manner consistent with freight rail assistance program projects. The value of the public benefit of this project is expected to meet or exceed the cost of this project in: Shipper savings on transportation costs; jobs saved in rail-dependent industries; and/or reduced future costs to repair wear and tear on state and local highways due to fewer annual truck trips (reduced vehicle miles traveled). The amounts provided in this subsection are not a commitment for future legislatures, but it is the legislature's intent that future legislatures will work to approve biennial appropriations until the full \$7,337,000 cost of this project is reimbursed.

(5)(a) (~~(\$550,000)~~) \$1,008,000 of the essential rail assistance account—state appropriation is provided solely for the purpose of the rehabilitation and maintenance of the Palouse river and Coulee City railroad line (F01111B).

(b) Expenditures from the essential rail assistance account—state in this subsection may not exceed the combined total of:

(i) Revenues and transfers deposited into the essential rail assistance account from leases and sale of property relating to the Palouse river and Coulee City railroad;

(ii) Revenues from trackage rights agreement fees paid by shippers; and

(iii) Revenues and transfers transferred from the miscellaneous program account to the essential rail assistance account, pursuant to RCW 47.76.360, for the purpose of sustaining the grain train program by maintaining the Palouse river and Coulee City railroad.

(6) The department shall issue a call for projects for the freight rail assistance program, and shall evaluate the applications in a manner consistent with past practices as specified in section 309, chapter 367, Laws of 2011. By November 15, 2022, the department shall submit a prioritized list of recommended projects to the office of financial management and the transportation committees of the legislature.

(7) (~~(\$33,964,000)~~) \$32,996,000 of the multimodal transportation account—state appropriation (~~(and \$37,500,000 of the multimodal transportation account federal appropriation are)~~) is provided solely for Passenger Rail Equipment Replacement (project (~~(700010C-))~~) 700010C). The (~~(appropriations)~~) appropriation in this subsection include insurance proceeds received by the state. The department must use these funds only to purchase replacement equipment that has been competitively procured and for service recovery needs and corrective actions related to the December 2017 derailment.

(8) (~~(\$223,000 of the multimodal transportation account state appropriation is provided solely for contingency funding for emergent freight~~

~~rail assistance projects funded in subsection (3) of this section. Project sponsors may apply to the department for contingency funds needed due to unforeseeable cost increases. The department shall submit a report of any contingency funds provided under this subsection as part of the department's annual budget submittal.~~

(9))) It is the intent of the legislature to encourage the department to pursue federal grant opportunities leveraging up to \$6,696,000 in connecting Washington programmed funds to be used as a state match to improve the state-owned Palouse river and Coulee City system. The amount listed in this subsection is not a commitment for future legislatures, but is the legislature's intent that future legislatures will work to approve biennial appropriations up to a state match share not to exceed \$6,696,000 of a grant award.

(9) \$500,000 of the multimodal transportation account—state appropriation is provided solely for the Chelatchie Prairie railroad for track improvement activities on the northern part of the railroad (L1000311).

Sec. 310. 2021 c 333 s 311 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z—CAPITAL**

Highway Infrastructure Account—State Appropriation . . . . .	(\$793,000)
	<u>\$1,744,000</u>
Highway Infrastructure Account—Federal Appropriation	
	(\$1,600,000)
	<u>\$2,935,000</u>
Transportation Partnership Account—State Appropriation . . . . .	(\$750,000)
	<u>\$1,000,000</u>
Motor Vehicle Account—State Appropriation . . . . .	(\$11,064,000)
	<u>\$25,101,000</u>
Motor Vehicle Account—Federal Appropriation . . . . .	(\$55,751,000)
	<u>\$79,306,000</u>
Motor Vehicle Account—Private/Local Appropriation . . . . .	\$6,600,000
Connecting Washington Account—State Appropriation . . . . .	(\$123,292,000)
	<u>\$178,464,000</u>
Multimodal Transportation Account—State Appropriation . . . . .	(\$71,615,000)
	<u>\$96,975,000</u>
TOTAL APPROPRIATION . . . . .	(\$271,465,000)
	<u>\$392,125,000</u>

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

(1) Except as provided otherwise in this section, the entire appropriations in this section are provided solely for the projects and activities as listed by project and amount in LEAP Transportation Document ((2021-2)) 2022-2 ALL PROJECTS as developed ((April 23, 2021)) March 9, 2022, Program - Local Programs Program (Z).

(2) The amounts identified in the LEAP transportation document referenced under subsection (1) of this section for pedestrian safety/safe routes to school are as follows:

(a) (~~(\$32,613,000)~~) (i) \$46,163,000 of the multimodal transportation account—state appropriation is provided solely for pedestrian and bicycle safety program projects (L2000188).

(ii) The state route 99/Aurora Avenue North Planning Study funded in this subsection (2)(a) must prioritize designs that ensure slow vehicle speeds and systematic improvement to the quality of multimodal access, and must be fully completed by September 30, 2023, in order to ensure construction of improvements begin no later than March 1, 2024.

(b) (~~(\$19,344,000)~~) \$26,086,000 of the motor vehicle account—federal appropriation and (~~(\$17,397,000)~~) \$21,656,000 of the multimodal transportation account—state appropriation are provided solely for safe routes to school projects (L2000189). The department may consider the special situations facing high-need areas, as defined by schools or project areas in which the percentage of the children eligible to receive free and reduced-price meals under the national school lunch program is equal to, or greater than, the state average as determined by the department, when evaluating project proposals against established funding criteria while ensuring continued compliance with federal eligibility requirements.

(3) The department shall submit a report to the transportation committees of the legislature by December 1, 2021, and December 1, 2022, on the status of projects funded as part of the pedestrian safety/safe routes to school grant program. The report must include, but is not limited to, a list of projects selected and a brief description of each project's status. In its December 1, 2021, report the department must also include recommended changes to the pedestrian safety/safe routes to school grant program application and selection processes to increase utilization by a greater diversity of jurisdictions.

(4) (~~(\$6,561,000)~~) \$11,987,000 of the multimodal transportation account—state appropriation is provided solely for bicycle and pedestrian projects listed in the LEAP transportation document referenced in subsection (1) of this section.

(5) It is the expectation of the legislature that the department will be administering a local railroad crossing safety grant program for \$7,000,000 in federal funds during the 2021-2023 fiscal biennium.

(6) (~~(\$12,500,000)~~) \$17,438,000 of the motor vehicle account—federal appropriation is provided solely for national highway freight network projects identified on the project list submitted in accordance with section 218(4)(b), chapter 14, Laws of 2016 on October 31, 2016 (L1000169).

(7) When the department updates its federally-compliant freight plan, it shall consult the freight mobility strategic investment board on the freight plan update and on the investment plan component that describes how the estimated funding allocation for the national highway freight program for federal fiscal years 2022-2025 will be invested and matched. The investment plan component for the state portion of national highway freight program funds must first address shortfalls in funding for connecting Washington act projects. The department shall complete the freight plan update in compliance with federal requirements and deadlines and shall provide an update on the development of the freight plan, including the investment plan component, when submitting its 2022 supplemental appropriations request.

(8) (~~(\$11,679,000)~~) \$35,411,000 of the motor vehicle account—federal appropriation is provided solely for acceleration of local preservation projects

that ensure the reliable movement of freight on the national highway freight system (G2000100). The department will identify projects through its current national highway system asset management call for projects with applications due in February 2021. The department shall give priority to those projects that can be obligated by September 30, 2021.

(9) \$400,000 of the multimodal transportation account—state appropriation is provided solely for a grant to the Northwest Seaport Alliance (NWSA) to lead the creation and coordination of a multistakeholder zero emissions truck collaborative that will: (a) Facilitate the development and implementation of one or more zero-emissions drayage truck demonstration projects in Washington state; and (b) develop a roadmap for transitioning the entire fleet of approximately 4,500 drayage trucks that serve the NWSA cargo gateway to zero-emissions vehicles by 2050 or sooner.

(10) \$8,524,000 of the connecting Washington account—state appropriation is provided solely for the I-5/Mellen Street Connector project.

(11) \$500,000 of the motor vehicle account—state appropriation is provided solely for the 166th/SR 410 Interchange.

(12) \$1,063,000 of the motor vehicle account—state appropriation is provided solely for repairs and rehabilitation of the Pierce county ferry landings at Anderson Island and Steilacoom.

(13) \$300,000 of the motor vehicle account—state appropriation is provided solely for the city of Spokane for preliminary engineering of the US 195/Inland Empire Way project. Funds may be used for predesign environmental assessment work, community engagement, design, and project cost estimation.

**Sec. 311.** 2021 c 333 s 313 (uncodified) is amended to read as follows:

**QUARTERLY REPORTING REQUIREMENTS FOR CAPITAL PROGRAM**

On a quarterly basis, the department of transportation shall provide to the office of financial management and the legislative transportation committees a report for all capital projects, except for ferry projects subject to the reporting requirements established in section 309 (~~of this act~~), chapter 333, Laws of 2021, that must include:

(1) A TEIS version containing actual capital expenditures for all projects consistent with the structure of the most recently enacted budget;

(2) Anticipated cost savings, cost increases, reappropriations, and schedule adjustments for all projects consistent with the structure of the most recently enacted budget;

(3) The award amount, the engineer's estimate, and the number of bidders for all active projects consistent with the structure of the most recently enacted budget; and

(4) Risk reserves and contingency amounts for all projects consistent with the structure of the most recently enacted budget.

**NEW SECTION. Sec. 312.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**FOR THE WASHINGTON STATE DEPARTMENT OF TRANSPORTATION—FUNDS MANAGEMENT**

(1) As part of the department of transportation's 2023-2025 biennial budget request, the department shall provide an overview of capital funds management

challenges and recommendations for funds management strategies that would improve the likelihood of increasing performance associated with the following outcomes:

- (a) Streamlined delivery of the department's capital program and local government capital projects;
  - (b) Increased likelihood that federal funds are committed and used prior to debt backed capital resources;
  - (c) Reduced overall time and cost of administrative efforts of the department and local governments;
  - (d) Ensured federal government contributions regarding its share toward overhead costs;
  - (e) Increased disadvantaged business enterprise program participation and/or funding;
  - (f) Maximized amount of federal redistributed and grant funding received by the state, including how to position the state for providing state matching funds for federal grant opportunities;
  - (g) Increased clarity on how federal funds are administered;
  - (h) Identification of opportunities to leverage current and future toll credits secured by the state; and
  - (i) Minimized risk of audit findings related to federal funds.
- (2) The department may provide recommendations on the transportation appropriations act structure and project list amendments to most efficiently utilize state and federal capital funds.
- (3) As part of the department's 2023-2025 biennial budget request, the department shall also report on:
- (a) The federal grant programs it has applied for;
  - (b) The federal competitive grant programs it could have applied for but did not and the reason or reasons it did not apply; and
  - (c) The potential to use a federal fund exchange program to most efficiently use state and local federal funds.

**TRANSFERS AND DISTRIBUTIONS**

**Sec. 401.** 2021 c 333 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 ACCOUNT AND TRANSPORTATION FUND REVENUE**

Transportation Partnership Account—State	
Appropriation . . . . .	(( <del>\$904,000</del> ))
	<u>\$794,000</u>
Connecting Washington Account—State Appropriation . . . . .	(( <del>\$11,153,000</del> ))
	<u>\$1,633,000</u>
Special Category C Account—State Appropriation . . . . .	(( <del>\$412,000</del> ))
	<u>\$257,000</u>
Highway Bond Retirement Account—State Appropriation . . . . .	(( <del>\$1,483,793,000</del> ))
	<u>\$1,408,622,000</u>
Ferry Bond Retirement Account—State Appropriation . . . . .	\$17,150,000
Transportation Improvement Board Bond Retirement Account—State Appropriation . . . . .	(( <del>\$11,770,000</del> ))

	<u>\$18,152,000</u>
Nondebt-Limit Reimbursable Bond Retirement Account—	
State Appropriation . . . . .	(((\$29,323,000))
	<u>\$26,278,000</u>
Toll Facility Bond Retirement Account—State	
Appropriation . . . . .	\$76,376,000
TOTAL APPROPRIATION . . . . .	(((\$1,630,881,000))
	<u>\$1,542,811,000</u>

The appropriations in this section are subject to the following conditions and limitations: \$6,451,550 of the transportation improvement board bond retirement account—state appropriation is provided solely for the prepayment of certain outstanding bonds and debt service.

**Sec. 402.** 2021 c 333 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**

Transportation Partnership Account—State	
Appropriation . . . . .	(((\$181,000))
	<u>\$150,000</u>
Connecting Washington Account—State Appropriation . . . . .	(((\$2,231,000))
	<u>\$327,000</u>
Special Category C Account—State Appropriation . . . . .	(((\$82,000))
	<u>\$51,000</u>
<u>Transportation Improvement Account—State</u>	
Appropriation . . . . .	\$20,000
TOTAL APPROPRIATION . . . . .	(((\$2,494,000))
	<u>\$548,000</u>

**Sec. 403.** 2021 c 333 s 403 (uncodified) is amended to read as follows:  
**FOR THE STATE TREASURER—STATE REVENUES FOR DISTRIBUTION**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax statutory distributions to cities and counties . . . . .	(((\$467,390,000))
	<u>\$474,003,000</u>
Multimodal Transportation Account—State	
Appropriation: For distribution to cities and counties . . . . .	\$26,786,000
Motor Vehicle Account—State Appropriation: For distribution to cities and counties . . . . .	\$23,438,000

**Sec. 404.** 2021 c 333 s 404 (uncodified) is amended to read as follows:  
**FOR THE STATE TREASURER—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor vehicle fuel tax refunds and statutory transfers . . . . .	(((\$1,974,599,000))
	<u>\$2,000,419,000</u>

**Sec. 405.** 2021 c 333 s 405 (uncodified) is amended to read as follows:

**FOR THE DEPARTMENT OF LICENSING—TRANSFERS**

Motor Vehicle Account—State Appropriation: For motor  
 vehicle fuel tax refunds and transfers . . . . . ~~(\$235,675,000)~~  
\$240,330,000

**Sec. 406.** 2021 c 333 s 406 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—ADMINISTRATIVE TRANSFERS**

(1) Highway Safety Account—State Appropriation:  
 For transfer to the State Patrol Highway  
 Account—State . . . . . \$47,000,000

(2)(a) Transportation Partnership Account—State  
 Appropriation: For transfer to the Capital Vessel  
 Replacement Account—State . . . . . ~~(\$152,453,000)~~  
\$45,468,000

(b) The amount transferred in this subsection represents proceeds from the sale of bonds authorized in RCW 47.10.873.

(3)(a) Transportation Partnership Account—State  
 Appropriation: For transfer to the Tacoma Narrows Toll Bridge Account—State  
 \$30,293,000

(b) It is the intent of the legislature that this transfer is temporary, for the purpose of minimizing the impact of toll increases. An equivalent reimbursing transfer is to occur after the debt service and deferred sales tax on the Tacoma Narrows bridge construction costs are fully repaid in accordance with chapter 195, Laws of 2018.

(4)(a) Motor Vehicle Account—State Appropriation:  
 For transfer to Alaskan Way Viaduct Replacement Project  
 Account—State . . . . . \$6,000,000

(b) The funds provided in (a) of this subsection are a loan to the Alaskan Way viaduct replacement project account—state, and the legislature assumes that these funds will be reimbursed to the motor vehicle account—state at a later date when traffic on the toll facility has recovered from the COVID-19 pandemic.

(5) Motor Vehicle Account—State Appropriation:  
 For transfer to the County Arterial Preservation  
 Account—State . . . . . \$7,666,000

(6) Motor Vehicle Account—State Appropriation:  
 For transfer to the Freight Mobility Investment  
 Account—State . . . . . \$5,511,000

(7) Motor Vehicle Account—State Appropriation:  
 For transfer to the Rural Arterial Trust Account—State . . . . . \$9,331,000

(8) Motor Vehicle Account—State Appropriation:  
 For transfer to the Transportation Improvement  
 Account—State . . . . . \$9,688,000

(9) Rural Mobility Grant Program Account—State  
 Appropriation: For transfer to the Multimodal  
 Transportation Account—State . . . . . \$3,000,000

(10)(a) State Route Number 520 Civil Penalties  
 Account—State Appropriation: For transfer to the  
 Motor Vehicle Account—State  
\$2,000,000



(b) The transfer in this subsection is to repay moneys loaned to the state route number 520 civil penalties account in the 2019-2021 fiscal biennium.

(11) State Route Number 520 Civil Penalties Account—State Appropriation: For transfer to the State Route Number 520 Corridor Account—State . . . . . \$1,532,000

(12) Capital Vessel Replacement Account—State Appropriation: For transfer to the Connecting Washington Account—State . . . . . \$35,000,000

(13)(a) Capital Vessel Replacement Account—State Appropriation: For transfer to the Transportation Partnership Account—State . . . . . ~~(\$10,305,000)~~  
\$1,542,000

(b) The amount transferred in this subsection represents repayment of debt service incurred for the construction of the Hybrid Electric Olympic Class (144-auto) Vessel #5 project (L2000329).

(14) Multimodal Transportation Account—State Appropriation: For transfer to the Complete Streets Grant Program Account—State . . . . . \$14,670,000

(15) Multimodal Transportation Account—State Appropriation: For transfer to the Connecting Washington Account—State . . . . . \$200,000,000

(16) Multimodal Transportation Account—State Appropriation: For transfer to the Freight Mobility Multimodal Account—State . . . . . \$4,011,000

(17) Multimodal Transportation Account—State Appropriation: For transfer to the Ignition Interlock Device Revolving Account—State . . . . . \$600,000

(18) Multimodal Transportation Account—State Appropriation: For transfer to the Pilotage Account—State . . . . . ~~(\$1,500,000)~~  
\$2,000,000

(19) Multimodal Transportation Account—State Appropriation: For transfer to the Puget Sound Capital Construction Account—State . . . . . ~~(\$60,000,000)~~  
\$816,700,000

(20) Multimodal Transportation Account—State Appropriation: For transfer to the Regional Mobility Grant Program Account—State . . . . . \$27,679,000

(21) Multimodal Transportation Account—State Appropriation: For transfer to the Rural Mobility Grant Program Account—State . . . . . \$15,223,000

(22)(a) Alaskan Way Viaduct Replacement Project Account—State Appropriation: For transfer to the Transportation Partnership Account—State . . . . . \$22,884,000

(b) The amount transferred in this subsection represents repayment of debt service incurred for the construction of the SR 99/Alaskan Way Viaduct Replacement project (809936Z).

(23) Tacoma Narrows Toll Bridge Account—State Appropriation: For transfer to the Motor Vehicle

Account—State .....	\$950,000
(24) Puget Sound Ferry Operations Account—State	
Appropriation: For transfer to the Puget Sound	
Capital Construction Account—State .....	\$60,000,000
(25)(a) General Fund Account—State	
Appropriation: For transfer to the State Patrol	
Highway Account—State .....	\$625,000
(b) The state treasurer shall transfer the funds only after receiving notification from the Washington state patrol under section 207(2) ( <del>of this act</del> ), chapter 333, Laws of 2021.	
(26) Motor Vehicle Account—State	
Appropriation: For transfer to the Puget Sound	
Capital Construction Account—State .....	\$30,000,000
(27) Multimodal Transportation Account—State	
Appropriation: For transfer to the I-405 and SR 167	
Express Toll Lanes Account—State .....	\$268,433,000
(28) Multimodal Transportation Account—State	
Appropriation: For transfer to the Move Ahead WA	
Account—State .....	\$874,081,000
(29) Multimodal Transportation Account—State	
Appropriation: For transfer to the State Route	
Number 520 Corridor Account—State .....	\$70,786,000
(30) Motor Vehicle Account—State	
Appropriation: For transfer to the Connecting Washington	
Account—State .....	\$80,000,000
(31) Move Ahead WA Account—State	
Appropriation: For transfer to the Connecting Washington	
Account—State .....	\$600,000,000
(32) Transportation Improvement Account—State	
Appropriation: For transfer to the Transportation	
Improvement Board Bond Retirement Account .....	\$6,451,550

Sec. 407. 2021 c 333 s 407 (uncodified) is amended to read as follows:

**FOR THE STATE TREASURER—BOND RETIREMENT AND INTEREST, AND ONGOING BOND REGISTRATION AND TRANSFER CHARGES: FOR DEBT TO BE PAID BY STATUTORILY PRESCRIBED REVENUE**

Toll Facility Bond Retirement Account—Federal	
Appropriation .....	\$199,129,000
Toll Facility Bond Retirement Account—State	
Appropriation .....	\$25,372,000
TOTAL APPROPRIATION .....	\$224,501,000

**COMPENSATION**

NEW SECTION. Sec. 501. A new section is added to 2021 c 333 (uncodified) to read as follows:

**COLLECTIVE BARGAINING AGREEMENTS**

Sections 502 through 519 of this act represent the results of the collective bargaining process from reopening the 2021-2023 contracts for the limited purpose of bargaining over compensation, and are described in general terms.

Only major economic terms are included in the descriptions. These descriptions do not contain the complete contents of the agreements. The collective bargaining agreements contained in part V of this act may also be funded by expenditures from nonappropriated accounts. If positions are funded with lidded grants or dedicated fund sources with insufficient revenue, additional funding from other sources is not provided.

**Sec. 502.** 2021 c 333 s 503 (uncodified) is amended to read as follows:

**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—OPEIU**

(1) An agreement has been reached between the governor and the office and professional employees international union local eight (OPEIU) pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium. In addition, the following positions are not subject to the furlough requirement: Bid administrator, dispatch, dispatch coordinator, and relief positions.

(2) An agreement has been reached between the governor and the office and professional employees international union local eight (OPEIU) pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 503.** 2021 c 333 s 504 (uncodified) is amended to read as follows:

**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—FASPAA**

(1) An agreement has been reached between the governor and the ferry agents, supervisors, and project administrators association pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

(2) An agreement has been reached between the governor and the ferry agents, supervisors, and project administrators association pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 504.** 2021 c 333 s 505 (uncodified) is amended to read as follows:

**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—SEIU LOCAL 6**

(1) An agreement has been reached between the governor and the service employees international union local 6 pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

(2) An agreement has been reached between the governor and the service employees international union local 6 pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage

increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 505.** 2021 c 333 s 506 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—CARPENTERS**

(1) An agreement has been reached between the governor and the Pacific Northwest regional council of carpenters pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

(2) An agreement has been reached between the governor and the Pacific Northwest regional council of carpenters pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 506.** 2021 c 333 s 507 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—METAL TRADES**

(1) An agreement has been reached between the governor and the Puget Sound metal trades council through an interest arbitration award pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. The arbitration award imposed and funding is provided to implement a 1.9(%) percent general wage decrease from July 1, 2021, through June 30, 2022, and exempted these employees from the furlough requirement.

(2) An agreement has been reached between the governor and the Puget Sound metal trades council pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 507.** 2021 c 333 s 508 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—MEBA-UL**

(1) An agreement has been reached between the governor and the marine engineers' beneficial association unlicensed engine room employees pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either wage increases or the furlough requirement.

(2) An agreement has been reached between the governor and the marine engineers' beneficial association unlicensed engine room employees pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 508.** 2021 c 333 s 509 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—MEBA-L**

(1) An agreement has been reached between the governor and the marine engineers' beneficial association licensed engineer officers pursuant to chapter

47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either wage increases or the furlough requirement.

(2) An agreement has been reached between the governor and the marine engineers' beneficial association licensed engineer officers pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 509.** 2021 c 333 s 510 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
 COLLECTIVE BARGAINING AGREEMENTS—MEBA—PORT  
 ENGINEERS**

(1) An agreement has been reached between the governor and the marine engineers' beneficial association port engineers pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs. The agreement provides that positions designated by the employer as not requiring backfill take 24 furlough days during the biennium.

(2) An agreement has been reached between the governor and the marine engineers' beneficial association port engineers pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 510.** 2021 c 333 s 511 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
 COLLECTIVE BARGAINING AGREEMENTS—MM&P MATES**

(1) An agreement has been reached between the governor and the masters, mates, and pilots - mates pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which includes a two percent wage increase for second mates, and does not include the furlough requirement.

(2) An agreement has been reached between the governor and the masters, mates, and pilots - mates pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 511.** 2021 c 333 s 512 (uncodified) is amended to read as follows:  
**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
 COLLECTIVE BARGAINING AGREEMENTS—MM&P MASTERS**

(1) An agreement has been reached between the governor and the masters, mates, and pilots - masters pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include either wage increases or the furlough requirement.

(2) An agreement has been reached between the governor and the masters, mates, and pilots - masters pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 512.** 2021 c 333 s 513 (uncodified) is amended to read as follows:

**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—MM&P WATCH  
CENTER SUPERVISORS**

(1) An agreement has been reached between the governor and the masters, mates, and pilots - watch center supervisors pursuant to chapter 47.64 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases but does include furloughs only for the following positions: Fleet facility security officers and workforce development leads.

(2) An agreement has been reached between the governor and the masters, mates, and pilots - watch center supervisors pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 513.** 2021 c 333 s 514 (uncodified) is amended to read as follows:

**DEPARTMENT OF TRANSPORTATION MARINE DIVISION  
COLLECTIVE BARGAINING AGREEMENTS—IBU**

(1) An agreement has been reached between the governor and the inlandboatmen's union of the Pacific pursuant to chapter 47.64 RCW through an interest arbitration award for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include furlough days for employees in positions that do not require the position to be backfilled.

(2) An agreement has been reached between the governor and the inlandboatmen's union of the Pacific pursuant to chapter 47.64 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 514.** 2021 c 333 s 515 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—WFSE**

(1) An agreement has been reached between the governor and the Washington federation of state employees under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include 24 furlough days for employees in position that do not require the position to be backfilled.

(2) An agreement has been reached between the governor and the Washington federation of state employees under the provisions of chapter 41.80 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees who were employed continuously starting on or before July 1, 2021, through June 30, 2022.

**Sec. 515.** 2021 c 333 s 516 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—PTE LOCAL 17**

(1) An agreement has been reached between the governor and the professional and technical employees local 17 under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the

agreement, which does not include wage increases, but does include 24 furlough days for employees in position that do not require the position to be backfilled.

(2) An agreement has been reached between the governor and the professional and technical employees local 17 under the provisions of chapter 41.80 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees who were employed continuously starting on or before July 1, 2021, through June 30, 2022.

**Sec. 516.** 2021 c 333 s 517 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—WPEA**

(1) An agreement has been reached between the governor and the Washington public employees association under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include wage increases, but does include 24 furlough days for employees in positions that do not require the position to be backfilled.

(2) An agreement has been reached between the governor and the Washington public employees association general government under the provisions of chapter 41.80 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 517.** 2021 c 333 s 518 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—COALITION OF UNIONS**

(1) An agreement has been reached for the 2019-2021 biennium between the governor and the coalition of unions under the provisions of chapter 41.80 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which includes 24 furlough days for employees in position that do not require the position to be backfilled. The agreement includes and funding is provided for a 2.5 percent wage increase for fiscal year 2022 and a 2.5 percent wage increase for fiscal year 2023 for the department of corrections marine vessel operators.

(2) An agreement has been reached between the governor and the coalition of unions under the provisions of chapter 41.80 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 3.25 percent for fiscal year 2023 and a lump sum payment for employees hired before July 1, 2022.

**Sec. 518.** 2021 c 333 s 519 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—WSP TROOPERS ASSOCIATION**

(1) An agreement has been reached between the governor and the Washington state patrol troopers association under the provisions of chapter 41.56 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include general wages increases but does provide the ability to request to reopen the compensation article for the purpose of bargaining base rate of pay for fiscal year 2023.

(2) An agreement has been reached between the governor and the Washington state patrol troopers association under the provisions of chapter

41.56 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 10 percent for fiscal year 2023.

**Sec. 519.** 2021 c 333 s 520 (uncodified) is amended to read as follows:

**COLLECTIVE BARGAINING AGREEMENT—WSP LIEUTENANTS AND CAPTAINS ASSOCIATION**

(1) An agreement has been reached between the governor and the Washington state patrol lieutenants and captains association under the provisions of chapter 41.56 RCW for the 2021-2023 fiscal biennium. Funding is provided to fund the agreement, which does not include general wages increases but does provide the ability to request to reopen the compensation article for the purpose of bargaining base rate of pay for fiscal year 2023.

(2) An agreement has been reached between the governor and the Washington state patrol lieutenants and captains association under the provisions of chapter 41.56 RCW for fiscal year 2023. The agreement includes and funding is provided for a general wage increase of 10 percent for fiscal year 2023.

**Sec. 520.** 2021 c 333 s 521 (uncodified) is amended to read as follows:

**COMPENSATION—REPRESENTED EMPLOYEES—HEALTH CARE—COALITION—INSURANCE BENEFITS**

An agreement was reached for the 2021-2023 biennium between the governor and the health care coalition under the provisions of chapter 41.80 RCW. Appropriations in this act for state agencies, including institutions of higher education, are sufficient to implement the provisions of the 2021-2023 collective bargaining agreement, which maintains the provisions of the 2019-2021 agreement, and are subject to the following conditions and limitations:

The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$936 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate shall not exceed (~~(\$1094)~~) \$1,130 per eligible employee.

The board shall collect a \$25 per month surcharge payment from members who use tobacco products and a surcharge payment of not less than \$50 per month from members who cover a spouse or domestic partner where the spouse or domestic partner has chosen not to enroll in another employer-based group health insurance that has benefits and premiums with an actuarial value of not less than 95 percent of the actuarial value of the public employees' benefits board plan with the largest enrollment. The surcharge payments shall be collected in addition to the member premium payment if directed by the legislature.

**Sec. 521.** 2021 c 333 s 522 (uncodified) is amended to read as follows:

**COMPENSATION—REPRESENTED EMPLOYEES OUTSIDE HEALTH CARE COALITION—INSURANCE BENEFITS**

Appropriations for state agencies in this act are sufficient for represented employees outside the coalition for health benefits, and are subject to the following conditions and limitations: The monthly employer funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, may not exceed \$936 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate may not exceed (~~(\$1094)~~) \$1,130 per eligible employee.



**Sec. 522.** 2021 c 333 s 523 (uncodified) is amended to read as follows:

**COMPENSATION—NONREPRESENTED EMPLOYEES—  
INSURANCE BENEFITS**

Appropriations for state agencies in this act are sufficient for nonrepresented state employee health benefits for state agencies, including institutions of higher education, and are subject to the following conditions and limitations: The employer monthly funding rate for insurance benefit premiums, public employees' benefits board administration, and the uniform medical plan, shall not exceed \$936 per eligible employee for fiscal year 2022. For fiscal year 2023, the monthly employer funding rate shall not exceed (~~(\$1094)~~) \$1,130 per eligible employee.

NEW SECTION. **Sec. 523.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**GENERAL WAGE INCREASES**

(1) Appropriations for state agency employee compensation in this act are sufficient to provide general wage increases to state agency employees who are not represented or who bargain under statutory authority other than chapter 41.80 or 47.64 RCW or RCW 41.56.473 or RCW 41.56.475.

(2) Funding is provided for a 3.25 percent salary increase effective July 1, 2022, for all classified employees as specified in subsection (1) of this section, employees in the Washington management service, and exempt employees under the jurisdiction of the office of financial management. The appropriations are also sufficient to fund a 3.25 percent salary increase effective July 1, 2022 for executive, legislative, and judicial branch employees exempt from merit system rules whose maximum salaries are not set by the commission on salaries of elected officials.

NEW SECTION. **Sec. 524.** A new section is added to 2021 c 333 (uncodified) to read as follows:

**COMPENSATION—PENSION CONTRIBUTIONS**

Appropriations to state agencies include funding for an increase in pension contribution rates for several state pension systems as provided in this section.

(1) An increase of 0.14 percent is funded for state employer contributions to the public employees' retirement system, the public safety employees' retirement systems, and the school employees' retirement system. An increase of 0.27 percent for employer contributions to the teachers' retirement system is funded. These increases are provided for the purpose of a one-time, ongoing pension increase for retirees in the public employees' retirement system plan 1 and teachers' retirement system plan 1, as provided in Senate Bill No. 5676 (providing a benefit increase to certain retirees of the public employees' retirement system plan 1 and the teachers' retirement system plan 1). If Senate Bill No. 5676 is not enacted by June 30, 2022, this subsection lapses.

(2) An increase of 0.10 percent is funded for state employer contributions to the public safety employees' retirement system. These increases are provided for the cost to provide an enhanced disability benefit to members of this system who experience a qualifying catastrophic disability on the job, as provided in House Bill No. 1669 (PSERS disability benefits). If House Bill No. 1669 is not enacted by June 30, 2022, this subsection lapses.

**NEW SECTION. Sec. 525.** The following acts or parts of acts are each repealed:

- (1) 2021 c 333 s 526 (uncodified);
- (2) 2021 c 333 s 527 (uncodified);
- (3) 2021 c 333 s 528 (uncodified);
- (4) 2021 c 333 s 529 (uncodified);
- (5) 2021 c 333 s 530 (uncodified);
- (6) 2021 c 333 s 531 (uncodified);
- (7) 2021 c 333 s 532 (uncodified);
- (8) 2021 c 333 s 533 (uncodified);
- (9) 2021 c 333 s 534 (uncodified);
- (10) 2021 c 333 s 535 (uncodified);
- (11) 2021 c 333 s 536 (uncodified); and
- (12) 2021 c 333 s 537 (uncodified).

### IMPLEMENTING PROVISIONS

**Sec. 601.** 2021 c 333 s 601 (uncodified) is amended to read as follows:

#### MANAGEMENT OF TRANSPORTATION FUNDS WHEN THE LEGISLATURE IS NOT IN SESSION

(1) The 2005 transportation partnership projects or improvements and 2015 connecting Washington projects or improvements are listed in the LEAP Transportation Document ((2021-4)) 2022-1 as developed ((April 23, 2024)) March 9, 2022, which consists of a list of specific projects by fund source and amount over a sixteen-year period. Current fiscal biennium funding for each project is a line-item appropriation, while the outer year funding allocations represent a sixteen-year plan. The department of transportation is expected to use the flexibility provided in this section to assist in the delivery and completion of all transportation partnership account and connecting Washington account projects on the LEAP transportation document referenced in this subsection. For the 2021-2023 project appropriations, unless otherwise provided in this act, the director of the office of financial management may provide written authorization for a transfer of appropriation authority between projects funded with transportation partnership account appropriations or connecting Washington account appropriations to manage project spending and efficiently deliver all projects in the respective program under the following conditions and limitations:

(a) Transfers may only be made within each specific fund source referenced on the respective project list;

(b) Transfers from a project may not be made as a result of the reduction of the scope of a project or be made to support increases in the scope of a project;

(c) Transfers from a project may be made if the funds appropriated to the project are in excess of the amount needed in the current fiscal biennium;

(d) Transfers may not occur for projects not identified on the applicable project list;

(e) Transfers to a project may not occur if that project is a programmatic funding item described in broad general terms on the applicable project list without referencing a specific state route number;

(f) Transfers may not be made while the legislature is in session;

(g) Transfers to a project may not be made with funds designated as attributable to practical design savings as described in RCW 47.01.480;

(h) Except for transfers made under (l) of this subsection, transfers may only be made in fiscal year 2023;

(i) The total amount of transfers under this section may not exceed \$50,000,000;

(j) Except as otherwise provided in (l) of this subsection, transfers made to a single project may not cumulatively total more than \$20,000,000 per biennium;

(k) Each transfer between projects may only occur if the director of the office of financial management finds that any resulting change will not hinder the completion of the projects as approved by the legislature; and

(l) Transfers between projects may be made by the department of transportation without the formal written approval provided under this subsection (1), provided that the transfer amount to a single project does not exceed two hundred fifty thousand dollars or ten percent of the total project per biennium, whichever is less. These transfers must be reported quarterly to the director of the office of financial management and the chairs of the house of representatives and senate transportation committees.

(2) The department of transportation must submit quarterly all transfers authorized under this section in the transportation executive information system. The office of financial management must maintain a legislative baseline project list identified in the LEAP transportation documents referenced in this act, and update that project list with all authorized transfers under this section, including any effects to the total project budgets and schedules beyond the current biennium.

(3) At the time the department submits a request to transfer funds under this section, a copy of the request must be submitted to the chairs and ranking members of the transportation committees of the legislature.

(4) Before approval, the office of financial management shall work with legislative staff of the house of representatives and senate transportation committees to review the requested transfers in a timely manner and address any concerns raised by the chairs and ranking members of the transportation committees.

(5) No fewer than ten days after the receipt of a project transfer request, the director of the office of financial management must provide written notification to the department of any decision regarding project transfers, with copies submitted to the transportation committees of the legislature.

(6) The department must submit annually as part of its budget submittal a report detailing all transfers made pursuant to this section, including any effects to the total project budgets and schedules beyond the current biennium.

(7)(a) If the department of transportation receives federal funding not appropriated in this act, the department shall apply such funds to any of the following activities in lieu of state funds, if compliant with federal funding restrictions, and in the order that most reduces administrative burden and minimizes the use of bond proceeds:

(i) Projects on LEAP Transportation Document (~~(2021-2)~~) 2022-2 ALL PROJECTS as developed (~~(April 23, 2021)~~) March 9, 2022; or

(ii) Other department of transportation operating or capital expenditures funded by appropriations from state accounts in this act.

(b) However, if the funds received may not be used for any of the purposes enumerated in this section and must be obligated before the next regular

legislative session, then the department may program the funds for other transportation-related activities, provided that these actions do not initiate any new programs, policies, or expenditure levels requiring additional one-time or ongoing state funds that have not been expressly authorized by the legislature. The department shall follow the existing unanticipated receipt process to notify the legislative standing committees on transportation and the office of financial management of the amount of federal funds received in addition to those appropriated in this act and the projects or activities receiving funding through this process.

**Sec. 602.** 2021 c 333 s 606 (uncodified) is amended to read as follows:

**TRANSIT, BICYCLE, AND PEDESTRIAN ELEMENTS REPORTING**

(1) By November 15th of each year, the department of transportation must report on amounts expended to benefit transit, bicycle, or pedestrian elements within all connecting Washington projects in programs I, P, and Z identified in LEAP Transportation Document ((2021-2)) 2022-2 ALL PROJECTS as developed ((April 23, 2021)) March 9, 2022. The report must address each modal category separately and identify if eighteenth amendment protected funds have been used and, if not, the source of funding.

(2) To facilitate the report in subsection (1) of this section, the department of transportation must require that all bids on connecting Washington projects include an estimate on the cost to implement any transit, bicycle, or pedestrian project elements.

**MISCELLANEOUS 2021-2023 FISCAL BIENNIUM**

**Sec. 701.** 2021 c 333 s 701 (uncodified) is amended to read as follows:

**INFORMATION TECHNOLOGY OVERSIGHT**

(1) Agencies must apply to the office of financial management and the office of the state chief information officer for approval before beginning a project or proceeding with each discrete stage of a project subject to this section. At each stage, the office of the state chief information officer must certify that the project has an approved technology budget and investment plan, complies with state information technology and security requirements, and other policies defined by the office of the state chief information officer. The office of financial management must notify the fiscal committees of the legislature of the receipt of each application and may not approve a funding request for ten business days from the date of notification.

(2)(a) Each project must have a technology budget. The technology budget must have the detail by fiscal month for the 2021-2023 fiscal biennium. The technology budget must use a method similar to the state capital budget, identifying project costs, each fund source, and anticipated deliverables through each stage of the entire project investment and across fiscal periods and biennia from project onset through implementation and close out, as well as at least five years of maintenance and operations costs.

(b) As part of the development of a technology budget and at each request for funding, the agency shall submit an updated technology budget, if changes occurred, to include detailed financial information to the office of financial management and the office of the chief information officer. The technology budget must describe the total cost of the project, as well as maintenance and operations costs, to include and identify at least:

- (i) Fund sources;
- (ii) Full time equivalent staffing level to include job classification assumptions;
- (iii) Discrete financial budget codes to include at least the appropriation index and program index;
- (iv) Object and subobject codes of expenditures;
- (v) Anticipated deliverables;
- (vi) Historical budget and expenditure detail by fiscal year; and
- (vii) Maintenance and operations costs by fiscal year for at least five years as a separate worksheet.

(c) If a project technology budget changes and a revised technology budget is completed, a comparison of the revised technology budget to the last approved technology budget must be posted to the dashboard, to include a narrative rationale on what changed, why, and how that impacts the project in scope, budget, and schedule.

(3)(a) Each project must have an investment plan that includes:

- (i) An organizational chart of the project management team that identifies team members and their roles and responsibilities;
- (ii) The office of the chief information officer staff assigned to the project;
- (iii) An implementation schedule covering activities, critical milestones, and deliverables at each stage of the project for the life of the project at each agency affected by the project;
- (iv) Performance measures used to determine that the project is on time, within budget, and meeting expectations for quality of work product;
- (v) Ongoing maintenance and operations cost of the project post implementation and close out delineated by agency staffing, contracted staffing, and service level agreements; and
- (vi) Financial budget coding to include at least discrete financial coding for the project.

(4) Projects with estimated costs greater than \$100,000,000 from initiation to completion and implementation may be divided into discrete subprojects as determined by the office of the state chief information officer. Each subproject must have a technology budget and investment plan as provided in this section.

(5)(a) The office of the chief information officer shall maintain an information technology project dashboard that provides updated information each fiscal month on projects subject to this section. This includes, at least:

- (i) Project changes each fiscal month;
- (ii) Noting if the project has a completed market requirements document, and when it was completed;
- (iii) Financial status of information technology projects under oversight;
- (iv) Coordination with agencies;
- (v) Monthly quality assurance reports, if applicable;
- (vi) Monthly office of the chief information officer status reports;
- (vii) Historical project budget and expenditures through fiscal year 2021;
- (viii) Budget and expenditures each fiscal month;
- (ix) Estimated annual maintenance and operations costs by fiscal year; and
- (x) Posting monthly project status assessments on scope, schedule, budget, and overall by the:
  - (A) Office of the chief information officer;

(B) Agency project team; and

(C) Quality assurance vendor, if applicable to the project.

(b) The dashboard must retain a roll up of the entire project cost, including all subprojects, that can display subproject detail. This includes coalition projects that are active.

(6) If the project affects more than one agency:

(a) A separate technology budget and investment plan must be prepared for each agency; and

(b) The dashboard must contain a statewide project technology budget roll up that includes each affected agency at the subproject level.

(7) For any project that exceeds \$2,000,000 in total funds to complete, requires more than one biennium to complete, or is financed through financial contracts, bonds, or other indebtedness:

(a) Quality assurance for the project must report independently to the office of the chief information officer;

(b) The office of the chief information officer must review, and, if necessary, revise the proposed project to ensure it is flexible and adaptable to advances in technology;

(c) The technology budget must specifically identify the uses of any financing proceeds. No more than 30 percent of the financing proceeds may be used for payroll-related costs for state employees assigned to project management, installation, testing, or training;

(d) The agency must consult with the office of the state treasurer during the competitive procurement process to evaluate early in the process whether products and services to be solicited and the responsive bids from a solicitation may be financed; and

(e) The agency must consult with the contracting division of the department of enterprise services for a review of all contracts and agreements related to the project's information technology procurements.

(8) The office of the chief information officer must evaluate the project at each stage and certify whether the project is planned, managed, and meeting deliverable targets as defined in the project's approved technology budget and investment plan.

(9) The office of the chief information officer may suspend or terminate a project at any time if it determines that the project is not meeting or not expected to meet anticipated performance and technology outcomes. Once suspension or termination occurs, the agency shall unallot any unused funding and shall not make any expenditure for the project without the approval of the office of financial management. The office of the chief information officer must report on July 1st and December 1st each calendar year any suspension or termination of a project in the previous six-month period to the legislative fiscal committees.

(10) The office of the chief information officer, in consultation with the office of financial management, may identify additional projects to be subject to this section, including projects that are not separately identified within an agency budget. The office of the chief information officer must report on July 1st and December 1st each calendar year any additional projects to be subjected to this section that were identified in the previous six-month period to the legislative fiscal committees.

(11) The following transportation projects are subject to the conditions, limitations, and review provided in this section:

- (a) For the Washington state patrol: Aerial criminal investigation tools;
- (b) For the department of licensing: Website accessibility and usability; and
- (c) For the department of transportation: Maintenance management system, land mobile radio system replacement(~~(, new cse system and operator)~~), PROPEL - WSDOT support of one Washington, and capital systems replacement.

**Sec. 702.** RCW 47.01.071 and 2016 c 35 s 1 are each amended to read as follows:

The transportation commission shall have the following functions, powers, and duties:

(1) To propose policies to be adopted by the governor and the legislature designed to assure the development and maintenance of a comprehensive and balanced statewide transportation system which will meet the needs of the people of this state for safe and efficient transportation services. Wherever appropriate, the policies shall provide for the use of integrated, intermodal transportation systems. The policies must be aligned with the goals established in RCW 47.04.280. To this end the commission shall:

(a) Develop transportation policies which are based on the policies, goals, and objectives expressed and inherent in existing state laws;

(b) Inventory the adopted policies, goals, and objectives of the local and area-wide governmental bodies of the state and define the role of the state, regional, and local governments in determining transportation policies, in transportation planning, and in implementing the state transportation plan;

(c) Establish a procedure for review and revision of the state transportation policy and for submission of proposed changes to the governor and the legislature; and

(d) Integrate the statewide transportation plan with the needs of the elderly and persons with disabilities, and coordinate federal and state programs directed at assisting local governments to answer such needs;

(2) To provide for the effective coordination of state transportation planning with national transportation policy, state and local land use policies, and local and regional transportation plans and programs;

(3) In conjunction with the provisions under RCW 47.01.075, to provide for public involvement in transportation designed to elicit the public's views both with respect to adequate transportation services and appropriate means of minimizing adverse social, economic, environmental, and energy impact of transportation programs;

(4) By December 2010, to prepare a comprehensive and balanced statewide transportation plan consistent with the state's growth management goals and based on the transportation policy goals provided under RCW 47.04.280 and applicable state and federal laws. The plan must reflect the priorities of government developed by the office of financial management and address regional needs, including multimodal transportation planning. The plan must, at a minimum: (a) Establish a vision for the development of the statewide transportation system; (b) identify significant statewide transportation policy issues; and (c) recommend statewide transportation policies and strategies to the legislature to fulfill the requirements of subsection (1) of this section. The plan

must be the product of an ongoing process that involves representatives of significant transportation interests and the general public from across the state. Every four years, except during the 2021-2023 fiscal biennium, the plan shall be reviewed and revised, and submitted to the governor and the house of representatives and senate standing committees on transportation.

The plan shall take into account federal law and regulations relating to the planning, construction, and operation of transportation facilities;

(5) To propose to the governor and the legislature prior to the convening of each regular session held in an odd-numbered year a recommended budget for the operations of the commission as required by RCW 47.01.061;

(6) To adopt such rules as may be necessary to carry out reasonably and properly those functions expressly vested in the commission by statute;

(7) To contract with the office of financial management or other appropriate state agencies for administrative support, accounting services, computer services, and other support services necessary to carry out its other statutory duties;

(8) To conduct transportation-related studies and policy analysis to the extent directed by the legislature or governor in the biennial transportation budget act, or as otherwise provided in law, and subject to the availability of amounts appropriated for this specific purpose; and

(9) To exercise such other specific powers and duties as may be vested in the transportation commission by this or any other provision of law.

**Sec. 703.** RCW 46.01.385 and 2021 c 32 s 2 are each amended to read as follows:

The agency financial transaction account is created in the state treasury. Receipts directed by law to the account from cost recovery charges for credit card and other financial transaction fees must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for paying credit card and financial transaction fees, and other related costs incurred by state agencies. During the 2021-2023 fiscal biennium, expenditures from the account may also be used for additional information technology costs related to supporting the department of licensing operations and addressing its staffing shortages.

**Sec. 704.** RCW 47.01.505 and 2017 c 288 s 4 are each amended to read as follows:

(1) On behalf of the state, the legislature of the state of Washington invites the legislature of the state of Oregon to participate in a joint legislative action committee regarding the construction of a new Interstate 5 bridge spanning the Columbia river that achieves the following purposes:

(a) Works with both states' departments of transportation and transportation commissions and stakeholders to begin a process toward project development. It is assumed that the appropriate local and bistate entities already tasked with related work will also be included when the legislative and interagency agreements are ready to move forward. The legislative action committee must convene its first meeting by December 15, 2017;

(b) Reviews and confirms lead roles related to permitting, construction, operation, and maintenance of a future Interstate 5 bridge project;



(c) Establishes a process to seek public comment on the Interstate 5 bridge project development plan selected and presents final recommendations for the process and financing to both states;

(d) Works to ensure that there are sufficient resources available to both states' departments of transportation to inventory and utilize existing data and any prior relevant work to allow for nonduplicative and efficient decision making regarding a new project;

(e) Examines all of the potential mass transit options available for a future Interstate 5 bridge project;

(f) Utilizes design-build procurement, or an equivalent or better innovation delivery method, and determines the least costly, most efficient project management and best practices tools consistent with work already completed including, but not limited to, height, navigation needs, transparency, economic development, and other critical elements, while minimizing the impacts of congestion during construction;

(g) Considers the creation of a Columbia river bridge authority to review bridge needs for possible repair, maintenance, or new construction, prioritizing those needs and making recommendations to both states with regard to financing specific projects, timing, authorities, and operations; and

(h) Provides a report to the legislatures of each state that details the findings and recommendations of the legislative action committee by December 15, 2018. The report must also contain a recommendation as to whether the Interstate 5 project should be designated by the legislature of the state of Washington as a project of statewide significance and by the state of Oregon with an equivalent designation.

(2)(a) The joint Oregon-Washington legislative action committee is established, with sixteen members as provided in this subsection:

(i) The speaker and minority leader of the house of representatives of each state shall jointly appoint four members, two from each of the two largest caucuses of their state's house of representatives.

(ii) The majority leader and minority leader of the senate of each state shall jointly appoint four members, two from each of the two largest caucuses of their state's senate.

(b) The legislative action committee shall choose its cochairs from among its membership, one each from the senate and the house of representatives of both states.

(c) Executive agencies, including the departments of transportation and the transportation commissions, shall cooperate with the committee and provide information and other assistance as the cochairs may reasonably request.

(d) Staff support for the legislative action committee must be provided by the Washington house of representatives office of program research, Washington senate committee services, and, contingent upon the acceptance by the legislature of the state of Oregon of the invitation in subsection (1) of this section to participate in the legislative action committee, the Oregon legislative policy and research office.

(e) Legislative members of the legislative action committee are reimbursed for travel expenses. For Washington legislative members, this reimbursement must be in accordance with RCW 44.04.120.

(f) The expenses of the legislative action committee must be paid jointly by both states' senate and house of representatives. In Washington, committee expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(g) Each meeting of the legislative action committee must allow an opportunity for public comment. Legislative action committee meetings must be scheduled and conducted in accordance with the requirements of both the senate and the house of representatives of both states.

(h) The Washington members of the joint Oregon-Washington legislative action committee shall report back to the Washington state legislature, by August 1, 2022, regarding the progress of the committee and its work to advance the project to build a new Interstate 5 bridge spanning the Columbia river. The report must include a description of the locally preferred alternative ultimately identified as part of the interstate bridge replacement project.

**Sec. 705.** RCW 70A.205.415 and 2009 c 261 s 3 are each amended to read as follows:

The waste tire removal account is created in the state treasury. Expenditures from the account may be used for the cleanup of unauthorized waste tire piles, measures that prevent future accumulation of unauthorized waste tire piles, and road wear related maintenance on state and local public highways. During the 2007-2009 fiscal biennium, the legislature may transfer from the waste tire removal account to the motor vehicle fund such amounts as reflect the excess fund balance of the waste tire removal account. During the 2021-2023 fiscal biennium, appropriations from the waste tire removal account may be made for the department of transportation to address the risks to safety and public health associated with homeless encampments on department owned rights-of-way.

**Sec. 706.** RCW 46.68.410 and 2010 c 161 s 812 are each amended to read as follows:

(1) The vehicle identification number inspection fee collected under RCW 46.17.130 must be distributed as follows:

~~((1) Fifteen dollars))~~ (a) \$15 to the state patrol highway account created in RCW 46.68.030; and

~~((2) Fifty dollars))~~ (b) \$50 to the motor vehicle fund created in RCW 46.68.070.

(2) During the 2021-2023 fiscal biennium, the entire vehicle identification number inspection fee collected under RCW 46.17.130 must be distributed to the state patrol highway account created in RCW 46.68.030.

**Sec. 707.** 2021 c 333 s 719 (uncodified) is amended to read as follows:

(1) The state commercial aviation coordinating commission will review existing data and conduct research to determine Washington's long-range commercial aviation facility needs and the site of a new primary commercial aviation facility. Research for each potential site must include the feasibility of constructing a commercial aviation facility in that location and its potential environmental, community, and economic impacts. Options for a new primary commercial aviation facility in Washington may include expansion of an existing airport facility but may not include siting a facility on or in the vicinity of a military installation that would be incompatible with the installation's ability

to carry out its mission requirements. The work of the commission shall include the following:

(a) Recommendations to the legislature on future Washington state long-range commercial aviation facility needs including possible additional aviation facilities or expansion of current aviation facilities, excluding those located in a county with a population of two million or more, to meet anticipated commercial aviation, general aviation, and air cargo demands;

(b) Identifying a preferred location for a new primary commercial aviation facility. The commission shall make recommendations and shall select a single preferred location by a sixty percent majority vote using the following process:

(i) Initiating a broad review of potential sites;

(ii) Recommending a final short list of no more than six locations by February 15, 2022;

(iii) Identifying the top two locations from the final six locations by October 15, 2022; and

(iv) Identifying a single preferred location for a new primary commercial aviation facility by ~~((February))~~ June 15, 2023; and

(c) A projected timeline for the development of an additional commercial aviation facility that is completed and functional by 2040.

(2) The commission shall submit a report of its findings and recommendations to the transportation committees of the legislature by ~~((February))~~ June 15, 2023. The commission must allow a minority report to be included with the commission report if requested by a voting member of the commission.

(3) Nothing in this section shall be construed to endorse, limit, or otherwise alter existing or future plans for capital development and capacity enhancement at existing commercial airports in Washington.

(4) This section expires June 30, 2023.

**Sec. 708.** RCW 46.55.010 and 2005 c 88 s 2 are each amended to read as follows:

The definitions set forth in this section apply throughout this chapter:

(1) "Abandoned vehicle" means a vehicle that a registered tow truck operator has impounded and held in the operator's possession for ~~((one hundred twenty))~~ 120 consecutive hours.

(2) "Immobilize" means the use of a locking wheel boot that, when attached to the wheel of a vehicle, prevents the vehicle from moving without damage to the tire to which the locking wheel boot is attached.

(3) "Abandoned vehicle report" means the document prescribed by the state that the towing operator forwards to the department after a vehicle has become abandoned.

(4) "Impound" means to take and hold a vehicle in legal custody. There are two types of impounds—public and private.

(a) "Public impound" means that the vehicle has been impounded at the direction of a law enforcement officer or by a public official having jurisdiction over the public property upon which the vehicle was located.

(b) "Private impound" means that the vehicle has been impounded at the direction of a person having control or possession of the private property upon which the vehicle was located.

(5) "Junk vehicle" means a vehicle certified under RCW 46.55.230 as meeting at least three of 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) Has an approximate fair market value equal only to the approximate value of the scrap in it.

(6) "Master log" means the document or an electronic facsimile prescribed by the department and the Washington state patrol in which an operator records transactions involving impounded vehicles.

(7) "Registered tow truck operator" or "operator" means any person who engages in the impounding, transporting, or storage of unauthorized vehicles or the disposal of abandoned vehicles.

(8) "Residential property" means property that has no more than four living units located on it.

(9) "Suspended license impound" means an impound ordered under RCW 46.55.113 because the operator was arrested for a violation of RCW 46.20.342 or 46.20.345.

(10) "Tow truck" means a motor vehicle that is equipped for and used in the business of towing vehicles with equipment as approved by the state patrol.

(11) "Tow truck number" means the number issued by the department to tow trucks used by a registered tow truck operator in the state of Washington.

(12) "Tow truck permit" means the permit issued annually by the department that has the classification of service the tow truck may provide stamped upon it.

(13) "Tow truck service" means the transporting upon the public streets and highways of this state of vehicles, together with personal effects and cargo, by a tow truck of a registered operator.

(14) "Unauthorized vehicle" means a vehicle that is subject to impoundment after being left unattended in one of the following public or private locations for the indicated period of time:

Subject to removal after:

(a) Public locations:

(i) Constituting an accident or a traffic hazard as defined in RCW 46.55.113 . . . . . Immediately

(ii) On a highway and tagged as described in RCW 46.55.085 . . . . . 24 hours

(iii) In a publicly owned or controlled parking facility, properly posted under RCW 46.55.070 . . . . . Immediately

- (iv) During the 2021-2023 fiscal biennium, within the right-of-way used by a regional transit authority for high capacity transportation where the vehicle constitutes an obstruction to the operation of high capacity transportation vehicles or jeopardizes public safety . . . . . Immediately
- (b) Private locations:
  - (i) On residential property . . . . . Immediately
  - (ii) On private, nonresidential property, properly posted under RCW 46.55.070 . . . . . Immediately
  - (iii) On private, nonresidential property, not posted . . . . . 24 hours

**Sec. 709.** RCW 46.55.080 and 2018 c 22 s 12 are each amended to read as follows:

(1) If a vehicle is in violation of the time restrictions of RCW 46.55.010(14), it may be impounded by a registered tow truck operator at the direction of a law enforcement officer, authorized regional transit authority representative under the conditions described in RCW 46.55.010(14)(a)(iv), or other public official with jurisdiction if the vehicle is on public property, or at the direction of the property owner or an agent if it is on private property. A law enforcement officer may also direct the impoundment of a vehicle pursuant to a writ or court order.

(2) The person requesting a private impound or a law enforcement officer, authorized regional transit authority representative, or public official requesting a public impound shall provide a signed authorization for the impound at the time and place of the impound to the registered tow truck operator before the operator may proceed with the impound. A registered tow truck operator, employee, or his or her agent may not serve as an agent of a property owner for the purposes of signing an impound authorization or, independent of the property owner, identify a vehicle for impound.

(3) In the case of a private impound, the impound authorization shall include the following statement: "A person authorizing this impound, if the impound is found in violation of chapter 46.55 RCW, may be held liable for the costs incurred by the vehicle owner."

(4) A registered tow truck operator shall record and keep in the operator's files the date and time that a vehicle is put in the operator's custody and released. The operator shall make an entry into a master log regarding transactions relating to impounded vehicles. The operator shall make this master log available, upon request, to representatives of the department or the state patrol.

(5) A person who engages in or offers to engage in the activities of a registered tow truck operator may not be associated in any way with a person or business whose main activity is authorizing the impounding of vehicles.

**Sec. 710.** RCW 47.12.063 and 2015 3rd sp.s. c 13 s 2 are each amended to read as follows:

(1) It is the intent of the legislature to continue the department's policy giving priority consideration to abutting property owners in agricultural areas when disposing of property through its surplus property program under this section.

(2) Whenever the department determines that any real property owned by the state of Washington and under the jurisdiction of the department is no longer required for transportation purposes and that it is in the public interest to do so, the department may sell the property or exchange it in full or part consideration for land or building improvements or for construction of highway improvements at fair market value to any person through the solicitation of written bids through public advertising in the manner prescribed under RCW 47.28.050 or in the manner prescribed under RCW 47.12.283.

(3) The department may forego the processes prescribed by RCW 47.28.050 and 47.12.283 and sell the real property to any of the following entities or persons at fair market value:

- (a) Any other state agency;
- (b) The city or county in which the property is situated;
- (c) Any other municipal corporation;
- (d) Regional transit authorities created under chapter 81.112 RCW;
- (e) The former owner of the property from whom the state acquired title;
- (f) In the case of residentially improved property, a tenant of the department who has resided thereon for not less than six months and who is not delinquent in paying rent to the state;

(g) Any abutting private owner but only after each other abutting private owner (if any), as shown in the records of the county assessor, is notified in writing of the proposed sale. If more than one abutting private owner requests in writing the right to purchase the property within ~~((fifteen))~~ 15 days after receiving notice of the proposed sale, the property shall be sold at public auction in the manner provided in RCW 47.12.283;

(h) To any other owner of real property required for transportation purposes;

(i) In the case of property suitable for residential use, any nonprofit organization dedicated to providing affordable housing to very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510 and is eligible to receive assistance through the Washington housing trust fund created in chapter 43.185 RCW; ~~((or))~~

(j) During the 2021-2023 fiscal biennium, any nonprofit organization that identifies real property to be sold or conveyed as a substitute for real property owned by the nonprofit within the city of Seattle to be redeveloped for the purpose of affordable housing; or

(k) A federally recognized Indian tribe within whose reservation boundary the property is located.

(4) When selling real property pursuant to RCW 47.12.283, the department may withhold or withdraw the property from an auction when requested by one of the entities or persons listed in subsection (3) of this section and only after the receipt of a nonrefundable deposit equal to ~~((ten))~~ 10 percent of the fair market value of the real property or ~~((five thousand dollars))~~ \$5,000, whichever is less. This subsection does not prohibit the department from exercising its discretion to withhold or withdraw the real property from an auction if the department determines that the property is no longer surplus or chooses to sell the property

through one of the other means listed in subsection (2) of this section. If a transaction under this subsection is not completed within (~~sixty~~) 60 days, the real property must be put back up for sale.

(5) Sales to purchasers may, at the department's option, be for cash, by real estate contract, or exchange of land or highway improvements. Transactions involving the construction of improvements must be conducted pursuant to chapter 47.28 RCW and Title 39 RCW, as applicable, and must comply with all other applicable laws and rules.

(6) Conveyances made pursuant to this section shall be by deed executed by the secretary of transportation and shall be duly acknowledged.

(7) Unless otherwise provided, all moneys received pursuant to the provisions of this section less any real estate broker commissions paid pursuant to RCW 47.12.320 shall be deposited in the motor vehicle fund.

(8) The department may not enter into equal value exchanges or property acquisitions for building improvements without first consulting with the office of financial management and the joint transportation committee.

NEW SECTION. Sec. 711. Section 706 of this act takes effect only if chapter . . . (Substitute Senate Bill No. 5778), Laws of 2022 (addressing the current backlog of vehicle inspections) is not enacted by June 30, 2022.

### MISCELLANEOUS

NEW SECTION. Sec. 801. 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. 802. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the Senate March 10, 2022.

Passed by the House March 10, 2022.

Approved by the Governor March 25, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State March 28, 2022.

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

"I am returning herewith, without my approval as to Sections 207(24) and 216(17), Engrossed Substitute Senate Bill No. 5689 entitled:

"AN ACT Relating to transportation funding and appropriations."

#### **Section 207(24), page 28, Washington State Patrol, Unfunded Pilot**

This section directs the Washington State Patrol to oversee a pilot program that allows registered tow truck operators to respond to a regional transit authority's request for impoundment of unauthorized vehicles in a right-of-way used by the transit authority. The proviso also requires the State Patrol to submit a report on the outcomes of the pilot program by July 1, 2023. No funding was provided in the budget to support this work. For this reason, I have vetoed Section 207(24).

#### **Section 216(17), page 57, Department of Transportation, Unfunded Pilot**

This section directs the Department of Transportation to conduct a pilot program allowing commercial motor vehicles to park in areas designated as chain up and chain off areas along U.S. Route 2 and Interstate 90 between May 1 and November 1 of each calendar year of the biennium. I strongly support providing adequate parking facilities and rest areas for truck drivers who are a vital link in our state's supply chains. However, the timeframe of the pilot program and need for Federal

Highway Administration (FHWA) approval on one of the highways included in the pilot does not give the department adequate time to address all of the safety and maintenance concerns and to meet any FHWA requirements prior to implementation of the pilot. Although I have vetoed this section, I am directing the department to develop options and recommendations to address truck parking and rest area shortages while ensuring necessary safety and maintenance standards are upheld. For this reason, I have vetoed Section 216(17).

For these reasons I have vetoed Sections 207(24) and 216(17) of Engrossed Substitute Senate Bill No. 5689.

With the exception of Sections 207(24) and 216(17), Engrossed Substitute Senate Bill No. 5689 is approved."

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## CHAPTER 187

[Substitute Senate Bill 5975]

### ADDITIVE TRANSPORTATION BUDGET

AN ACT Relating to additive transportation funding and appropriations; amending RCW 82.44.200; amending 2021 c 333 ss 110, 111, and 103 (uncodified); creating new sections; making appropriations; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** (1) An additive omnibus transportation budget of the state is hereby adopted and, subject to the provisions set forth, the several amounts specified, or as much thereof as may be necessary to accomplish the purposes designated, are hereby appropriated from the several accounts and funds named to the designated state agencies and offices for employee compensation and other expenses, for capital projects, and for other specified purposes, including the payment of any final judgments arising out of such activities, for the period ending June 30, 2023.

(2) Except as otherwise provided in this act, it is the intent of the legislature that the funding levels specified in LEAP Transportation Document 2022-A as developed March 9, 2022, represents a commitment to provide climate commitment act-related appropriations to the agencies, programs, and activities at the amounts identified therein through fiscal year 2038.

(3) Except as otherwise provided in this act, it is the intent of the legislature that the funding levels specified in LEAP Transportation Document 2022-B as developed March 9, 2022, represents a commitment to provide move ahead WA-related appropriations to the agencies, programs, and activities, at the amounts identified therein, through fiscal year 2038.

(4) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this act.

(a) "Fiscal year 2022" or "FY 2022" means the fiscal year ending June 30, 2022.

(b) "Fiscal year 2023" or "FY 2023" means the fiscal year ending June 30, 2023.

(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 that is not



expended subject to the specified conditions and limitations to fulfill the specified purpose shall lapse.

(f) "Reappropriation" means appropriation and, unless the context clearly provides otherwise, is subject to the relevant conditions and limitations applicable to appropriations.

(g) "LEAP" means the legislative evaluation and accountability program committee.

**2021-2023 FISCAL BIENNIUM**

**GENERAL GOVERNMENT AGENCIES—OPERATING**

**Sec. 101.** 2021 c 333 s 110 (uncodified) is amended to read as follows:

**FOR THE HOUSE OF REPRESENTATIVES**

Motor Vehicle Account—State Appropriation . . . . .((~~\$3,210,000~~))  
\$1,577,000

**Sec. 102.** 2021 c 333 s 111 (uncodified) is amended to read as follows:

**FOR THE SENATE**

Motor Vehicle Account—State Appropriation . . . . .((~~\$3,085,000~~))  
\$1,518,000

**Sec. 103.** 2021 c 333 s 103 (uncodified) is amended to read as follows:

**FOR THE OFFICE OF FINANCIAL MANAGEMENT**

Motor Vehicle Account—State Appropriation . . . . .((~~\$1,441,000~~))  
\$1,034,000

Puget Sound Ferry Operations Account—State  
 Appropriation. . . . . \$126,000

Multimodal Transportation Account—State  
 Appropriation. . . . . \$250,000

**TOTAL APPROPRIATION . . . . .**((~~\$1,817,000~~))  
\$1,410,000

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

\$250,000 of the multimodal transportation account—state appropriation is provided solely for the office of financial management, in collaboration with the Washington department of transportation and the office of the chief information officer, to conduct an evaluation of short term and long term facility and information technology needs. In conducting the evaluation, the office of financial management may contract with an entity with direct expertise in this area. The office of financial management must submit a final report of their evaluation by October 1, 2022. The evaluation must be coordinated with any legislatively directed study regarding leased space. The evaluation must include, but is not limited to:

(1) Development of a status quo scenario based on current policy and projections and two alternative scenarios of the number of people and percentage of staff in telework status on a permanent basis with one alternative being the minimum feasible level of teleworking and one alternative being the maximum feasible level of teleworking;

(2) Current and projected facility needs by location and function for the scenarios in subsection (1) of this section;

(3) The specific number of employees and percentage of the workforce expected to be teleworking by location and function and the anticipated impact on facility space needs for the scenarios in subsection (1) of this section;

(4) Analysis of opportunities to colocate with other state, local, and other public agencies to reduce costs and improve cost-efficiency;

(5) Detailed information on any increased costs, such as end-user devices, software, technology infrastructure, and other types of assistance needed to meet the teleworking levels in each of the scenarios in subsection (1) of this section;

(6) Detailed information on any reduced costs, such as leases, facility maintenance, and utilities, resulting from the projected teleworking levels for the scenarios in subsection (1) of this section; and

(7) Cost-benefit analysis detailing the net impact of teleworking on facility and total costs for the scenarios in subsection (1) of this section.

**NEW SECTION. Sec. 104.** (1) During the 2021-2023 fiscal biennium, the department of agriculture shall produce a fuel tax sticker for display on each motor fuel pump from which fuel is sold at retail that displays and provides notice of the federal and state fuel tax rates. The sticker must display the rate of each tax, in cents per gallon, for each type of fuel.

(2) The department of agriculture shall provide notice of federal and state fuel tax rates, in the form of a fuel tax sticker, to be displayed on motor fuel pumps.

(3) The department of agriculture shall distribute fuel tax stickers to all individuals who conduct fuel pump inspections, including department employees and local government employees. Government employees who conduct fuel pump inspections shall display a fuel tax sticker on each motor fuel pump or shall verify that such a sticker is being displayed at the time of inspection as required under this subsection. Fuel tax stickers must:

(a) Be displayed on each face of the motor fuel pump on which the price of the fuel sold from the pump is displayed; and

(b) Be displayed in a clear, conspicuous, and prominent manner.

(4) The department of agriculture shall provide fuel tax stickers by mail to fuel pump owners who request them for the face of each motor fuel pump for which a sticker is requested.

(5) The department of agriculture shall produce updated fuel tax stickers on an annual basis when one or more fuel tax rates have changed. Fuel tax stickers must be replaced at the time of motor fuel pump inspection if the sticker has been updated with any new fuel tax rates.

**TRANSPORTATION AGENCIES—OPERATING**

**NEW SECTION. Sec. 201. FOR THE DEPARTMENT OF LICENSING**

Move Ahead WA Flexible Account—State Appropriation . . . . .	\$1,260,000
Agency Financial Transaction Account—State	
Appropriation . . . . .	\$103,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$1,363,000</b>

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

(1) \$550,000 of the move ahead WA flexible account—state appropriation is provided solely for an interagency transfer to the department of children, youth,

and families to provide driver's license support to a larger population of foster youth than is currently being served. Support services include reimbursement of driver's license issuance costs, fees for driver training education, and motor vehicle liability insurance costs.

(2) \$569,000 of the move ahead WA flexible account—state appropriation and \$103,000 of the agency financial transaction account—state are provided for estimated implementation costs associated with new revenues.

(3) \$141,000 of the move ahead WA flexible account—state appropriation is provided solely for chapter . . . (Engrossed Substitute Senate Bill No. 5815), Laws of 2022 (homeless identicaid).

**NEW SECTION. Sec. 202. FOR THE TRANSPORTATION COMMISSION**

Within the parameters established by RCW 47.56.880, the commission shall review toll revenue performance on the Interstate 405 and state route number 167 corridor and adjust Interstate 405 tolls as appropriate to increase toll revenue to provide sufficient funds for payments of future debt pursuant to RCW 47.10.896 and to support improvements to the corridor. The commission may consider adjusting maximum toll rates, minimum toll rates, time-of-day rates, restricting direct access ramps to transit and HOV vehicles only, or any combination thereof, in setting tolls to increase toll revenue.

**NEW SECTION. Sec. 203. FOR THE DEPARTMENT OF COMMERCE**

Move Ahead WA Flexible Account—State Appropriation . . . . .	\$10,000
Multimodal Transportation Account—Federal	
Appropriation. . . . .	\$350,000
TOTAL APPROPRIATION . . . . .	\$360,000

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

(1)(a) \$10,000 of the move ahead WA flexible account—state appropriation is provided solely for development of a process to select projects to advance the research, development, or manufacturing of sustainable aviation technologies. The purpose is to support adoption of zero emissions aircraft and sustainable aviation fuels, reduce harmful aviation-related emissions, and reduce the aviation industry's reliance on fossil fuels. Sustainable aviation projects may include, but are not limited to, the development of:

- (i) Batteries;
- (ii) Electric motors;
- (iii) Sustainable fuels;
- (iv) Hydrogen electrolyzers and storage; and
- (v) Activities that support the supply chain of (a)(i) through (iv) of this subsection.

(b) In developing the project selection process, the department may consult industry representatives, members of historically underrepresented and unserved communities, and federally recognized tribes, and may seek additional funds for this purpose. The department shall submit a report to the transportation committees of the legislature by December 1, 2022, identifying the selected sustainable aviation projects for funding by the legislature.

(2) \$350,000 of the multimodal transportation account—federal appropriation is provided solely for staff support for the interagency electric vehicle coordinating council created in chapter . . . (Engrossed Substitute Senate Bill No. 5974), Laws of 2022, in order to help implement the national electric vehicle program funded in the federal infrastructure investment and jobs act (P.L. 117-58).

**NEW SECTION. Sec. 204. FOR THE DEPARTMENT OF TRANSPORTATION—AVIATION—PROGRAM F**

Aeronautics Account—State Appropriation . . . . .	\$1,000,000
Move Ahead WA Flexible Account—State Appropriation . . . . .	\$10,000
<b>TOTAL APPROPRIATION . . . . .</b>	<b>\$1,010,000</b>

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

(1) \$10,000 of the move ahead WA flexible account—state appropriation is provided solely for the creation of a sustainable aviation grant program for airports. The purpose of the grant program is to support adoption of zero emissions aircraft and sustainable aviation fuels, reduce harmful aviation-related emissions, and reduce the aviation industry's reliance on fossil fuels. Sustainable aviation projects may include, but are not limited to: (a) Sustainable aviation fuel storage; (b) electrification of ground support equipment; (c) electric aircraft charging infrastructure; (d) airport clean power production; or (e) electric vehicle charging stations whose infrastructure also supports ground support equipment and electric aircraft charging. The department must select projects, which may include planning, to propose to the legislature for funding. The department shall submit a report to the transportation committees of the legislature by December 1, 2022, identifying the initial selection of sustainable aviation projects for funding by the legislature and recommended changes to modify and sustain the program.

(2) \$1,000,000 of the aeronautics account—state appropriation is provided solely for move ahead WA aviation grants.

**NEW SECTION. Sec. 205. FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC-PRIVATE PARTNERSHIPS—PROGRAM K**

Multimodal Transportation Account—Federal Appropriation . . . . .	\$9,822,000
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The appropriation in this section is subject to the following conditions and limitations: \$9,822,000 of the multimodal transportation account—federal appropriation is provided solely to implement the national electric vehicle program, established in the federal infrastructure investment and jobs act (P.L. 117-58), as directed by the interagency electric vehicle coordinating council created in chapter . . . (Engrossed Substitute Senate Bill No. 5974), Laws of 2022. The amounts provided in this subsection include staff support for the council. The funding provided in this subsection may be used to support the publicly available mapping and forecasting tool under RCW 47.01.520, but only to the extent not funded in the omnibus appropriations act.

**NEW SECTION. Sec. 206. FOR THE DEPARTMENT OF TRANSPORTATION—HIGHWAY MAINTENANCE—PROGRAM M**

Move Ahead WA Account—State Appropriation . . . . . \$47,000,000

**NEW SECTION. Sec. 207. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q**

Move Ahead WA Account—State Appropriation . . . . . \$1,850,000

The appropriation in this section is subject to the following conditions and limitations: \$1,850,000 of the move ahead WA—state appropriation is provided solely for traffic operations enhancements. It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$30,000,000 for this purpose.

**NEW SECTION. Sec. 208. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION MANAGEMENT AND SUPPORT—PROGRAM S**

Move Ahead WA Flexible Account—State Appropriation . . . . . \$2,000,000

The appropriation in this section is subject to the following conditions and limitations: \$2,000,000 of the move ahead WA flexible account—state appropriation is provided solely for efforts to increase diversity in the transportation construction and maritime workforce. Of this amount:

(1) \$500,000 of the move ahead WA flexible account—state appropriation is provided solely for: (a) The preapprenticeship support services (PASS) program, which aims to increase diversity in the highway construction workforce and prepare individuals interested in entering the highway construction workforce. In addition to the services allowed by RCW 47.01.435, the PASS program may provide housing assistance for youth aging out of the foster care and juvenile rehabilitation systems in order to support the participation of these youth in a transportation-related preapprenticeship program; and (b) assisting minority and women-owned businesses to perform work in the highway construction industry. This assistance shall include technical assistance, business training, counseling, guidance, prime to subcontractor relationship building, and a capacity building mentorship program.

(2) \$1,500,000 of the move ahead WA flexible account—state appropriation is provided solely for expansion of the PASS program to support apprenticeships and workforce development in the maritime industry through preapprenticeship training for inland waterways trades and support services to obtain necessary documents and coast guard certification.

**NEW SECTION. Sec. 209. FOR THE DEPARTMENT OF TRANSPORTATION—TRANSPORTATION PLANNING, DATA, AND RESEARCH—PROGRAM T**

Move Ahead WA Flexible Account—State Appropriation . . . . . \$1,500,000

Move Ahead WA Flexible Account—Federal Appropriation . . . . . \$1,000,000

TOTAL APPROPRIATION . . . . . \$2,500,000

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

(1) \$1,500,000 of the move ahead WA flexible account—state appropriation and \$1,000,000 of the move ahead WA flexible account—federal appropriation are provided solely for an Interstate 5 planning and environmental linkage study. This study will serve as a next step toward a statewide Interstate 5 master plan,

building upon existing work underway in the corridor. It is the intent of the legislature to direct \$40,000,000 to complete the planning and environmental linkage study over the course of the 16-year move ahead WA investment program.

(2) The study must meet planning and environmental linkages requirements to assess strategies and actions to address preservation and safety needs; climate change; improve corridor efficiency and person-throughput; and operate managed lanes effectively in the long-term. The study must include a robust public engagement program; and must assess multimodal transportation system impacts as well as economic, revenue and equity considerations. The outcome of this work will provide a basis for preliminary project planning, design, and environmental work.

(3) The department shall conduct initial stakeholder listening sessions and submit an interim report on the Interstate 5 planning and environmental linkage study to the joint transportation committee by June 30, 2023. The interim report will set study limits; outline milestones and deliverables for environmental analysis; define committee structure and equitable engagement approaches; define subsequent phases of the study; and determine final scope, budget, and workforce needs.

(4) As an initial element of the study, the department must identify and prepare recommendations for near-term actions to improve HOV lane system-wide performance. The study should identify steps required to convert HOV lanes to a different managed lane operating concept such as express toll lanes, including detailed analysis and environmental process. The recommendations must include the planning, design, environmental review, equity considerations, community engagement, traffic and revenue analysis, rate setting, and related engineering considerations necessary for a full I-5 HOV system conversion. The department shall submit an interim report on near-term recommendations to the legislative transportation committees by June 30, 2023.

(5) By December 1, 2022, the department must also submit a recommended approach and funding request to:

(a) Assess the seismic risk of the I-5 causeway from Boeing field to Lake City Way; and

(b) Recommendations for future work to mitigate seismic risk on the causeway, including estimated costs.

**NEW SECTION. Sec. 210. FOR THE DEPARTMENT OF TRANSPORTATION—CHARGES FROM OTHER AGENCIES—PROGRAM U**

Move Ahead WA Flexible Account—State Appropriation . . . . . \$2,000,000

The appropriation in this section is subject to the following conditions and limitations: \$2,000,000 of the move ahead WA flexible account—state appropriation is provided solely for enhanced funding to the office of minority and women's business enterprises to increase the number of certified women and minority-owned contractors in the transportation sector.

**NEW SECTION. Sec. 211. FOR THE DEPARTMENT OF TRANSPORTATION—PUBLIC TRANSPORTATION—PROGRAM V**

Climate Transit Programs Account—State Appropriation . . . . . \$53,436,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$14,120,000 of the climate transit programs account—state appropriation is provided solely for newly selected special needs grants. Of this amount:

(a) \$3,248,000 of the climate transit programs account—state appropriation is provided solely for grants to nonprofit providers of special needs transportation. Grants for nonprofit providers must be based on need, including the availability of other providers of service in the area, efforts to coordinate trips among providers and riders, and the cost-effectiveness of trips provided.

(b) \$10,872,000 of the climate transit programs account—state appropriation is provided solely for grants to transit agencies to transport persons with special transportation needs. To receive a grant, the transit agency must, to the greatest extent practicable, have a maintenance of effort for special needs transportation that is no less than the previous year's maintenance of effort for special needs transportation. Grants for transit agencies must be prorated based on the amount expended for demand response service and route deviated service in calendar year 2019 as reported in the "Summary of Public Transportation - 2019" published by the department of transportation. No transit agency may receive more than 30 percent of these distributions.

(2) \$33,606,000 of the climate transit programs account—state appropriation is provided solely for transit support grants. To be eligible for transit support grant distribution, transit agencies must submit documentation of fare-free policy for 18 years and under by October 1, 2022, to be eligible for the 2023-2025 biennium. Transit agencies that submit fare policy documentation following the October 1, 2022, deadline shall become eligible for the next biennial distribution.

(3) \$4,710,000 of the climate transit programs account—state appropriation is provided solely for newly selected green transportation grants.

(4) \$1,000,000 of the climate transit programs account—state appropriation is provided solely for newly selected transit coordination grants. The department shall give priority to grant proposals that promote the formation of joint partnerships between transit agencies or merge service delivery across entities.

(5) It is the intent of the legislature that \$520,000 will be provided for the Sauk-Suiattle Commuter Bus Project (L1000318) in the 2023-2025 fiscal biennium.

(6) The department shall submit the projects on LEAP Transportation Document 2022 NL-3 as developed March 9, 2022, in three tiers to the transportation committees of the legislature and the office of financial management by December 1, 2022, prioritizing projects based on community impacts to overburdened communities as defined in RCW 70A.02.010.

**TRANSPORTATION AGENCIES—CAPITAL**

**NEW SECTION. Sec. 301. FOR THE TRANSPORTATION IMPROVEMENT BOARD**

Move Ahead WA Account—State Appropriation . . . . .	\$10,000,000
Climate Active Transportation Account—State	
Appropriation . . . . .	\$3,000,000
TOTAL APPROPRIATION . . . . .	\$13,000,000

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

(1) The entire climate active transportation account—state appropriation is provided solely for newly selected complete streets grants.

(2) The entire move ahead WA account—state appropriation is provided solely for additional preservation funding to cities.

**NEW SECTION. Sec. 302. FOR THE COUNTY ROAD ADMINISTRATION BOARD**

Move Ahead WA Account—State Appropriation . . . . . \$10,000,000

The appropriation in this section is subject to the following conditions and limitations: The entire move ahead WA account—state appropriation is provided solely for additional preservation funding allocations to counties through the county arterial preservation program.

**NEW SECTION. Sec. 303. FOR THE DEPARTMENT OF TRANSPORTATION—IMPROVEMENTS—PROGRAM I**

Move Ahead WA Account—State Appropriation . . . . . \$32,000,000

The appropriation in this section is subject to the following conditions and limitations:

(1) Except as otherwise provided in this section, the entire move ahead WA account—state appropriation is provided solely for the state highway projects and activities as listed in LEAP Transportation Document 2022 NL-1 as developed March 9, 2022.

(2)(a) It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$2,435,000,000 for fish passage barrier removal with the intent of fully complying with the federal *U.S. v. Washington* court injunction by 2030. Furthermore, it is the intent of the legislature that appropriations for this purpose may be used to jointly leverage state and local funds for match requirements in applying for competitive federal aid grants provided in the infrastructure investment and jobs act for removals of fish passage barriers under the national culvert removal, replacement, and restoration program. State funds used for the purpose described in this subsection must not compromise fully complying with the court injunction by 2030.

(b) The department shall coordinate with the Brian Abbott fish passage barrier removal board and local governments to use a watershed approach by replacing both state and local culverts guided by the principle of providing the greatest fish habitat gain at the earliest time. The department shall deliver high habitat value fish passage barrier corrections that it has identified, guided by the following factors: Opportunity to bundle projects, tribal priorities, ability to leverage investments by others, presence of other barriers, project readiness, culvert conditions, other transportation projects in the area, and transportation impacts.

(3)(a) \$10,000,000 of the move ahead WA state—appropriation is provided solely for the stormwater retrofits and improvements project (L4000040). It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$500,000,000 for this project.

(b) The department shall ensure that \$6,000,000 is provided to the Urban Stormwater Partnership - I-5 Ship-Canal Bridge Pilot (Seattle) project from the



\$500,000,000 provided from stormwater retrofits and improvements over the 16-year move ahead WA investment program.

(c) The funding provided for stormwater retrofits and improvements must enhance stormwater runoff treatment from existing roads and infrastructure with an emphasis on green infrastructure retrofits. Projects must be prioritized based on benefits to salmon recovery and ecosystem health, reducing toxic pollution, addressing health disparities, and cost-effectiveness. The department of transportation must submit progress reports on its efforts to reduce the toxicity of stormwater runoff from existing infrastructure, recommendations for addressing barriers to innovative solutions, and anticipated demand for funding each biennium.

(4) \$1,000,000 of the move ahead WA account—state appropriation is provided solely for the SR 522 Widening project (L4000031). The department must consider reserving portions of state route 522, including designated lanes or ramps, for the exclusive or preferential use of public transportation vehicles, privately owned buses, motorcycles, private motor vehicles carrying not less than a specified number of passengers, or private transportation provider vehicles pursuant to RCW 47.52.025.

(5) \$3,000,000 of the move ahead WA—state appropriation is provided solely for the US 2 Trestle Capacity Improvements & Westbound Trestle Replacement project (L4000056). It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$210,541,000 for planning, design, right-of-way acquisition, interim improvements, and initial construction. It is the further intent of the legislature that this project enhance multimodal mobility options on the US 2 Trestle. The planning, design and engineering work must consider options to enhance transit and multimodal mobility, including bus rapid transit. The department must report to the legislature with its preliminary analysis of these options by June 30, 2023.

(6) It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$74,298,000 for the SR 3/Gorst Area - Widening project (L4000017). Tribal consultation with the Suquamish Tribe must begin at the earliest stage of planning, including without limitation on all funding decisions and funding programs, to provide a government-to-government mechanism for the tribe to evaluate, identify, and expressly notify governmental entities of any potential impacts to tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which the tribe possesses rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by state law, or by a state agency, including the requirements of Executive Order 21-02 related to archaeological and cultural resources, and regardless of whether the agency receives a request for consultation from the Suquamish Tribe. Regularly scheduled tribal consultation meetings with the Suquamish Tribe must continue throughout the duration of any funding program and proposed project approval.

(7) \$10,000,000 of the move ahead WA account—state appropriation is provided solely for the I-5 Columbia River Bridge (L4000054). The legislature finds that the replacement of the I-5 Columbia River Bridge is a project of national significance and is critical for the movement of freight. One span is now 104 years old, at risk for collapse in the event of a major earthquake, and no

longer satisfies the needs of commerce and travel. Replacing the aging Interstate Bridge with a modern, seismically resilient, multimodal structure that provides improved mobility for people, goods and services is a high priority. Therefore, the legislature intends to support the replacement of the I-5 Columbia River Bridge with an investment of \$1,000,000,000 over the 16-year move ahead WA investment program.

**NEW SECTION. Sec. 304. FOR THE DEPARTMENT OF TRANSPORTATION—PRESERVATION—PROGRAM P**

Move Ahead WA Account—Federal

Appropriation . . . . . \$140,000,000

The appropriation in this section is subject to the following conditions and limitations: \$140,000,000 of the move ahead WA account—federal appropriation is provided solely for highway preservation (L4000057). The department must use funding provided in this subsection, along with other funds at its discretion, for the following preservation projects:

- (1) I-5/SB Denny Way-Lakeview Viaduct;
- (2) I-5/SB&NB Concrete and Joint Replacement;
- (3) SR 529/NB Snohomish River - Bridge Rehabilitation and Painting;
- (4) I-5/SB Snohomish River Bridge Painting.

**NEW SECTION. Sec. 305. FOR THE DEPARTMENT OF TRANSPORTATION—TRAFFIC OPERATIONS—PROGRAM Q**

Move Ahead WA Account—State Appropriation . . . . . \$1,250,000

The appropriation in this section is subject to the following conditions and limitations:

(1) \$1,250,000 of the move ahead WA account—state appropriation is provided solely for the department to establish a reducing rural roadway departures program (L2021122) to provide funding for safety improvements specific to preventing lane departures in areas where the departure is likely to cause serious injuries or death pursuant to section 433 of chapter . . . (Substitute Senate Bill No. 5974), Laws of 2022 (transportation resources).

(2) It is the intent of the legislature, over the 16-year move ahead WA investment program, to provide \$20,000,000 for this project.

**NEW SECTION. Sec. 306. FOR THE DEPARTMENT OF TRANSPORTATION—WASHINGTON STATE FERRIES CONSTRUCTION—PROGRAM W**

Puget Sound Capital Construction Account—State

Appropriation . . . . . \$10,000,000

The appropriation in this section is subject to the following conditions and limitations: \$10,000,000 of the Puget Sound capital construction account—state appropriation is provided solely for vessel and terminal preservation projects.

**NEW SECTION. Sec. 307. FOR THE DEPARTMENT OF TRANSPORTATION—RAIL—PROGRAM Y**

Move Ahead WA Flexible Account—State Appropriation . . . . . \$10,000,000

Carbon Emissions Reduction Account—State

Appropriation . . . . . \$50,000,000

TOTAL APPROPRIATION . . . . . \$60,000,000

The appropriation in this section is subject to the following conditions and limitations:

(1) The entire move ahead WA flexible account—state appropriation in this section is provided solely for the rail projects and activities as listed in LEAP Transportation Document 2022 NL-1 as developed March 9, 2022.

(2) \$50,000,000 of the carbon emissions reduction account—state appropriation is provided solely for state match contributions to support the department's application for pending federal grant opportunities for a new ultra high-speed ground transportation corridor. These funds are to remain in unallotted status and are available only upon award of federal funds. The department must provide draft applications for federal grant opportunities to the transportation committees of the legislature for review and comment prior to submission.

**NEW SECTION. Sec. 308. FOR THE DEPARTMENT OF TRANSPORTATION—LOCAL PROGRAMS—PROGRAM Z**

Move Ahead WA Account—State Appropriation . . . . .	\$131,900,000
Move Ahead WA Flexible Account—State Appropriation . . . . .	\$5,000,000
Climate Active Transportation Account—State	
Appropriation . . . . .	\$20,182,000
TOTAL APPROPRIATION . . . . .	\$157,082,000

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

(1) The entire move ahead WA account—state appropriation is provided solely for the local road projects and activities as listed in LEAP Transportation Document 2022 NL-1 as developed March 9, 2022.

(2) The department shall submit the projects on LEAP Transportation Document 2022 NL-2 as developed March 9, 2022, in three tiers to the transportation committees of the legislature and the office of financial management by December 1, 2022, prioritizing projects based on community impacts to overburdened communities as defined in RCW 70A.02.010.

(3) \$10,686,000 of the climate active transportation account—state appropriation is provided solely for newly selected safe routes to school grants.

(4) \$9,496,000 of the climate active transportation account—state appropriation is provided solely for newly selected pedestrian and bicycle grants.

(5) It is the intent of the legislature that up to \$14,000,000 will be provided for the Guemes Ferry Boat Replacement Project (L4000124).

(6) \$5,000,000 of the move ahead WA flexible account—state appropriation is provided solely for railroad crossing grant awards which match federal funds for city and county projects which eliminate at-grade highway-rail crossings.

(7) It is the intent of the legislature that \$25,000,000 will be provided as part of the move ahead WA investment package in a future biennium, as indicated on the list identified in subsection (1) of this section, for the Ballard and Magnolia bridge project (L4000123). As part of the project, the Seattle department of transportation (SDOT) must consult with an independent engineering firm to verify that the costs for the type, size, and location preliminary design report (TS&L), environmental impact statement (EIS), and 60 percent design work are within industry cost range standards in advance of moving forward with

construction. SDOT must ensure that funds are maximized by limiting the percentage for TS&L, EIS, and 60 percent design work to 10 percent of the total cost of the project. Of the \$25,000,000, \$12,500,000 must remain in unallotted status, and may be distributed to SDOT only upon determination by the office of financial management that SDOT's cost estimates have been verified by an independent engineering firm as within industry cost range standards, and SDOT has secured the additional matching funding needed to complete the TS&L, EIS, and 60 percent design work.

(8)(a) It is the intent of the legislature, over the first five years of the move ahead WA program, that \$50,000,000 will be provided to SDOT to implement Aurora Avenue North Safety Improvements (L4000154). Under this program, SDOT will be required to implement strategic transportation investments for the Aurora Ave N Corridor from N 90th St to N 105th St that ensure slow vehicle speeds, walkability, multimodal mobility, safe routes to local schools, and safety for residents, which will demonstrate the benefits of similar transportation investments for other locations along Aurora Avenue and elsewhere. SDOT must convene a neighborhood oversight board consisting of residents of communities of the Aurora Ave N Corridor to prioritize investments and monitor project implementation. The oversight board should be composed of an equitable representation of local communities along the Aurora Ave N Corridor, including residents with disabilities. SDOT will ensure that the oversight board is consulted on a bimonthly basis during the prioritization process.

(b) The legislature intends, upon completion of the State Route 99/Aurora Avenue North Planning Study, that projects recommended in the study will be funded by this program. A specific focus must be on access management to consolidate driveways and improve safety for vulnerable users. This work must also include installation of full curb and sidewalks to improve safety, mobility, transit ridership, equity, and work towards the goals set forth in vision zero, target zero, and the Washington state active transportation plan. SDOT must ensure the design and implementation of an accessible sidewalk network to support users with mobility limitations, convenient and accessible transit stops, all-ages-and-abilities bicycle facilities, and safe pedestrian-activated crosswalks that puts safety over speed, balances the needs of different modes, reduces the level of traffic stress experienced by pedestrians and cyclists, connects to existing bicycle and transit networks, creates safe walking and bicycling routes to local schools including crosswalks, improves human and environmental health, and supports the surrounding neighborhoods. SDOT must coordinate with the Washington state department of transportation and King county metro in implementing the investments. SDOT must ensure that funds are maximized by limiting the percentage for planning, predesign, design, permitting, and environmental review to 10 percent of the total cost of each project.

(c) The legislature intends that all Aurora Avenue North Safety Improvement projects funded in this program be completed by December 31, 2029, and that no funds may be expended for this purpose after this date.

#### **TRANSFERS AND DISTRIBUTIONS**

##### **NEW SECTION. Sec. 401. FOR THE STATE TREASURER— ADMINISTRATIVE TRANSFERS**

- (1) Carbon Emissions Reduction Account—State Appropriation:  
For transfer to the Puget Sound Ferry

Operations Account—State . . . . . \$600,000

The amount transferred in this subsection represents an estimate of fare replacement revenue to account for the implementation of 18 and under fare-free policies.

(2)(a) Multimodal Transportation Account—State Appropriation:  
For transfer to the Carbon Emissions Reduction  
Account—State . . . . . \$127,000,000

(b) It is the intent of the legislature that this transfer is temporary, for the purpose of ensuring a positive account balance for the remainder of the 2021-2023 fiscal biennium. An equivalent reimbursing transfer is to occur in the 2023-2025 fiscal biennium.

(3) Motor Vehicle Account—State Appropriation: For  
transfer to the Move Ahead WA Account—State . . . . . \$3,607,000

(4) Electric Vehicle Account—State Appropriation:  
For transfer to the Move Ahead WA Flexible  
Account—State . . . . . \$16,064,000

(5) Carbon Emissions Reduction Account—State  
Appropriation: For transfer to the Climate  
Active Transportation Account—State . . . . . \$23,182,000

(6) Carbon Emissions Reduction Account—State  
Appropriation: For transfer to the Climate  
Transit Programs Account—State . . . . . \$53,436,000

**MISCELLANEOUS**

**Sec. 501.** RCW 82.44.200 and 2021 c 300 s 5 are each amended to read as follows:

The electric vehicle account is created in the transportation infrastructure account. Proceeds from the principal and interest payments made on loans from the account must be deposited into the account. Expenditures from the account may be used only for the purposes specified in RCW 47.04.350, 82.08.9999, and 82.12.9999, and the support of other transportation electrification and alternative fuel related purposes, including RCW 47.01.520. Moneys in the account may be spent only after appropriation. During the 2021-2023 fiscal biennium, the legislature may direct the state treasurer to make transfers of moneys in the electric vehicle account to the move ahead WA flexible account.

**NEW SECTION. Sec. 502.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**NEW SECTION. Sec. 503.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

- Passed by the Senate March 10, 2022.
- Passed by the House March 10, 2022.
- Approved by the Governor March 25, 2022.
- Filed in Office of Secretary of State March 28, 2022.

**CHAPTER 188**

[Senate Bill 5615]

## STATE SPORT—PICKLEBALL

AN ACT Relating to designating pickleball as the official state sport; adding a new section to chapter 1.20 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that the sport of pickleball was created in 1965 on Bainbridge Island by Joel McFee Pritchard, who went on to be elected lieutenant governor and member of Congress for Washington, along with two of his friends, Bill Bell and Barney McCallum. These men created the game at Pritchard's summer cabin after they "persuaded" their abnormally hyper children to go outside to play a few games of badminton, but there was no badminton equipment to be found. Instead, these fathers did some brainstorming and created a new game using ping-pong paddles, a net, and a neighbor's plastic wiffle ball. The rules that they created for the new game, which they named pickleball, are still used today by the USA Pickleball Association.

The legislature finds that pickleball is a game that can be played by anyone, one-on-one, or as a team, and has expanded far beyond Washington to become a nationally and internationally beloved game; over four million people play pickleball in the United States and there are currently 67 member countries in the International Federation of Pickleball. Soon pickleball will even be televised by Fox Sports. The legislature intends to honor and recognize the Washingtonians who created, popularized, and continue to enjoy this sport by designating pickleball the official sport of the state of Washington.

**NEW SECTION. Sec. 2.** A new section is added to chapter 1.20 RCW to read as follows:

The sport of pickleball is hereby designated as the official sport of the state of Washington.

Passed by the Senate February 2, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 28, 2022.

Filed in Office of Secretary of State March 29, 2022.

**CHAPTER 189**

[Engrossed Second Substitute House Bill 1015]

## EQUITABLE ACCESS TO CREDIT

AN ACT Relating to creating the Washington equitable access to credit act; adding a new section to chapter 82.04 RCW; adding a new chapter to Title 43 RCW; creating a new section; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** This chapter may be known and cited as the Washington equitable access to credit act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 82.04 RCW to read as follows:

(1) Subject to the limitations in this section, a credit is allowed against the tax imposed under this chapter for contributions made by a person to the equitable access to credit program created in chapter 43.--- RCW (the new chapter created in section 6 of this act).

(2)(a) The person must make the contribution before claiming a credit authorized under this section. The credit may be used against any tax due under this chapter. The amount of the credit claimed for a reporting period may not exceed the tax otherwise due under this chapter for that reporting period. No person may claim more than \$1,000,000 of credit in any calendar year, including credit carried over from a previous calendar year. No refunds may be granted for any unused credits.

(b) Any amount of tax credit otherwise allowable under this section not claimed by the person in any calendar year may be carried forward and claimed against a person's tax liability for the next succeeding calendar year; and any credit not used in that next succeeding calendar year may be carried forward and claimed against the person's tax liability for the second succeeding calendar year, but may not be carried over for any calendar year thereafter.

(3) Credits are available on a first-in-time basis. The department must disallow any credits, or portions thereof, that would cause the total amount of credits claimed under this section for any calendar year to exceed \$8,000,000. If this limitation is reached, the department must notify the department of commerce that the annual statewide limit has been met. In addition, the department must provide written notice to any person who has claimed tax credits in excess of the limitation in this subsection. The notice must indicate the amount of tax due and provide the tax be paid within 30 days from the date of the notice. The department may not assess penalties and interest as provided in chapter 82.32 RCW on the amount due in the initial notice if the amount due is paid by the due date specified in the notice, or any extension thereof.

(4) To claim a credit under this section, a person must electronically file with the department all returns, forms, and any other information required by the department, in an electronic format as provided or approved by the department. Any return, form, or information required to be filed in an electronic format under this section is not filed until received by the department in electronic format. As used in this subsection, "returns" has the same meaning as "return" in RCW 82.32.050.

(5) No application is necessary for the tax credit. The person must keep records necessary for the department to verify eligibility under this section.

(6) The equitable access to credit program must provide to the department, upon request, such information as may be needed to verify eligibility for credit under this section, including information regarding contributions received by the program.

(7) The maximum credit that may be earned for each calendar year under this section for a person is limited to the lesser of \$1,000,000 or an amount equal to 100 percent of the contributions made by the person to the equitable access to credit program.

(8) No credit may be earned for contributions made on or after June 30, 2027. Credits may be claimed as provided in subsections (2) through (4) of this section; however, credits may not be claimed prior to January 1, 2023.

(9) For the purposes of this section, "equitable access to credit program" means a program established within the department of commerce pursuant to section 3 of this act.

(10) The provisions of chapter 82.32 RCW apply to the administration of this section.

(11) This section expires July 1, 2027.

**NEW SECTION. Sec. 3.** (1) Subject to appropriation, the department of commerce shall create and operate the equitable access to credit program. The purpose of the equitable access to credit program is to award grants to qualified lending institutions, using funds generated by business and occupation tax credits created in section 2 of this act, for the purpose of providing access to credit for historically underserved communities. The equitable access to credit program must be governed by the provisions of this chapter and by any guidelines developed and rules adopted by the department of commerce pursuant to this chapter.

(2) The following requirements apply to the operation of the equitable access to credit program:

(a) No more than 25 percent of all grants awarded in any calendar year may be awarded to the same grant recipient;

(b) Up to 20 percent of an individual grant award may be used by the grant recipient to fund a loan loss reserve, technical assistance, and/or small business training programs;

(c) At least 65 percent of the value of all grants awarded in any calendar year must be provided for native community development financial institution grantees or grantees to provide services or invest, or both, in rural counties as defined in RCW 82.14.370; and

(d) Beginning in fiscal year 2022, up to five percent of the program revenues may be used for all agencies' staffing and other administrative costs related to the implementation of this act. In the event that the statewide limit in section 2(3) of this act is not reached, the percentage used for administration may be increased as necessary to maintain normal staffing operations, not to exceed 10 percent.

(3) In order to receive a grant award under the equitable access to credit program, a qualified lending institution must:

(a) Be recognized by the United States department of the treasury as:

(i) An emerging community development financial institution; or

(ii) A certified community development financial institution;

(b) Match any grant awarded by the equitable access to credit program on:

(i) At least a five percent basis, if the institution is recognized by the United States department of the treasury as an emerging community development financial institution;

(ii) At least a 10 percent basis, if the institution:

(A) Is recognized by the United States department of the treasury as a certified community development financial institution; and

(B) Has net assets of fewer than \$3,000,000 at the time of the grant application; or

(iii) At least a 25 percent basis, if the institution:

(A) Is recognized by the United States department of the treasury as a certified emerging community development financial institution; and



(B) Has net assets of \$3,000,000 or more at the time of the grant application;

(c) Be registered as a nonprofit organization exempt from taxation under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of the effective date of this section; and

(d) Demonstrate a history of lending in Washington.

(4) The director must appoint members to an advisory board that will assist the department in ranking applications for the grants. The department is encouraged to seek representation from members with relevant expertise, including those from the banking industry familiar with community development financial institutions, rural economic development professionals, local government representatives, and representatives from federally recognized Indian tribes. The department shall seek, to the greatest extent possible, a fair geographic balance.

(5)(a) The following criteria must be considered in ranking applications:

(i) The number and total value of loans and investments closed during the previous five-year period by the qualified lending institution in Washington and the percentage of those loans and investments that went to historically underserved communities;

(ii) Funds leveraged by the proposed grant award, which may be no less than 25 percent for certified community development financial institutions with net assets of \$3,000,000 or more at the time of the grant application;

(iii) Projected loan or investment production with the award over the performance period of the grant;

(iv) How the award supports the growth of the qualified lending institution;

(v) Past performance of loans and investments made by the qualified lending institution including, where applicable, past performance of loans and investments made using funds from the equitable access to credit program; and

(vi) Awards to a diversity of qualified lending institution awardees, including institutions of different sizes or with different target markets or products, access to historically underserved communities, or other differentiators that ensure a broad-base access to capital.

(b) The department may also include such additional criteria as it deems helpful in achieving the goal of ensuring access to credit to underserved communities across the state.

(6) Grants may be awarded from the equitable access to credit program beginning six months after the first tax credits are claimed pursuant to section 2 of this act. Grant awards must cease from the equitable access to credit program upon the expiration of this chapter.

(7) No loan or investment made by a qualified lending institution using funds awarded from the equitable access to credit program may have an interest rate that exceeds 200 basis points above the Wall Street Journal prime rate when the loan or investment is made.

(8) Once a loan or investment made by a qualified lending institution using funds awarded from the equitable access to credit program has been repaid, the qualified lending institution must reloan the repaid funds consistent with the terms of this chapter.

(9) A qualified lending institution that receives funds from the equitable access to credit program must submit a report to the department of commerce by June 30th of each year that contains the following information:

(a) A list of loans and investments made using funds from the equitable access to credit program's grant and associated match, including, on a per-borrower or per-investee basis:

- (i) The date the loan or investment was originated;
- (ii) The amount of the loan or investment;
- (iii) The total cost of the project, including owner equity and leverage;
- (iv) The interest rate and interest type;
- (v) The Wall Street Journal prime rate at the time the loan or investment is made;
- (vi) The term;
- (vii) The number of permanent full-time equivalent jobs projected to be created in the business due to this financing;
- (viii) Whether the loan or investment utilized a guarantee program;
- (ix) The North American industry classification system code;
- (x) The entity structure;
- (xi) Whether the investee or borrower is more than 50 percent owned or controlled by:
  - (A) One or more minorities;
  - (B) One or more women; or
  - (C) One or more low-income persons;
- (xii) The race of the primary investee(s) or borrower(s);
- (xiii) Whether the primary investee or borrower is Hispanic or Latino; and
- (xiv) The location, by city and county, in which funds from the program will be invested;

(b) Certification that each loan or investment made using funds from the program was to a historically underserved community; and

(c) Other information as required by the department of commerce.

(10) No later than September 15th of each year, beginning in 2022, the department of commerce must submit a report to the appropriate committees of the legislature that contains the following information:

(a) The list of grant applicants, total value of grants requested, and the location of each applicant;

(b) The list of grant recipients, total amount of awards, and required match amounts; and

(c) On an aggregate basis, information on loans and investments as reported under subsection (9) of this section.

(11) The department may contract for all or part of the administration of this section.

(12) The department may adopt rules as necessary to implement this section.

**NEW SECTION. Sec. 4.** The equitable access to credit program account is created in the custody of the state treasurer. All receipts from contributions to the equitable access to credit program created by this chapter must be deposited in the account. Expenditures from the account may be used only for the award of grants to qualified lending institutions from the equitable access to credit program and administrative costs pursuant to section 3 of this act. Only the director of the department of commerce or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

Any funds remaining in the account upon the expiration of this chapter must be transferred to the state general fund.

**NEW SECTION. Sec. 5.** (1) This section is the tax preference performance statement for the tax preference contained in section 2, chapter . . . , Laws of 2022 (section 2 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to create or retain jobs pursuant to RCW 82.32.808(2)(c), as well as encourage community and economic development within communities that have historically lacked access to capital.

(3) It is the legislature's specific public policy objective to create a program that encourages investment in small, underserved businesses to encourage community and economic development in Washington.

(4) The legislature intends to extend the expiration date of this tax preference if a review finds that the equitable access to credit program has had a net positive impact on investment in communities historically underserved by credit and on state and local tax revenues. In conducting its review under this section, the joint legislative audit and review committee should consider, among other data:

(a) The number and aggregate amount of loans and investments originated under the program, including with revolved dollars;

(b) Overall match, including project leverage, invested by grant recipients;

(c) The balance sheet growth of community development financial institutions that received grants from the program;

(d) Whether participants in the program achieved balance sheet growth during the time of their participation in the program;

(e) The percentage of community development financial institutions in Washington that received funding from the program; and

(f) The level of ongoing demand for funding from the program.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any data collected by the state.

(6) This section expires July 1, 2027.

**NEW SECTION. Sec. 6.** Sections 1, 3, and 4 of this act constitute a new chapter in Title 43 RCW.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 190

[Substitute House Bill 1074]

FATALITY REVIEW TEAMS—OVERDOSE, WITHDRAWAL, AND SUICIDE

AN ACT Relating to overdose, withdrawal, and suicide fatality reviews; and adding a new section to chapter 70.05 RCW.

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

NEW SECTION. **Sec. 1.** A new section is added to chapter 70.05 RCW to read as follows:

(1) The legislature finds that the mortality rate in Washington state due to overdose, withdrawal related to substance abuse such as opiates, benzodiazepines, and alcohol, and suicide is unacceptably high and that such mortality may be preventable. The legislature further finds that, through the performance of overdose, withdrawal, and suicide fatality reviews, preventable causes of mortality can be identified and addressed, thereby reducing the number of overdose, withdrawal, and suicide fatalities in Washington state.

(2)(a) A local health department may establish multidisciplinary overdose, withdrawal, and suicide fatality review teams to review overdose, withdrawal, and suicide deaths and to develop strategies for the prevention of overdose, withdrawal, and suicide fatalities.

(b) The department shall assist local health departments to collect the reports of any overdose, withdrawal, and suicide fatality reviews conducted by local health departments and assist with entering the reports into a database to the extent that the data is not protected under subsection (3) of this section. Notwithstanding subsection (3) of this section, the department shall respond to any requests for data from the database to the extent permitted for health care information under chapters 70.02 and 70.225 RCW. In addition, the department shall provide technical assistance to local health departments and overdose, withdrawal, and suicide fatality review teams conducting overdose, withdrawal, and suicide fatality reviews and encourage communication among overdose, withdrawal, and suicide fatality review teams.

(c) All overdose, withdrawal, or suicide fatality reviews undertaken under this section shall be shared with the department, subject to the same confidentiality restrictions described in this section.

(3)(a) All health care information collected as part of an overdose, withdrawal, and suicide fatality review is confidential, subject to the restrictions on disclosure provided for in chapter 70.02 RCW. When documents are collected as part of an overdose, withdrawal, and suicide fatality review, the records may be used solely by local health departments for the purposes of the review.

(b) Information, documents, proceedings, records, and opinions created, collected, or maintained by the overdose, withdrawal, and suicide fatality review team or the local health department in support of the review team are confidential and are not subject to public inspection or copying under chapter 42.56 RCW and are not subject to discovery or introduction into evidence in any civil or criminal action.

(c) Any person who was in attendance at a meeting of the review team or who participated in the creation, collection, or maintenance of the review team's information, documents, proceedings, records, or opinions may not be permitted or required to testify in any civil or criminal action as to the content of such proceedings, or the review team's information, documents, records, or opinions. This subsection does not prevent a member of the review team from testifying in a civil or criminal action concerning facts which form the basis for the overdose, withdrawal, and suicide fatality review team's proceedings of which the review

team member had personal knowledge acquired independently of the overdose, withdrawal, and suicide fatality review team or which is public information.

(d) Any person who, in substantial good faith, participates as a member of the review team or provides information to further the purposes of the review team may not be subject to an action for civil damages or other relief as a result of the activity or its consequences.

(e) All meetings, proceedings, and deliberations of the overdose, withdrawal, and suicide fatality review team must be confidential and may be conducted in executive session.

(4) This section does not prevent a local health department from publishing statistical compilations and reports related to the overdose, withdrawal, and suicide fatality review. Any portions of such compilations and reports that identify individual cases and sources of information must be redacted.

(5) To aid in an overdose, withdrawal, and suicide fatality review, the local health department has the authority to:

(a) Request and receive data for specific overdose, withdrawal, and suicide fatalities including, but not limited to, all medical records related to the overdose, withdrawal, and suicide, autopsy reports, medical examiner reports, coroner reports, schools, criminal justice, law enforcement, and social services records; and

(b) Request and receive data as described in (a) of this subsection from health care providers, health care facilities, clinics, schools, criminal justice, law enforcement, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of health and its licensees, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers.

(6) Upon request by the local health department, health care providers, health care facilities, clinics, schools, criminal justice, law enforcement, laboratories, medical examiners, coroners, professions and facilities licensed by the department of health, local health jurisdictions, the health care authority and its licensees and providers, the department of health and its licensees, the department of social and health services and its licensees and providers, and the department of children, youth, and families and its licensees and providers must provide all medical records related to the overdose, withdrawal, and suicide, autopsy reports, medical examiner reports, coroner reports, social services records, and other data requested for specific overdose, withdrawal, and suicide fatalities to perform an overdose, withdrawal, and suicide fatality review to the local health department.

(7) For the purposes of this section, "overdose, withdrawal, and suicide fatality review" means a confidential process to review minor or adult overdose, withdrawal, and suicide deaths as identified through a death certificate; by a medical examiner or coroner; or by a process defined by the local department of health. The process may include a systematic review of medical, clinical, and hospital records related to the overdose, withdrawal, and suicide; confidential interviews conducted with the protections established in subsection (3) of this section; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical,

socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

Passed by the House March 7, 2022.

Passed by the Senate March 1, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 191

[Engrossed Second Substitute House Bill 1181]

### SUICIDE PREVENTION—VETERANS AND MILITARY MEMBERS

AN ACT Relating to establishing programs and measures to prevent suicide among veterans and military members; adding new sections to chapter 43.60A RCW; adding a new section to chapter 18.130 RCW; adding a new section to chapter 43.70 RCW; adding a new section to chapter 46.18 RCW; adding a new section to chapter 74.04 RCW; adding a new section to chapter 9.41 RCW; adding a new section to chapter 39.04 RCW; adding a new section to chapter 43.34 RCW; creating new sections; providing effective dates; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** (1) Suicide is a public health issue that affects many Washington families and communities daily. Over the last 10 years, Washington state has been at the forefront of suicide prevention, investing more in upstream suicide prevention strategies and supports with the goal of a noteworthy reduction in suicide by 2025.

(2) At the request of the governor, in 2020 Washington stakeholders engaged in a national and statewide initiative to end veteran and military member suicide. This initiative culminated in a new state plan to educate providers and help them address the unique needs of veterans and military members, particularly those in transition to civilian life; and to provide resources and supports including improved lethal means safety training. The purpose of this act is to support the implementation of that plan.

(3) Service members, veterans, and their families are at a higher risk of being affected by suicide as experiences prior to enlistment, during service, and transition from service can contribute to suicidal thoughts and behaviors. A report on post-9/11 era military deaths by the United States department of veterans affairs found that service members are four times more likely to die by suicide than in military operations. Over 7,000 service members died in combat during the global war on terror, while more than 30,000 active duty members and veterans died by suicide. For veterans of all United States military operations, there is an average of 22 suicide deaths per day across the country, with one occurring every 65 minutes.

(4) Washington is home to 544,290 veterans, 60,699 active duty service members, 17,941 guard and reserve service members, and 2,000,000 military and veteran family members. Although veterans themselves make up only seven percent of the Washington population, they account for 19 percent of total suicides in the state. Nearly 1,000 veterans have died by suicide in Washington state over the last five years. More than two-thirds of veterans who died by suicide in Washington used a firearm.

(5) Family members of veterans who die by suicide are at higher risk for future suicide due to the exposure of experiencing suicide loss. Research shows

for every suicide that occurs, 135 people suffer from the effects either directly or indirectly, meaning veteran suicides impact a community of 2,600,000 people.

(6) There is no one path to suicide, but life experiences, moral injury, trauma, culture, and health can play a major role in suicidal behavior. Military and veteran culture in particular includes stigma around mental wellness and help-seeking behavior, emphasizes reliability on group cohesion, and facilitates access, comfortability, and familiarity with lethal means such as firearms. Additionally, a significant number of veterans do not seek care within the veterans administration system.

(7) The legislature intends to address the tragedy of suicide amongst veterans, military members, and their families through support of professionals and community and peer organizations serving veterans, cultural changes that support help-seeking behaviors, and investments in education, training, prevention, and care.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.60A RCW to read as follows:

(1) There is created in the department a suicide prevention community-based services grant program. The purpose of the grant program is to provide suicide prevention, peer support, and other assistance to at-risk and transitioning veterans and military members and their families in their communities.

(2) Subject to the availability of amounts appropriated for the specific purposes provided in this section and amounts disbursed from the veterans and military members suicide prevention account created in section 3 of this act, the department, in consultation with the forefront suicide prevention center, must establish a process to receive, review, process, and award grants to organizations, including nonprofit and peer support community programs, that address veterans, military members, and their families who may be at risk of suicide and other mental health crises. Priority should be given to organizations using peer support models that use evidence-based, research-based, or promising practices.

(3) The department shall report to the legislature annually beginning July 1, 2023, on grant recipients, number of veterans and military members served, and the types of services offered by grant recipients.

(4) The forefront suicide prevention center shall evaluate the effectiveness of each grant program recipient providing suicide prevention and peer support services to veterans, military members, and their families who may be at risk of suicide and other mental health crises.

(5) For the purposes of this section, "forefront suicide prevention center" means the University of Washington's forefront suicide prevention center of excellence.

**NEW SECTION. Sec. 3.** A new section is added to chapter 43.60A RCW to read as follows:

(1) The veterans and military members suicide prevention account is created in the custody of the state treasurer. The account shall consist of funds appropriated by the legislature, revenues received from the prevent veteran suicide emblem under section 8 of this act, and all receipts from gifts, grants, bequests, devises, or other donations from public and private sources to support veterans and military members suicide prevention measures. Expenditures from

the account may be used only for the purposes provided in subsection (3) of this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2)(a) The department may request and accept nondedicated contributions, grants, or gifts in cash or otherwise, and voluntary donations for deposit into the account, including funds generated by voluntary donations under (b) of this subsection.

(b) The department may accept, for deposit into the account, voluntary donations from persons who are: (i) Applying for a concealed pistol license or renewal of a concealed pistol license; or (ii) undergoing a background check under chapter 9.41 RCW in connection with the purchase of a firearm from a firearms dealer. The department shall coordinate with local law enforcement agencies, the department of licensing, and firearms dealers licensed under chapter 9.41 RCW to develop a form and process for publicizing and collecting voluntary donations under this subsection. The department and the department of licensing shall post educational information regarding the voluntary donation provisions of this section on their websites.

(3) All moneys deposited into the account must be used for activities that are dedicated to the benefit of veteran and military member suicide education and prevention including, but not limited to: (a) Expanding the department's peer corps program; and (b) providing programs, peer support, and services that assist veterans and military members in addressing mental health and wellness impacts of military service, trauma, moral injury, and transition to civilian life. Funds may also be used for the suicide prevention community-based services grant program established in section 2 of this act. Funds from the account may not be used to supplant existing funds received by the department nor shall grant recipients use the funds to supplant existing funding.

(4) For the purposes of this section the following definitions apply:

(a) "Veteran" has the same meaning as provided in RCW 41.04.005 and 41.04.007.

(b) "Military members" means actively serving members of the national guard or reserves, or active duty military personnel.

(c) "Account" means the veterans and military members suicide prevention account.

**NEW SECTION. Sec. 4.** A new section is added to chapter 43.60A RCW to read as follows:

Beginning December 2022, subject to the availability of amounts appropriated for this specific purpose, the governor's challenge team and service members, veterans, and their families suicide prevention advisory committee shall report to the legislature on a biannual basis regarding implementation of the plan developed by the committee.

**NEW SECTION. Sec. 5.** A new section is added to chapter 43.60A RCW to read as follows:

Subject to the availability of amounts appropriated for this specific purpose, the department shall:

(1) Create and maintain a database of information on nonprofit, for-profit, city, county, state, and federal organizations, providers, and resources that



address the mental health, well-being, and suicide prevention of veterans, military members, and their families. The department shall establish criteria for inclusion in the database by July 1, 2022. The department must make the database accessible on its website to veterans, military members, and their families by July 1, 2023;

(2) Provide suicide prevention education training and information for veterans, military members, and their families that is accessible through the internet; and

(3) By December 1, 2023, create, in consultation with the suicide-safer homes task force, a web-based application to be shared by state agencies and primary care providers with veterans, military members, and their families to provide applicable information and resources including but not limited to benefits, mental health resources, and lethal means safety information.

**NEW SECTION. Sec. 6.** A new section is added to chapter 18.130 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department shall consult with the department of veterans affairs to create educational materials informing health care providers regulated under this chapter about the availability of the nationwide 988 phone number for individuals in crisis to connect with suicide prevention and mental health crisis counselors. The educational materials must include information about the veterans crisis line for veterans and service members, and, beginning July 1, 2023, information about the resources developed under section 5 of this act.

(2) The department shall:

(a) Determine the health professions to which this section shall apply; and

(b) Collaborate with the corresponding disciplining authority under RCW 18.130.020 to ensure that the educational materials are distributed electronically to appropriate licensed health care providers when a provider renews his or her license.

(3) Beginning July 1, 2023, all health care providers are strongly encouraged to inquire with new patients entering care whether the patient is a veteran, member of the military, or a family member of a veteran or member of the military. If the patient responds in the affirmative, the provider is encouraged to share the educational materials created under this section with the patient.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.70 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, a suicide-safer homes task force is established to raise public awareness and increase suicide prevention education among new partners who are in key positions to help reduce suicide. The task force shall be administered and staffed by the department of veterans affairs. To the extent possible, the task force membership should include representatives from geographically diverse and priority populations, including tribal populations.

(2) The suicide-safer homes task force shall be cochaired by the director, or the director's designee, of the department of veterans affairs and the director, or the director's designee, of the forefront suicide prevention center and also consist of the following members:

(a) Two representatives of suicide prevention organizations, selected by the cochairs of the task force;

(b) Two representatives of the firearms industry, selected by the cochairs of the task force;

(c) Two individuals who are suicide attempt survivors or who have experienced suicide loss, selected by the cochairs of the task force;

(d) Two representatives of law enforcement agencies, selected by the cochairs of the task force;

(e) One representative from the department of health;

(f) One representative from the department of fish and wildlife;

(g) One individual representing veterans;

(h) One member of a Washington or federally recognized Indian tribe;

(i) Two veterans;

(j) One representative of the national rifle association;

(k) One representative of the Second Amendment foundation;

(l) One representative of a nonprofit organization working on gun safety issues;

(m) One representative of a national firearms trade association;

(n) One representative of a Washington state pharmacy association; and

(o) No more than five other interested parties, selected by the cochairs of the task force.

(3) The department of veterans affairs shall convene the initial meeting of the task force.

(4) The task force shall:

(a) Develop and prepare to disseminate online trainings on suicide awareness and prevention for firearms dealers and their employees and firearm range owners and their employees;

(b) Partner with medical providers, firearms dealers, firearms ranges, and pharmacies to develop and distribute suicide awareness and prevention messages for posters and brochures;

(c) In consultation with the department of fish and wildlife, develop strategies for creating and disseminating suicide awareness and prevention information for hunting safety classes, including messages to parents that can be shared during online registration, in either follow-up email communications, or in writing, or both;

(d) Create a website that will be a clearinghouse for the newly created suicide awareness and prevention materials developed by the task force;

(e) Continue to support medical providers with suicide prevention and awareness work through the dissemination of collateral education programs;

(f) Allocate funding towards the purchase of lock boxes for dissemination via the forefront suicide prevention center's TeleSAFER program;

(g) Develop and direct advocacy efforts with firearms dealers to pair suicide awareness and prevention training with distribution of safe storage devices;

(h) Partner with a statewide pharmacy association to market and promote medication disposal kits and safe storage devices;

(i) Train health care providers on suicide awareness and prevention, paired with distribution of medication disposal kits and safe storage devices; and

(j) Train local law enforcement officers on suicide awareness and prevention, paired with distribution of medication disposal kits and safe storage devices.

(5) The forefront suicide prevention center shall provide subject matter expertise, technical and programmatic support, and consultation and evaluation to the task force.

(6) Beginning December 1, 2022, the task force shall annually report to the legislature on the status of its work.

(7) This section expires July 1, 2024.

**NEW SECTION. Sec. 8.** A new section is added to chapter 46.18 RCW to read as follows:

(1) The general public may purchase a prevent veteran suicide emblem for a prescribed fee set by the department. The emblem must be displayed on license plates in the manner described by the department, existing vehicular registration procedures, and current laws.

(2) The department, in creating the prevent veteran suicide emblem, must consult with the department of veterans affairs on the design of the emblem. The emblem must incorporate the 988 suicide prevention hotline or its successor.

(3) Revenues from the prevent veteran suicide emblem must be deposited into the veterans and military members suicide prevention account created in section 3 of this act.

**NEW SECTION. Sec. 9.** A new section is added to chapter 74.04 RCW to read as follows:

During the application process for public assistance benefits, the department shall inquire of each applicant whether he or she has ever served in the United States military services or is a family or household member of someone who has ever served in the United States military services. If the applicant answers in the affirmative, the department shall provide the applicant with information on how to contact the Washington department of veterans affairs to inquire as to whether the applicant may be eligible for any benefits, services, or programs offered to veterans, military members, or their families.

**NEW SECTION. Sec. 10.** A new section is added to chapter 9.41 RCW to read as follows:

(1) In order to better prevent suicide by veterans, military members, and their families, an expansion of safe storage of firearms and reduced access to lethal means in the community is encouraged.

(2) A dealer who provides a service of allowing a person to temporarily store a firearm on the dealer's premises in a storage locker, box, or container that is locked and not accessible to the dealer does not thereby create a special relationship, for civil liability purposes, between the dealer and the person who temporarily stores the firearm on the dealer's premises.

**NEW SECTION. Sec. 11.** A new section is added to chapter 39.04 RCW to read as follows:

(1)(a) For any building, bridge, ferry, or park being constructed or replaced after July 1, 2024, as a public works project, there must be installed in appropriate locations signs displaying the 988 national suicide prevention and mental health crisis hotline.

(b) The public body as defined in RCW 39.10.210 in control of a public works project in this subsection must decide where signs under this section would be physically feasible and appropriate. The following facilities are recommended to have such signs:

(i) Bridges where suicides by jumping have occurred or are likely to occur; and

(ii) Locations that provide services to people that have high incidence of suicide or mental health conditions that would benefit from knowing about the hotline.

(c) The signs must be designed to communicate that dialing 988 on a telephone will connect callers to behavioral health and suicide prevention services as provided in accordance with state and federal laws governing the 988 number.

(d) If a sign is located along a state highway or the interstate system, the department of transportation must approve the location prior to erecting the sign, but no permit is necessary.

(e) Signs created under this section may not conflict with provisions of the manual of uniform traffic control devices or existing state laws related to placement and design of signs.

(2) This section does not create a private right of action by, or a legal duty to, any party, and may not be used to impose liability on the public body if a sign has or has not been erected on its property. The state of Washington, including all of its agencies, subdivisions, employees, and agents, shall not be liable in tort for any violation of this section, notwithstanding any other provision of law.

(3) The public body may accept gifts or donations to pay for the creation, installation, or maintenance of signs under this section.

**NEW SECTION. Sec. 12.** A new section is added to chapter 43.34 RCW to read as follows:

Any memorial established on capitol campus to commemorate the global war on terror must recognize service members who died in Operation Iraqi Freedom, Operation Enduring Freedom, and Operation New Dawn, which are classified under the umbrella term global war on terror. Any such memorial must include a component designed to reflect on the great number of active duty service members and veterans who have died by suicide after serving in these wars. The design of such a memorial must serve to honor those who are lost and provide a sacred space for healing and reflection for veterans and military families.

**NEW SECTION. Sec. 13.** (1) The Washington state global war on terror memorial account is created in the custody of the state treasurer. The purpose of the account is to support the establishment and maintenance of the memorial. The secretary of state may solicit and accept moneys from gifts, grants, or endowments for this purpose. All receipts from federal funds, gifts, or grants from the private sector, foundations, or other sources must be deposited into the account. Expenditures from the account may be used only for the design, siting, permitting, construction, maintenance, dedication, or creation of educational materials related to placement of this memorial on the capital campus. Only the secretary of state, or the secretary of state's designee, may authorize

expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but appropriation is not required for expenditures.

(2) The secretary of state may adopt rules governing the receipt and use of these funds.

NEW SECTION. Sec. 14. Section 11 of this act takes effect July 1, 2024.

NEW SECTION. Sec. 15. Section 8 of this act takes effect October 1, 2022.

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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 192

[Engrossed Second Substitute House Bill 1241]

### GROWTH MANAGEMENT ACT—COMPREHENSIVE PLAN UPDATES—DEADLINES

AN ACT Relating to planning under the growth management act; and reenacting and amending RCW 36.70A.130.

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

**Sec. 1.** RCW 36.70A.130 and 2020 c 113 s 1 and 2020 c 20 s 1026 are each reenacted and amended to read as follows:

(1)(a) Each comprehensive land use plan and development regulations shall be subject to continuing review and evaluation by the county or city that adopted them. Except as otherwise provided, a county or city shall take legislative action to review and, if needed, revise its comprehensive land use plan and development regulations to ensure the plan and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section.

(b) Except as otherwise provided, a county or city not planning under RCW 36.70A.040 shall take action to review and, if needed, revise its policies and development regulations regarding critical areas and natural resource lands adopted according to this chapter to ensure these policies and regulations comply with the requirements of this chapter according to the deadlines in subsections (4) and (5) of this section. Legislative action means the adoption of a resolution or ordinance following notice and a public hearing indicating at a minimum, a finding that a review and evaluation has occurred and identifying the revisions made, or that a revision was not needed and the reasons therefor.

(c) The review and evaluation required by this subsection shall include, but is not limited to, consideration of critical area ordinances and, if planning under RCW 36.70A.040, an analysis of the population allocated to a city or county from the most recent ten-year population forecast by the office of financial management.

(d) Any amendment of or revision to a comprehensive land use plan shall conform to this chapter. Any amendment of or revision to development regulations shall be consistent with and implement the comprehensive plan.

(2)(a) Each county and city shall establish and broadly disseminate to the public a public participation program consistent with RCW 36.70A.035 and 36.70A.140 that identifies procedures and schedules whereby updates, proposed amendments, or revisions of the comprehensive plan are considered by the governing body of the county or city no more frequently than once every year. "Updates" means to review and revise, if needed, according to subsection (1) of this section, and the deadlines in subsections (4) and (5) of this section or in accordance with the provisions of subsection (6) of this section. Amendments may be considered more frequently than once per year under the following circumstances:

(i) The initial adoption of a subarea plan. Subarea plans adopted under this subsection (2)(a)(i) must clarify, supplement, or implement jurisdiction-wide comprehensive plan policies, and may only be adopted if the cumulative impacts of the proposed plan are addressed by appropriate environmental review under chapter 43.21C RCW;

(ii) The development of an initial subarea plan for economic development located outside of the one hundred year floodplain in a county that has completed a state-funded pilot project that is based on watershed characterization and local habitat assessment;

(iii) The adoption or amendment of a shoreline master program under the procedures set forth in chapter 90.58 RCW;

(iv) The amendment of the capital facilities element of a comprehensive plan that occurs concurrently with the adoption or amendment of a county or city budget; or

(v) The adoption of comprehensive plan amendments necessary to enact a planned action under RCW 43.21C.440, provided that amendments are considered in accordance with the public participation program established by the county or city under this subsection (2)(a) and all persons who have requested notice of a comprehensive plan update are given notice of the amendments and an opportunity to comment.

(b) Except as otherwise provided in (a) of this subsection, all proposals shall be considered by the governing body concurrently so the cumulative effect of the various proposals can be ascertained. However, after appropriate public participation a county or city may adopt amendments or revisions to its comprehensive plan that conform with this chapter whenever an emergency exists or to resolve an appeal of a comprehensive plan filed with the growth management hearings board or with the court.

(3)(a) Each county that designates urban growth areas under RCW 36.70A.110 shall review, according to the schedules established in subsections (4) and (5) of this section, its designated urban growth area or areas, and the densities permitted within both the incorporated and unincorporated portions of each urban growth area. In conjunction with this review by the county, each city located within an urban growth area shall review the densities permitted within its boundaries, and the extent to which the urban growth occurring within the county has located within each city and the unincorporated portions of the urban growth areas.

(b) The county comprehensive plan designating urban growth areas, and the densities permitted in the urban growth areas by the comprehensive plans of the county and each city located within the urban growth areas, shall be revised to accommodate the urban growth projected to occur in the county for the succeeding twenty-year period. The review required by this subsection may be combined with the review and evaluation required by RCW 36.70A.215.

(4) Except as otherwise provided in subsections (6) and (8) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before June 30, 2015, for King, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2016, for Clallam, Clark, Island, Jefferson, Kitsap, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2017, for Benton, Chelan, Cowlitz, Douglas, Kittitas, Lewis, Skamania, Spokane, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2018, for Adams, Asotin, Columbia, Ferry, Franklin, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, Walla Walla, and Whitman counties and the cities within those counties.

(5) Except as otherwise provided in subsections (6) and (8) of this section, following the review of comprehensive plans and development regulations required by subsection (4) of this section, counties and cities shall take action to review and, if needed, revise their comprehensive plans and development regulations to ensure the plan and regulations comply with the requirements of this chapter as follows:

(a) On or before ~~(June 30)~~ December 31, 2024, with the following review and, if needed, revision on or before June 30, 2034, and then every ((eight)) ten years thereafter, for King, Kitsap, Pierce, and Snohomish counties and the cities within those counties;

(b) On or before June 30, 2025, and every ~~((eight)) ten~~ years thereafter, for Clallam, Clark, Island, Jefferson, Lewis, Mason, San Juan, Skagit, Thurston, and Whatcom counties and the cities within those counties;

(c) On or before June 30, 2026, and every ~~((eight)) ten~~ years thereafter, for Benton, Chelan, Cowlitz, Douglas, Franklin, Kittitas, Skamania, Spokane, Walla Walla, and Yakima counties and the cities within those counties; and

(d) On or before June 30, 2027, and every ~~((eight)) ten~~ years thereafter, for Adams, Asotin, Columbia, Ferry, Garfield, Grant, Grays Harbor, Klickitat, Lincoln, Okanogan, Pacific, Pend Oreille, Stevens, Wahkiakum, and Whitman counties and the cities within those counties.

(6)(a) Nothing in this section precludes a county or city from conducting the review and evaluation required by this section before the deadlines established in subsections (4) and (5) of this section. Counties and cities may begin this process early and may be eligible for grants from the department, subject to available funding, if they elect to do so.

(b) A county that is subject to a deadline established in subsection (5)~~((a)(ii) through (iv) [(b) through (d)])~~ of this section and meets the

following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The county has a population of less than fifty thousand and has had its population increase by no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(c) A city that is subject to a deadline established in subsection (5) ~~((a)(ii) through (iv) [(b) through (d)])~~ of this section and meets the following criteria may comply with the requirements of this section at any time within the twenty-four months following the deadline established in subsection (5) of this section: The city has a population of no more than five thousand and has had its population increase by the greater of either no more than one hundred persons or no more than seventeen percent in the ten years preceding the deadline established in subsection (5) of this section as of that date.

(d) State agencies are encouraged to provide technical assistance to the counties and cities in the review of critical area ordinances, comprehensive plans, and development regulations.

(7)(a) The requirements imposed on counties and cities under this section shall be considered "requirements of this chapter" under the terms of RCW 36.70A.040(1). Only those counties and cities that meet the following criteria may receive grants, loans, pledges, or financial guarantees under chapter 43.155 or 70A.135 RCW:

(i) Complying with the deadlines in this section; or

(ii) Demonstrating substantial progress towards compliance with the schedules in this section for development regulations that protect critical areas.

(b) A county or city that is fewer than twelve months out of compliance with the schedules in this section for development regulations that protect critical areas is making substantial progress towards compliance. Only those counties and cities in compliance with the schedules in this section may receive preference for grants or loans subject to the provisions of RCW 43.17.250.

(8)(a) Except as otherwise provided in (c) of this subsection, if a participating watershed is achieving benchmarks and goals for the protection of critical areas functions and values, the county is not required to update development regulations to protect critical areas as they specifically apply to agricultural activities in that watershed.

(b) A county that has made the election under RCW 36.70A.710(1) may only adopt or amend development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed if:

(i) A work plan has been approved for that watershed in accordance with RCW 36.70A.725;

(ii) The local watershed group for that watershed has requested the county to adopt or amend development regulations as part of a work plan developed under RCW 36.70A.720;

(iii) The adoption or amendment of the development regulations is necessary to enable the county to respond to an order of the growth management hearings board or court;

(iv) The adoption or amendment of development regulations is necessary to address a threat to human health or safety; or

(v) Three or more years have elapsed since the receipt of funding.



(c) Beginning ten years from the date of receipt of funding, a county that has made the election under RCW 36.70A.710(1) must review and, if necessary, revise development regulations to protect critical areas as they specifically apply to agricultural activities in a participating watershed in accordance with the review and revision requirements and timeline in subsection (5) of this section. This subsection (8)(c) does not apply to a participating watershed that has determined under RCW 36.70A.720(2)(c)(ii) that the watershed's goals and benchmarks for protection have been met.

(9)(a) Counties subject to planning deadlines established in subsection (5) of this section that are required or that choose to plan under RCW 36.70A.040 and that meet either criteria of (a)(i) or (ii) of this subsection, and cities with a population of more than 6,000 as of April 1, 2021, within those counties, must provide to the department an implementation progress report detailing the progress they have achieved in implementing their comprehensive plan five years after the review and revision of their comprehensive plan. Once a county meets the criteria in (a)(i) or (ii) of this subsection, the implementation progress report requirements remain in effect thereafter for that county and the cities therein with populations greater than 6,000 as of April 1, 2021, even if the county later no longer meets either or both criteria. A county is subject to the implementation progress report requirement if it meets either of the following criteria on or after April 1, 2021:

(i) The county has a population density of at least 100 people per square mile and a population of at least 200,000; or

(ii) The county has a population density of at least 75 people per square mile and an annual growth rate of at least 1.75 percent as determined by the office of financial management.

(b) The department shall adopt guidelines for indicators, measures, milestones, and criteria for use by counties and cities in the implementation progress report that must cover:

(i) The implementation of previously adopted changes to the housing element and any effect those changes have had on housing affordability and availability within the jurisdiction;

(ii) Permit processing timelines; and

(iii) Progress toward implementing any actions required to achieve reductions to meet greenhouse gas and vehicle miles traveled requirements as provided for in any element of the comprehensive plan under RCW 36.70A.070.

(c) If a city or county required to provide an implementation progress report under this subsection (9) has not implemented any specifically identified regulations, zoning and land use changes, or taken other legislative or administrative action necessary to implement any changes in the most recent periodic update in their comprehensive plan by the due date for the implementation progress report, the city or county must identify the need for such action in the implementation progress report. Cities and counties must adopt a work plan to implement any necessary regulations, zoning and land use changes, or take other legislative or administrative action identified in the implementation progress report and complete all work necessary for implementation within two years of submission of the implementation progress report.

Passed by the House February 13, 2022.

Passed by the Senate March 3, 2022.  
Approved by the Governor March 30, 2022.  
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**CHAPTER 193**

[Engrossed Substitute House Bill 1357]

VOTERS' PAMPHLETS—OVERSEAS AND SERVICE VOTERS

AN ACT Relating to voters' pamphlets for overseas and service voters; amending RCW 29A.32.260; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature finds that service and overseas voters have the right to vote for their elected officials. To effectuate this right, service and overseas voters must have access to the same ballot materials as voters present in the state with sufficient time to thoughtfully consider candidates and issues before casting a ballot. Accordingly, the legislature intends to ensure that voters' pamphlets are available to service and overseas voters at the same time as the ballot.

**Sec. 2.** RCW 29A.32.260 and 2011 c 10 s 30 are each amended to read as follows:

As soon as practicable before the primary, special election, or general election, the county auditor, or if applicable, the city clerk of a first-class or code city, as appropriate, shall mail the local voters' pamphlet to every residence in each jurisdiction that has included information in the pamphlet. The county auditor or city clerk, as appropriate, may choose to mail the pamphlet to each registered voter in each jurisdiction that has included information in the pamphlet, if in his or her judgment, a more economical and effective distribution of the pamphlet would result. The county auditor shall either mail or send a printable electronic version of the state and local voters' pamphlets to any service or overseas voter registered in the jurisdiction who has requested them.

**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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 7, 2022.  
Passed by the Senate March 2, 2022.  
Approved by the Governor March 30, 2022.  
Filed in Office of Secretary of State March 31, 2022.

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**CHAPTER 194**

[House Bill 1430]

DEPARTMENT OF NATURAL RESOURCES LAND LEASES—DURATION

AN ACT Relating to the duration of state upland leases for lands managed by the department of natural resources; and amending RCW 79.13.060.

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

**Sec. 1.** RCW 79.13.060 and 2016 c 109 s 3 are each amended to read as follows:

(1) State lands may be leased not to exceed ten years with the following exceptions:

(a) The lands may be leased for agricultural purposes not to exceed twenty-five years, except:

(i) Leases that authorize tree fruit or grape production may be for up to fifty-five years;

(ii) Share crop leases may not exceed ten years;

(b) The lands may be leased for commercial, industrial, business, or recreational purposes not to exceed fifty-five years, except:

(i) Leases for commercial, industrial, or business purposes may extend to 99 years;

(ii) All leases for commercial, industrial, or business purposes that extend beyond 55 years must provide for periodic rental reevaluation and adjustment, except leases with rentals based on a percentage of income;

(iii) All leases for commercial, industrial, or business purposes that extend terms beyond 55 years must be reported to the office of financial management and the appropriate committees of the legislature within 30 days of the date of execution of the lease. The report must include a financial analysis that justifies the financial benefit for the added term and the schedule for periodic rental adjustments;

(c) The lands may be leased for public school, college, or university purposes not to exceed seventy-five years;

(d) The lands may be leased for residential purposes not to exceed ninety-nine years; and

(e) The lands and development rights on state lands held for the benefit of the common schools may be leased to public agencies, as defined in RCW 79.17.200, not to exceed ninety-nine years. The leases may include provisions for renewal of lease terms.

(2) No lessee of state lands may remain in possession of the land after the termination or expiration of the lease without the written consent of the department.

(a) The department may authorize a lease extension for a specific period beyond the term of the lease for cropping improvements for the purpose of crop rotation. These improvements shall be deemed authorized improvements under RCW 79.13.030.

(b) Upon expiration of the lease term, the department may allow the lessee to continue to hold the land for a period not exceeding one year upon such rent, terms, and conditions as the department may prescribe, if the leased land is not otherwise utilized.

(c) Upon expiration of the one-year lease extension, the department may issue a temporary permit to the lessee upon terms and conditions it prescribes if the department has not yet determined the disposition of the land for other purposes.

(d) The temporary permit shall not extend beyond a five-year period.

(3) If during the term of the lease of any state lands for agricultural, grazing, commercial, residential, business, or recreational purposes, in the opinion of the department it is in the best interest of the state so to do, the department may, on the application of the lessee and in agreement with the lessee, alter and amend

the terms and conditions of the lease. The sum total of the original lease term and any extension thereof shall not exceed the limits provided in this section.

(4) The department must include in the text of any grazing leases language that explains the right of access, and associated assumption of liability, created in RCW 76.04.021.

Passed by the House March 8, 2022.

Passed by the Senate February 25, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 195

[Engrossed Substitute House Bill 1497]

### COMMERCIAL TELEPHONE SOLICITATION—VARIOUS PROVISIONS

AN ACT Relating to commercial telephone solicitation; amending RCW 80.36.390, 19.158.040, and 19.158.110; and adding a new section to chapter 19.158 RCW.

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

**Sec. 1.** RCW 80.36.390 and 2015 c 53 s 95 are each amended to read as follows:

(1) As used in this section, "telephone solicitation" means the unsolicited initiation of a telephone call by a commercial or nonprofit company or organization to a ~~((residential telephone customer))~~ person and conversation for the purpose of encouraging ~~((a))~~ the person to purchase property, goods, or services or soliciting donations of money, property, goods, or services. "Telephone solicitation" does not include:

(a) Calls made in response to a request or inquiry by the called party. This includes calls regarding an item that has been purchased by the called party from the company or organization during a period not longer than twelve months prior to the telephone contact;

(b) Calls made by a not-for-profit organization to its own list of bona fide or active members of the organization;

(c) Calls limited to polling or soliciting the expression of ideas, opinions, or votes; or

(d) Business-to-business contacts.

For purposes of this section, each individual real estate agent or insurance agent who maintains a separate list from other individual real estate or insurance agents shall be treated as a company or organization. For purposes of this section, an organization as defined in RCW 29A.04.086 or 29A.04.097 and organized pursuant to chapter 29A.80 RCW shall not be considered a commercial or nonprofit company or organization.

(2) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first ~~((thirty))~~ 30 seconds of the telephone call.

(3) As used in this section, "telephone solicitor" means a commercial or nonprofit company or organization engaged in telephone solicitation.

(4) If the telephone solicitor is requesting a donation or gift of money, the telephone solicitor must ask the called party whether they want to continue the call, end the call, or be removed from the solicitor's telephone lists.

(5) If, at any time during the telephone contact, the called party states or indicates they want to end the call, the telephone solicitor must end the call within 10 seconds.

(6) If, at any time during the telephone contact, the called party states or indicates that he or she does not ~~((wish))~~ want to be called again by the ~~((company or organization))~~ telephone solicitor or wants to have his or her name ~~((and))~~, individual telephone number, or other contact information removed from the telephone lists used by the ~~((company or organization making the telephone solicitation, then))~~ telephone solicitor:

(a) The telephone solicitor shall inform the called party that his or her contact information will be removed from the telephone solicitor's telephone lists for at least one year;

(b) The telephone solicitor shall end the call within 10 seconds;

(c) The ~~((company or organization))~~ telephone solicitor shall not make any additional telephone solicitation of the called party at ~~((that telephone number))~~ any telephone number associated with that party within a period of at least one year; and

~~((b))~~ (d) The ~~((company or organization))~~ telephone solicitor shall not sell or give the called party's name ~~((and))~~, telephone number, and other contact information to another company or organization: PROVIDED, That the ~~((company or organization))~~ telephone solicitor may return the list, including the called party's name ~~((and))~~, telephone number, and other contact information to the company or organization from which it received the list.

~~((4))~~ (7) A telephone solicitor shall not place calls to any person which will be received before 8:00 a.m. or after 8:00 p.m. at the call recipient's local time.

(8) A violation of subsection (2) ~~((or))~~, (3), (4), (5), (6), or (7) of this section is punishable by a fine of up to one thousand dollars for each violation.

~~((5))~~ (9) The attorney general may bring actions to enforce compliance with this section. For the first violation by any ~~((company or organization))~~ telephone solicitor of this section, the attorney general shall notify the ~~((company))~~ telephone solicitor with a letter of warning that the section has been violated.

~~((6))~~ (10) A person aggrieved by repeated violations of this section may bring a civil action in superior court to enjoin future violations, to recover damages, or both. The court shall award damages of at least one hundred dollars for each individual violation of this section. If the aggrieved person prevails in a civil action under this subsection, the court shall award the aggrieved person reasonable attorneys' fees and cost of the suit.

~~((7))~~ (11) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by (a) annual inserts in the billing statements mailed to residential customers, or (b) conspicuous publication of the notice in the consumer information pages of local telephone directories.

**Sec. 2.** RCW 19.158.040 and 2002 c 86 s 284 are each amended to read as follows:

In addition to the unprofessional conduct described in RCW 18.235.130, the director of the department of licensing may take disciplinary action for any of the following conduct, acts, or conditions:

(1) It shall be unlawful for any person to engage in unfair or deceptive commercial telephone solicitation.

(2) A commercial telephone solicitor shall not place calls to any ~~((residence))~~ person which will be received before 8:00 a.m. or after ~~((9:00))~~ 8:00 p.m. at the ~~((purchaser's))~~ call recipient's local time.

(3) A commercial telephone solicitor may not engage in any conduct the natural consequence of which is to harass, intimidate, or torment any person in connection with the telephone call.

(4) A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first 30 seconds of the telephone call.

(5) A commercial telephone solicitor must end a call within 10 seconds if the called party states or indicates they want to end the call.

(6) A commercial telephone solicitor must promptly implement a call recipient's statement or indication they do not want to be called again, or want to be removed from the telephone lists used by the company or organization making the telephone solicitation.

**Sec. 3.** RCW 19.158.110 and 1989 c 20 s 11 are each amended to read as follows:

(1) ~~((Within the first minute of the telephone call, a commercial telephone solicitor or salesperson shall:~~

~~(a) Identify himself or herself, the company on whose behalf the solicitation is being made, the property, goods, or services being sold; and~~

~~(b) Terminate the telephone call within ten seconds if the purchaser indicates he or she does not wish to continue the conversation))~~ A person making a telephone solicitation must identify him or herself and the company or organization on whose behalf the solicitation is being made and the purpose of the call within the first 30 seconds of the telephone call.

(2) If, at any time during the telephone contact, the called party states or indicates that he or she wants to end the call, the telephone solicitor must end the call within 10 seconds.

(3) If at any time during the telephone contact, the ~~((purchaser))~~ called party states or indicates that he or she does not ~~((wish))~~ want to be called again by the commercial telephone solicitor or wants to have his or her name ~~((and))~~, individual telephone number, or other contact information removed from the telephone lists used by the commercial telephone solicitor:

(a) The commercial telephone solicitor shall inform the called party that his or her contact information will be removed from the telephone solicitor's telephone lists for at least one year;

(b) The commercial telephone solicitor shall end the call within 10 seconds;

(c) The commercial telephone solicitor shall not make any additional commercial telephone solicitation of the called party at ~~((that))~~ any telephone number associated with that party within a period of at least one year; and

~~((b))~~ (d) The commercial telephone solicitor shall not sell or give the called party's name ~~((and))~~, telephone number, or other contact information to another commercial telephone solicitor: PROVIDED, That the commercial telephone solicitor may return the list, including the called party's name ~~((and))~~, telephone number, and other contact information to the company or organization from which it received the list.

~~((3))~~ (4) A commercial telephone solicitor shall not place calls to any person which will be received before 8:00 a.m. or after 8:00 p.m. at the call recipient's local time.

(5) The utilities and transportation commission shall by rule ensure that telecommunications companies inform their residential customers of the provisions of this section. The notification may be made by:

(a) Annual inserts in the billing statements mailed to residential customers; or

(b) Conspicuous publication of the notice in the consumer information pages of local telephone directories.

~~((4))~~ (6) If a sale or an agreement to purchase is completed, the commercial telephone solicitor must inform the purchaser of his or her cancellation rights as enunciated in this chapter, state the registration number issued by the department of licensing, and give the street address of the seller.

~~((5))~~ (7) If, at any time prior to sale or agreement to purchase, the commercial telephone solicitor's registration number is requested by the purchaser, it must be provided.

~~((6))~~ (8) All oral disclosures required by this section shall be made in a clear and intelligible manner.

NEW SECTION. Sec. 4. A new section is added to chapter 19.158 RCW to read as follows:

The office of the attorney general shall provide and maintain a web page informing the public of the laws and regulations governing telephone solicitation, including the provisions of this chapter and RCW 80.36.390, and the legal rights of those who receive telephone solicitations; and provide information on how members of the public may file a complaint for violations of the laws and regulations governing telephone solicitation.

Passed by the House February 10, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 196

[Substitute House Bill 1593]

### LANDLORD MITIGATION PROGRAM—CLAIMS FOR DAMAGE—CERTAIN TENANT-VICTIMS

AN ACT Relating to expanding the landlord mitigation program to alleviate the financial burden on victims attempting to flee domestic violence, sexual assault, unlawful harassment, or stalking; amending RCW 43.31.605, 59.18.280, 59.18.575, 59.18.575, and 43.31.615; creating a new section; providing an effective date; and providing an expiration date.

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

NEW SECTION. **Sec. 1.** The legislature finds that domestic violence, sexual assault, unlawful harassment, and stalking are acts of violence that have devastating effects upon individual victims, their children, their communities, and the state as a whole. These acts of violence threaten the housing stability of many residents of this state. Victims of these violent acts may be forced to remain in unsafe and abusive situations because they do not have the financial wherewithal to obtain alternate housing. It is the long-standing practice of the state to provide rental assistance to its residents in a variety of urgent situations. By this act, the legislature intends to increase safety for victims of domestic violence, sexual assault, unlawful harassment, and stalking by removing some of the financial barriers to safely obtaining alternate housing and thereby contribute to the general welfare of the state.

**Sec. 2.** RCW 43.31.605 and 2021 c 115 s 5 are each amended to read as follows:

(1)~~((a))~~ Subject to the availability of funds for this purpose, the landlord mitigation program is created and administered by the department. The department shall have such rule-making authority as the department deems necessary to administer the program.

~~((b) The following types of claims related to landlord mitigation for))~~ The following types of claims related to landlord mitigation are eligible for reimbursement from the landlord mitigation program account:

(a) Claims relating to renting private market rental units to low-income tenants using a housing subsidy program ~~((are eligible for reimbursement from the landlord mitigation program account))~~ for:

(i) Up to one thousand dollars for improvements identified in RCW 59.18.255(1)(a). In order to be eligible for reimbursement under this subsection (1)~~((b))~~ (a)(i), the landlord must pay for the first five hundred dollars for improvements, and rent to the tenant whose housing subsidy program was conditioned on the real property passing inspection. Reimbursement under this subsection (1)~~((b))~~ (a)(i) may also include up to fourteen days of lost rental income from the date of offer of housing to the applicant whose housing subsidy program was conditioned on the real property passing inspection until move in by that applicant;

(ii) Reimbursement for damages as reflected in a judgment obtained against the tenant through either an unlawful detainer proceeding, or through a civil action in a court of competent jurisdiction after a hearing;

(iii) Reimbursement for damages established pursuant to subsection (2) of this section; and

(iv) Reimbursement for unpaid rent and unpaid utilities, provided that the landlord can evidence it to the department's satisfaction.

~~((c))~~ (b) Claims related to landlord mitigation for an unpaid judgment for rent, unpaid judgments resulting from the tenant's failure to comply with an installment payment agreement identified in RCW 59.18.610, late fees, attorneys' fees, and costs after a court order pursuant to RCW 59.18.410(3), including any unpaid portion of the judgment after the tenant defaults on the payment plan pursuant to RCW 59.18.410(3)(c), are eligible for reimbursement from the landlord mitigation program account and are exempt from any postjudgment interest required under RCW 4.56.110. Any claim for reimbursement made pursuant to RCW 59.18.410(3)(e)(ii) must be accompanied



by a court order staying the writ of restitution pursuant to RCW 59.18.410(3). Any claim for reimbursement under this subsection (1)((~~☞~~)) (b) is not an entitlement.

(i) The department shall provide for a form on its website for tenants and landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)((~~☞~~)) (b).

(ii) The form must include: (A) Space for the landlord and tenant to provide names, mailing addresses, phone numbers, date of birth for the tenant, and any other identifying information necessary for the department to process payment; (B) the landlord's statewide vendor identification number and how to obtain one; (C) name and address to whom payment must be made; (D) the amount of the judgment with instructions to include any other supporting documentation the department may need to process payment; (E) instructions for how the tenant is to reimburse the department under ((~~☞~~)) (b)(iii) of this subsection; (F) a description of the consequences if the tenant does not reimburse the department as provided in this subsection (1)((~~☞~~)) (b); (G) a signature line for the landlord and tenant to confirm that they have read and understood the contents of the form and program; and (H) any other information necessary for the operation of the program. If the tenant has not signed the form after the landlord has made good faith efforts to obtain the tenant's signature, the landlord may solely submit the form but must attest to the amount of money owed and sign the form under penalty of perjury.

(iii) When a landlord has been reimbursed pursuant to this subsection (1)((~~☞~~)) (b), the tenant for whom payment was made shall reimburse the department by depositing the amount disbursed from the landlord mitigation program account into the court registry of the superior court in which the judgment was entered. The tenant or other interested party may seek an ex parte order of the court under the unlawful detainer action to order such funds to be disbursed by the court. Upon entry of the order, the court clerk shall disburse the funds and include a case number with any payment issued to the department. If directed by the court, a clerk shall issue any payments made by a tenant to the department without further court order.

(iv) The department may deny an application made by a tenant who has failed to reimburse the department for prior payments issued pursuant to this subsection (1)((~~☞~~)) (b).

(v) With any disbursement from the account to the landlord, the department shall notify the tenant at the address provided within the application that a disbursement has been made to the landlord on the tenant's behalf and that failure to reimburse the account for the payment through the court registry may result in a denial of a future application to the account pursuant to this subsection (1)((~~☞~~)) (b). The department may include any other additional information about how to reimburse the account it deems necessary to fully inform the tenant.

(vi) The department's duties with respect to obtaining reimbursement from the tenant to the account are limited to those specified within this subsection (1)((~~☞~~)) (b).

(vii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)((~~☞~~)) (b), the department must create and maintain a waitlist and distribute funds in the order

the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department shall not be civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

~~((4))~~ (c)(i) Claims related to ~~((landlord mitigation))~~ unpaid rent for:

(A) Up to \$15,000 in unpaid rent that accrued between March 1, 2020, and six months following the expiration of the eviction moratorium and the tenant being low-income, limited resourced or experiencing hardship, voluntarily vacated or abandoned the tenancy; or

(B) Up to \$15,000 in remaining unpaid rent if a tenant defaults on a repayment plan entered into under RCW 59.18.630 are eligible for reimbursement from the landlord mitigation program account subject to the program requirements under this section, provided the tenancy has not been terminated at the time of reimbursement.

(ii) A landlord is ineligible for reimbursement under this subsection (1)~~((4))~~ (c) where the tenant vacated the tenancy because of an unlawful detainer action under RCW 59.12.030(3).

(iii) A landlord in receipt of reimbursement from the program pursuant to this subsection (1)~~((4))~~ (c) is prohibited from:

(A) Taking legal action against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy; or

(B) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages or any remaining unpaid rent accrued between March 1, 2020, and six months following the expiration of the eviction moratorium attributable to the same tenancy.

(d)(i) Claims, up to \$5,000, related to landlord mitigation for damages to rental property when:

(A) A tenant has terminated a rental agreement pursuant to RCW 59.18.575;

(B) The property has sustained damage beyond wear resulting from ordinary use of the premises;

(C) The landlord has, within the time limits specified in RCW 59.18.280, provided the tenant with a full and specific statement;

(D) The landlord has, rather than retaining any of the damage deposit, returned the full damage deposit to the tenant; and

(E) The landlord has agreed not to proceed against the tenant to recover the balance owed.

(ii) Any claim for reimbursement under this subsection (1)(d) is not an entitlement.

(iii) If at any time funds do not exist in the landlord mitigation program account to reimburse claims submitted under this subsection (1)(d), the department must create and maintain a waitlist and distribute funds in the order the claims are received pursuant to subsection (6) of this section. Payment of any claims on the waitlist shall be made only from the landlord mitigation program account. The department is not civilly or criminally liable and may not have any penalty or cause of action of any nature arise against it regarding the provision or lack of provision of funds for reimbursement.

(iv) The department shall provide for a form on its website for landlords to apply for reimbursement funds for the landlord pursuant to this subsection (1)(d).

(v) The department shall provide for the confidentiality of tenants' personal information and shall have such rule-making authority as is necessary to protect the personal information of tenants under this subsection (1)(d).

(2) In order for a claim under subsection (1)(~~(b)~~) (a)(iii) or (d) of this section to be eligible for reimbursement from the landlord mitigation program account, a landlord must:

(a) Have ensured that the rental property was inspected at the commencement of the tenancy by both the tenant and the landlord or landlord's agent and that a detailed written move-in property inspection report, as required in RCW 59.18.260, was prepared and signed by both the tenant and the landlord or landlord's agent;

(b) Make repairs and then apply for reimbursement to the department;

(c) Submit a claim on a form to be determined by the department, signed under penalty of perjury; and

(d) Submit to the department copies of the move-in property inspection report specified in (a) of this subsection and supporting materials including, but not limited to, before repair and after repair photographs, videos, copies of repair receipts for labor and materials, and such other documentation or information as the department may request.

(3)(a) The department shall make reasonable efforts to review a claim within ten business days from the date it received properly submitted and complete claims to the satisfaction of the department.

(b) In reviewing a claim pursuant to subsection (1)(~~(b)~~) (a) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a private market rental unit rented to a low-income tenant who is using a housing subsidy program.

(c) In reviewing a claim pursuant to subsection (1)(d)(i) of this section, and determining eligibility for reimbursement, the department must receive documentation, acceptable to the department in its sole discretion, that the claim involves a tenancy that was terminated pursuant to RCW 59.18.575 and that all of the requirements of subsection (1)(d)(i) of this section have been met.

(4) Claims pursuant to subsection (1)(~~(b)~~) (a) of this section related to a tenancy must total at least five hundred dollars in order for a claim to be eligible for reimbursement from the program. While claims or damages may exceed five thousand dollars, total reimbursement from the program may not exceed five thousand dollars per tenancy.

(5) Damages, beyond wear and tear, that are eligible for reimbursement include, but are not limited to: Interior wall gouges and holes; damage to doors and cabinets, including hardware; carpet stains or burns; cracked tiles or hard surfaces; broken windows; damage to household fixtures such as disposal, toilet, sink, sink handle, ceiling fan, and lighting. Other property damages beyond normal wear and tear may also be eligible for reimbursement at the department's discretion.

(6) All reimbursements for eligible claims shall be made on a first-come, first-served basis, to the extent of available funds. The department shall use best

efforts to notify the tenant of the amount and the reasons for any reimbursements made.

(7) The department, in its sole discretion, may inspect the property and the landlord's records related to a claim, including the use of a third-party inspector as needed to investigate fraud, to assist in making its claim review and determination of eligibility.

(8) A landlord in receipt of reimbursement from the program pursuant to subsection (1)~~((b))~~ (a) or (d) of this section is prohibited from:

(a) Taking legal action against the tenant for damages attributable to the same tenancy; or

(b) Pursuing collection, or authorizing another entity to pursue collection on the landlord's behalf, of a judgment against the tenant for damages attributable to the same tenancy.

(9) A landlord denied reimbursement under subsection (1)~~((b))~~ (a)(iii) of this section may seek to obtain a judgment from a court of competent jurisdiction and, if successful, may resubmit a claim for damages supported by the judgment, along with a certified copy of the judgment. The department may reimburse the landlord for that portion of such judgment that is based on damages reimbursable under the landlord mitigation program, subject to the limitations set forth in this section.

(10) Determinations regarding reimbursements shall be made by the department in its sole discretion.

(11) The department must establish a website that advertises the landlord mitigation program, the availability of reimbursement from the landlord mitigation program account, and maintains or links to the agency rules and policies established pursuant to this section.

(12) Neither the state, the department, or persons acting on behalf of the department, while acting within the scope of their employment or agency, is liable to any person for any loss, damage, harm, or other consequence resulting directly or indirectly from the department's administration of the landlord mitigation program or determinations under this section.

(13)(a) A report to the appropriate committees of the legislature on the effectiveness of the program and recommended modifications shall be submitted to the governor and the appropriate committees of the legislature by January 1, 2021. In preparing the report, the department shall convene and solicit input from a group of stakeholders to include representatives of large multifamily housing property owners or managers, small rental housing owners in both rural and urban markets, a representative of tenant advocates, and a representative of the housing authorities.

(b) The report shall include discussion of the effectiveness of the program as well as the department's recommendations to improve the program, and shall include the following:

(i) The number of total claims and total amount reimbursed to landlords by the fund;

(ii) Any indices of fraud identified by the department;

(iii) Any reports by the department regarding inspections authorized by and conducted on behalf of the department;

(iv) An outline of the process to obtain reimbursement for improvements and for damages from the fund;

(v) An outline of the process to obtain reimbursement for lost rent due to the rental inspection and tenant screening process, together with the total amount reimbursed for such damages;

(vi) An evaluation of the feasibility for expanding the use of the mitigation fund to provide up to ninety-day no interest loans to landlords who have not received timely rental payments from a housing authority that is administering section 8 rental assistance; and

(vii) Any other modifications and recommendations made by stakeholders to improve the effectiveness and applicability of the program.

(14) As used in this section:

(a) "Housing subsidy program" means a housing voucher as established under 42 U.S.C. Sec. 1437 as of January 1, 2018, or other housing subsidy program including, but not limited to, valid short-term or long-term federal, state, or local government, private nonprofit, or other assistance program in which the tenant's rent is paid either partially by the program and partially by the tenant, or completely by the program directly to the landlord;

(b) "Low-income" means income that does not exceed eighty percent of the median income for the standard metropolitan statistical area in which the (~~private market~~) rental unit is located; and

(c) "Private market rental unit" means any unit available for rent that is owned by an individual, corporation, limited liability company, nonprofit housing provider, or other entity structure, but does not include housing acquired, or constructed by a public housing agency under 42 U.S.C. Sec. 1437 as it existed on January 1, 2018. This definition only applies to claims for mitigation under subsection (1)(a) of this section and does not exclude public housing agencies from making claims under subsection (1)(b), (c), or (d) of this section.

**Sec. 3.** RCW 59.18.280 and 2016 c 66 s 4 are each amended to read as follows:

(1) Within twenty-one days after the termination of the rental agreement and vacation of the premises or, if the tenant abandons the premises as defined in RCW 59.18.310, within twenty-one days after the landlord learns of the abandonment, the landlord shall give a full and specific statement of the basis for retaining any of the deposit together with the payment of any refund due the tenant under the terms and conditions of the rental agreement.

(a) No portion of any deposit shall be withheld on account of wear resulting from ordinary use of the premises.

(b) The landlord complies with this section if the required statement or payment, or both, are delivered to the tenant personally or deposited in the United States mail properly addressed to the tenant's last known address with first-class postage prepaid within the twenty-one days.

(2) If the landlord fails to give such statement together with any refund due the tenant within the time limits specified above he or she shall be liable to the tenant for the full amount of the deposit. The landlord is also barred in any action brought by the tenant to recover the deposit from asserting any claim or raising any defense for retaining any of the deposit unless the landlord shows that circumstances beyond the landlord's control prevented the landlord from providing the statement within the twenty-one days or that the tenant abandoned the premises as defined in RCW 59.18.310. The court may in its discretion

award up to two times the amount of the deposit for the intentional refusal of the landlord to give the statement or refund due. In any action brought by the tenant to recover the deposit, the prevailing party shall additionally be entitled to the cost of suit or arbitration including a reasonable attorneys' fee.

(3) Nothing in this chapter shall preclude the landlord from proceeding against, and the landlord shall have the right to proceed against a tenant to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property for which the tenant is responsible together with reasonable attorneys' fees. However, if the landlord seeks reimbursement for damages from the landlord mitigation program pursuant to RCW 43.31.605(1)(d), the landlord is prohibited from retaining any portion of the tenant's damage or security deposit or proceeding against the tenant who terminates under RCW 59.18.575 to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property.

**Sec. 4.** RCW 59.18.575 and 2019 c 46 s 5042 are each amended to read as follows:

(1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a valid order for protection under one or more of the following: Chapter 7.90, 26.50, 26.26A, or 26.26B RCW or RCW 9A.46.040, 9A.46.050, 10.14.080, 10.99.040 (2) or (3), or 26.09.050; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, unlawful harassment, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under this chapter. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, unlawful harassment, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of

the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

.....  
[Name of organization, agency, clinic, professional service provider]

I and/or my ..... (household member) am/is a victim of  
... domestic violence as defined by RCW 26.50.010.  
... sexual assault as defined by RCW 70.125.030.  
... stalking as defined by RCW 9A.46.110.  
... unlawful harassment as defined by RCW 59.18.570.

Briefly describe the incident of domestic violence, sexual assault, unlawful harassment, or stalking: .....

.....  
The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s) and at the following location(s): .....

The incident(s) that I rely on in support of this declaration were committed by the following person(s): .....

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at ..... (city) ., Washington, this ... day of ....., ..... (year)

.....  
Signature of Tenant or Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.575 and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act. I further verify that I have informed the person whose signature appears above that information about the landlord mitigation program can be found on the website established pursuant to RCW 43.31.605(11), including the form developed pursuant to RCW 43.31.605(1)(d)(iv).

Dated this . . . day of . . . , . . . (year)

.....  
Signature of authorized officer/employee of (Organization, agency, clinic, professional service provider)

(2)(a) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1).

(b)(i) Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280.

(ii) If the landlord seeks reimbursement for damages from the landlord mitigation program pursuant to RCW 43.31.605(1)(d), the landlord is prohibited from retaining any portion of the tenant's damage or security deposit or proceeding against the tenant who terminates under this section to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property.

(c) Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, unlawful harassment, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3)(a) Notwithstanding any other provision under this section, if a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under this chapter prior to making a copy of a valid order for protection or a written record of a report signed by a qualified third party available to the landlord, provided that:

(i) The tenant must deliver a copy of a valid order for protection or written record of a report signed by a qualified third party to the landlord by mail, fax, or personal delivery by a third party within seven days of quitting the tenant's dwelling unit; and



(ii) A written record of a report signed by the qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator of the act to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) A tenant who terminates his or her rental agreement under this subsection is discharged from the payment of rent for any period following the latter of: (i) The date the tenant vacates the unit; or (ii) the date the record of the report of the qualified third party and the written notice that the tenant has vacated are delivered to the landlord by mail, fax, or personal delivery by a third party. The tenant is entitled to a pro rata refund of any prepaid rent and must receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

(4) If a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may change or add locks to the tenant's dwelling unit at the tenant's expense. If a tenant exercises his or her rights to change or add locks, the following rules apply:

(a) Within seven days of changing or adding locks, the tenant must deliver to the landlord by mail, fax, or personal delivery by a third party: (i) Written notice that the tenant has changed or added locks; and (ii) a copy of a valid order for protection or a written record of a report signed by a qualified third party. A written record of a report signed by a qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) After the tenant provides notice to the landlord that the tenant has changed or added locks, the tenant's rental agreement shall terminate on the ninetieth day after providing such notice, unless:

(i) Within sixty days of providing notice that the tenant has changed or added locks, the tenant notifies the landlord in writing that the tenant does not wish to terminate his or her rental agreement. If the perpetrator has been identified by the qualified third party and is no longer an employee or agent of the landlord or owner and does not reside at the property, the tenant shall provide the owner or owner's designated agent with a copy of the key to the new locks at the same time as providing notice that the tenant does not wish to terminate his or her rental agreement. A tenant who has a valid protection, antiharassment, or other protective order against the owner of the premises or against an employee or agent of the landlord or owner is not required to provide a key to the new locks until the protective order expires or the tenant vacates; or

(ii) The tenant exercises his or her rights to terminate the rental agreement under subsection (3) of this section within sixty days of providing notice that the tenant has changed or added locks.

(c) After a landlord receives notice that a tenant has changed or added locks to his or her dwelling unit under (a) of this subsection, the landlord may not enter the tenant's dwelling unit except as follows:

(i) In the case of an emergency, the landlord may enter the unit if accompanied by a law enforcement or fire official acting in his or her official capacity. If the landlord reasonably concludes that the circumstances require immediate entry into the unit, the landlord may, after notifying emergency services, use such force as necessary to enter the unit if the tenant is not present; or

(ii) The landlord complies with the requirements of RCW 59.18.150 and clearly specifies in writing the time and date that the landlord intends to enter the unit and the purpose for entering the unit. The tenant must make arrangements to permit access by the landlord.

(d) The exercise of rights to change or add locks under this subsection does not discharge the tenant from the payment of rent until the rental agreement is terminated and the tenant vacates the unit.

(e) The tenant may not change any locks to common areas and must make keys for new locks available to other household members.

(f) Upon vacating the dwelling unit, the tenant must deliver the key and all copies of the key to the landlord by mail or personal delivery by a third party.

(5) A tenant's remedies under this section do not preempt any other legal remedy available to the tenant.

(6) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or 70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section.

**Sec. 5.** RCW 59.18.575 and 2021 c 215 s 155 are each amended to read as follows:

(1)(a) If a tenant notifies the landlord in writing that he or she or a household member was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and either (a)(i) or (ii) of this subsection applies, then subsection (2) of this section applies:

(i) The tenant or the household member has a domestic violence protection order, sexual assault protection order, stalking protection order, or antiharassment protection order under chapter 7.105 RCW, or a valid order for protection under one or more of the following: Chapter 26.26A or 26.26B RCW, or any of the former chapters 7.90 and 26.50 RCW, or RCW 9A.46.040, 9A.46.050, 10.99.040 (2) or (3), or 26.09.050, or former RCW 10.14.080; or

(ii) The tenant or the household member has reported the domestic violence, sexual assault, unlawful harassment, or stalking to a qualified third party acting in his or her official capacity and the qualified third party has provided the tenant or the household member a written record of the report signed by the qualified third party.

(b) When a copy of a valid order for protection or a written record of a report signed by a qualified third party, as required under (a) of this subsection, is made available to the landlord, the tenant may terminate the rental agreement and quit the premises without further obligation under the rental agreement or under this chapter. However, the request to terminate the rental agreement must occur within ninety days of the reported act, event, or circumstance that gave rise to the protective order or report to a qualified third party. A record of the report to a qualified third party that is provided to the tenant or household member shall consist of a document signed and dated by the qualified third party stating: (i) That the tenant or the household member notified him or her that he or she was a victim of an act or acts that constitute a crime of domestic violence, sexual assault, unlawful harassment, or stalking; (ii) the time and date the act or acts occurred; (iii) the location where the act or acts occurred; (iv) a brief description of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking; and (v) that the tenant or household member informed him or her of the name of the alleged perpetrator of the act or acts. The record of the report provided to the tenant or household member shall not include the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The qualified third party shall keep a copy of the record of the report and shall note on the retained copy the name of the alleged perpetrator of the act or acts of domestic violence, sexual assault, unlawful harassment, or stalking. The record of the report to a qualified third party may be accomplished by completion of a form provided by the qualified third party, in substantially the following form:

.....  
[Name of organization, agency, clinic, professional service provider]

I and/or my ..... (household member) am/is a victim of  
... domestic violence as defined by RCW 7.105.010.  
... sexual assault as defined by RCW 70.125.030.  
... stalking as defined by RCW 9A.46.110.  
... unlawful harassment as defined by RCW 59.18.570.

Briefly describe the incident of domestic violence, sexual assault, unlawful harassment, or stalking: .....  
.....

The incident(s) that I rely on in support of this declaration occurred on the following date(s) and time(s) and at the following location(s): .....

The incident(s) that I rely on in support of this declaration were committed by the following person(s): ...  
.....

I state under penalty of perjury under the laws of the state of Washington that the foregoing is true and correct. Dated at . . . . . (city) . . , Washington, this . . . day of . . . , . . . (year)

. . . . .  
Signature of Tenant or  
Household Member

I verify that I have provided to the person whose signature appears above the statutes cited in RCW 59.18.575 and that the individual was a victim of an act that constitutes a crime of domestic violence, sexual assault, unlawful harassment, or stalking, and that the individual informed me of the name of the alleged perpetrator of the act. I further verify that I have informed the person whose signature appears above that information about the landlord mitigation program can be found on the website established pursuant to RCW 43.31.605(11), including the form developed pursuant to RCW 43.31.605(1)(d)(iv).

Dated this . . . day of . . . , . . . (year)

. . . . .  
Signature of authorized  
officer/employee of  
(Organization, agency, clinic,  
professional service provider)

(2)(a) A tenant who terminates a rental agreement under this section is discharged from the payment of rent for any period following the last day of the month of the quitting date. The tenant shall remain liable for the rent for the month in which he or she terminated the rental agreement unless the termination is in accordance with RCW 59.18.200(1).

(b)(i) Notwithstanding lease provisions that allow for forfeiture of a deposit for early termination, a tenant who terminates under this section is entitled to the return of the full deposit, subject to RCW 59.18.020 and 59.18.280.

(ii) If the landlord seeks reimbursement for damages from the landlord mitigation program pursuant to RCW 43.31.605(1)(d), the landlord is prohibited from retaining any portion of the tenant's damage or security deposit or proceeding against the tenant who terminates under this section to recover sums exceeding the amount of the tenant's damage or security deposit for damage to the property.

(c) Other tenants who are parties to the rental agreement, except household members who are the victims of sexual assault, stalking, unlawful harassment, or domestic violence, are not released from their obligations under the rental agreement or other obligations under this chapter.

(3)(a) Notwithstanding any other provision under this section, if a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may terminate the rental agreement and quit

the premises without further obligation under the rental agreement or under this chapter prior to making a copy of a valid order for protection or a written record of a report signed by a qualified third party available to the landlord, provided that:

(i) The tenant must deliver a copy of a valid order for protection or written record of a report signed by a qualified third party to the landlord by mail, fax, or personal delivery by a third party within seven days of quitting the tenant's dwelling unit; and

(ii) A written record of a report signed by the qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator of the act to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) A tenant who terminates his or her rental agreement under this subsection is discharged from the payment of rent for any period following the latter of: (i) The date the tenant vacates the unit; or (ii) the date the record of the report of the qualified third party and the written notice that the tenant has vacated are delivered to the landlord by mail, fax, or personal delivery by a third party. The tenant is entitled to a pro rata refund of any prepaid rent and must receive a full and specific statement of the basis for retaining any of the deposit together with any refund due in accordance with RCW 59.18.280.

(4) If a tenant or a household member is a victim of sexual assault, stalking, or unlawful harassment by a landlord, the tenant may change or add locks to the tenant's dwelling unit at the tenant's expense. If a tenant exercises his or her rights to change or add locks, the following rules apply:

(a) Within seven days of changing or adding locks, the tenant must deliver to the landlord by mail, fax, or personal delivery by a third party: (i) Written notice that the tenant has changed or added locks; and (ii) a copy of a valid order for protection or a written record of a report signed by a qualified third party. A written record of a report signed by a qualified third party must be substantially in the form specified under subsection (1)(b) of this section. The record of the report provided to the landlord must not include the name of the alleged perpetrator of the act. On written request by the landlord, the qualified third party shall, within seven days, provide the name of the alleged perpetrator to the landlord only if the alleged perpetrator was a person meeting the definition of the term "landlord" under RCW 59.18.570.

(b) After the tenant provides notice to the landlord that the tenant has changed or added locks, the tenant's rental agreement shall terminate on the ninetieth day after providing such notice, unless:

(i) Within sixty days of providing notice that the tenant has changed or added locks, the tenant notifies the landlord in writing that the tenant does not wish to terminate his or her rental agreement. If the perpetrator has been identified by the qualified third party and is no longer an employee or agent of the landlord or owner and does not reside at the property, the tenant shall provide the owner or owner's designated agent with a copy of the key to the new locks at the same time as providing notice that the tenant does not wish to terminate his or her rental agreement. A tenant who has a valid protection, antiharassment, or

other protective order against the owner of the premises or against an employee or agent of the landlord or owner is not required to provide a key to the new locks until the protective order expires or the tenant vacates; or

(ii) The tenant exercises his or her rights to terminate the rental agreement under subsection (3) of this section within sixty days of providing notice that the tenant has changed or added locks.

(c) After a landlord receives notice that a tenant has changed or added locks to his or her dwelling unit under (a) of this subsection, the landlord may not enter the tenant's dwelling unit except as follows:

(i) In the case of an emergency, the landlord may enter the unit if accompanied by a law enforcement or fire official acting in his or her official capacity. If the landlord reasonably concludes that the circumstances require immediate entry into the unit, the landlord may, after notifying emergency services, use such force as necessary to enter the unit if the tenant is not present; or

(ii) The landlord complies with the requirements of RCW 59.18.150 and clearly specifies in writing the time and date that the landlord intends to enter the unit and the purpose for entering the unit. The tenant must make arrangements to permit access by the landlord.

(d) The exercise of rights to change or add locks under this subsection does not discharge the tenant from the payment of rent until the rental agreement is terminated and the tenant vacates the unit.

(e) The tenant may not change any locks to common areas and must make keys for new locks available to other household members.

(f) Upon vacating the dwelling unit, the tenant must deliver the key and all copies of the key to the landlord by mail or personal delivery by a third party.

(5) A tenant's remedies under this section do not preempt any other legal remedy available to the tenant.

(6) The provision of verification of a report under subsection (1)(b) of this section does not waive the confidential or privileged nature of the communication between a victim of domestic violence, sexual assault, or stalking with a qualified third party pursuant to RCW 5.60.060, 70.123.075, or 70.125.065. No record or evidence obtained from such disclosure may be used in any civil, administrative, or criminal proceeding against the victim unless a written waiver of applicable evidentiary privilege is obtained, except that the verification itself, and no other privileged information, under subsection (1)(b) of this section may be used in civil proceedings brought under this section.

**Sec. 6.** RCW 43.31.615 and 2021 c 115 s 6 are each amended to read as follows:

(1) The landlord mitigation program account is created in the custody of the state treasury. All transfers and appropriations by the legislature, repayments, private contributions, and all other sources must be deposited into the account. Expenditures from the account may only be used for the landlord mitigation program under this chapter to reimburse landlords for eligible claims related to private market rental units during the time of their rental to low-income tenants using housing subsidy programs as defined in RCW 43.31.605, for any unpaid judgment issued within an unlawful detainer action after a court order pursuant to RCW 59.18.410(3) as described in RCW 43.31.605(1)((~~+~~)) (b), for any unpaid rent as described in RCW 43.31.605(1)((~~+~~)) (c), for any damages to

rental property as described in RCW 43.31.605(1)(d), and for the administrative costs identified in subsection (2) of this section. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Administrative costs associated with application, distribution, and other program activities of the department may not exceed twenty percent of the annual funds available for the landlord mitigation program. Reappropriations must not be included in the calculation of the annual funds available for determining the administrative costs.

(3) Funds deposited into the landlord mitigation program account shall be prioritized by the department for allowable costs under RCW 43.31.605(1)(~~(b)~~) (a) and (d), and may only be used for other allowable costs when funding available in the account exceeds the amount needed to pay claims under RCW 43.31.605(1)(~~(b)~~) (a) and (d).

NEW SECTION. Sec. 7. Section 4 of this act expires July 1, 2022.

NEW SECTION. Sec. 8. Section 5 of this act takes effect July 1, 2022.

Passed by the House February 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 197

[Substitute House Bill 1616]

### HOSPITAL CHARITY CARE—VARIOUS PROVISIONS

AN ACT Relating to the charity care act; amending RCW 70.170.020 and 70.170.060; creating new sections; and providing an expiration date.

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

**Sec. 1.** RCW 70.170.020 and 2018 c 263 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Department" means department of health.

(2) "Hospital" means any health care institution which is required to qualify for a license under RCW 70.41.020(~~(7)~~) (8); or as a psychiatric hospital under chapter 71.12 RCW.

(3) "Secretary" means secretary of health.

(4) "Charity care" means medically necessary hospital health care rendered to indigent persons when third-party coverage, if any, has been exhausted, to the extent that the persons are unable to pay for the care or to pay deductibles or coinsurance amounts required by a third-party payer, as determined by the department.

(5) "Indigent persons" are those patients or their guarantors who qualify for charity care pursuant to section 2(5) of this act based on the federal poverty level, adjusted for family size, and who have exhausted any third-party coverage.

(6) "Third-party coverage" means an obligation on the part of an insurance company, health care service contractor, health maintenance organization, group

health plan, government program, tribal health benefits, or health care sharing ministry as defined in 26 U.S.C. Sec. 5000A to pay for the care of covered patients and services, and may include settlements, judgments, or awards actually received related to the negligent acts of others which have resulted in the medical condition for which the patient has received hospital health care service. The pendency of such settlements, judgments, or awards must not stay hospital obligations to consider an eligible patient for charity care.

~~((6) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.))~~

(7) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations.

**Sec. 2.** RCW 70.170.060 and 2018 c 263 s 2 are each amended to read as follows:

(1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care; and

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a (~~charity care~~) policy which(~~, consistent with subsection (1) of this section,~~) shall enable (~~people below the federal poverty~~



level)) indigent persons access to ((~~appropriate hospital-based medical services, and a sliding fee schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, except to the extent the patient has third-party coverage for those charges.~~) charity care. The policy shall include procedures for identifying patients who may be eligible for health care coverage through medical assistance programs under chapter 74.09 RCW or the Washington health benefit exchange and actively assisting patients to apply for any available coverage. If a hospital determines that a patient or their guarantor is qualified for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital shall assist the patient or guarantor with applying for such coverage. If a hospital determines that a patient or their guarantor qualifies for retroactive health care coverage through the medical assistance programs under chapter 74.09 RCW, a hospital is not obligated to provide charity care under this section to any patient or their guarantor if the patient or their guarantor fails to make reasonable efforts to cooperate with the hospital's efforts to assist them in applying for such coverage. Hospitals may not impose application procedures for charity care or for assistance with retroactive coverage applications which place an unreasonable burden upon the patient or guarantor, taking into account any physical, mental, intellectual, or sensory deficiencies, or language barriers which may hinder the responsible party's capability of complying with application procedures. It is an unreasonable burden to require a patient to apply for any state or federal program where the patient is obviously or categorically ineligible or has been deemed ineligible in the prior 12 months.

(a) At a minimum, a hospital owned or operated by a health system that owns or operates three or more acute hospitals licensed under chapter 70.41 RCW, an acute care hospital with over 300 licensed beds located in the most populous county in Washington, or an acute care hospital with over 200 licensed beds located in a county with at least 450,000 residents and located on Washington's southern border shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 300 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges:

(ii) All patients and their guarantors whose income is between 301 and 350 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection:

(iii) All patients and their guarantors whose income is between 351 and 400 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(b) At a minimum, a hospital not subject to (a) of this subsection shall grant charity care per the following guidelines:

(i) All patients and their guarantors whose income is not more than 200 percent of the federal poverty level, adjusted for family size, shall be deemed charity care patients for the full amount of the patient responsibility portion of their hospital charges:

(ii) All patients and their guarantors whose income is between 201 and 250 percent of the federal poverty level, adjusted for family size, shall be entitled to a 75 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection; and

(iii) All patients and their guarantors whose income is between 251 and 300 percent of the federal poverty level, adjusted for family size, shall be entitled to a 50 percent discount for the full amount of the patient responsibility portion of their hospital charges, which may be reduced by amounts reasonably related to assets considered pursuant to (c) of this subsection.

(c)(i) If a hospital considers the existence, availability, and value of assets in order to reduce the discount extended, it must establish and make publicly available a policy on asset considerations and corresponding discount reductions.

(ii) If a hospital considers assets, the following types of assets shall be excluded from consideration:

(A) The first \$5,000 of monetary assets for an individual or \$8,000 of monetary assets for a family of two, and \$1,500 of monetary assets for each additional family member. The value of any asset that has a penalty for early withdrawal shall be the value of the asset after the penalty has been paid;

(B) Any equity in a primary residence;

(C) Retirement plans other than 401(k) plans;

(D) One motor vehicle and a second motor vehicle if it is necessary for employment or medical purposes;

(E) Any prepaid burial contract or burial plot; and

(F) Any life insurance policy with a face value of \$10,000 or less.

(iii) In considering assets, a hospital may not impose procedures which place an unreasonable burden on the responsible party. Information requests from the hospital to the responsible party for the verification of assets shall be limited to that which is reasonably necessary and readily available to substantiate the responsible party's qualification for charity sponsorship and may not be used to discourage application for such sponsorship. Only those facts relevant to eligibility may be verified and duplicate forms of verification may not be demanded.

(A) In considering monetary assets, one current account statement shall be considered sufficient for a hospital to verify a patient's assets.

(B) In the event that no documentation for an asset is available, a hospital shall rely upon a written and signed statement from the responsible party.

(iv) Asset information obtained by the hospital in evaluating a patient for charity care eligibility shall not be used for collection activities.

(v) Nothing in this section prevents a hospital from considering assets as required by the centers for medicare and medicaid services related to medicare cost reporting.

(6) Each hospital shall post and prominently display notice of charity care availability. Notice must be posted in all languages spoken by more than ten percent of the population of the hospital service area. Notice must be displayed in at least the following locations:

- (a) Areas where patients are admitted or registered;
- (b) Emergency departments, if any; and
- (c) Financial service or billing areas where accessible to patients.

(7) Current versions of the hospital's charity care policy, a plain language summary of the hospital's charity care policy, and the hospital's charity care application form must be available on the hospital's website. The summary and application form must be available in all languages spoken by more than ten percent of the population of the hospital service area.

(8)(a) All hospital billing statements and other written communications concerning billing or collection of a hospital bill by a hospital must include the following or a substantially similar statement prominently displayed on the first page of the statement in both English and the second most spoken language in the hospital's service area:

You may qualify for free care or a discount on your hospital bill, whether or not you have insurance. Please contact our financial assistance office at [website] and [phone number].

(b) Nothing in (a) of this subsection requires any hospital to alter any preprinted hospital billing statements existing as of October 1, 2018.

(9) Hospital obligations under federal and state laws to provide meaningful access for limited English proficiency and non-English-speaking patients apply to information regarding billing and charity care. Hospitals shall develop standardized training programs on the hospital's charity care policy and use of interpreter services, and provide regular training for appropriate staff, including the relevant and appropriate staff who perform functions relating to registration, admissions, or billing.

(10) Each hospital shall make every reasonable effort to determine:

(a) The existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient;

(b) The annual family income of the patient as classified under federal poverty income guidelines as of the time the health care services were provided, or at the time of application for charity care if the application is made within two years of the time of service, the patient has been making good faith efforts towards payment of health care services rendered, and the patient demonstrates eligibility for charity care; and

(c) The eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(11) At the hospital's discretion, a hospital may consider applications for charity care at any time, including any time there is a change in a patient's financial circumstances.

(12) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall prepare reports that identify any problems in distribution which

are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(13) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990.

**NEW SECTION. Sec. 3.** (1) The office of the insurance commissioner, in consultation with the Washington health benefit exchange, shall study and analyze how increasing eligibility for charity care impacts enrollment in health plans with high deductibles over a four-year time period.

(2) By November 1, 2026, the office of the insurance commissioner shall report to the health care committees of the legislature enrollment trends in health plans with high deductibles from January 1, 2023, through June 30, 2026. The one-time report shall include the number of individuals enrolled in high deductible plans for each year and by each county.

(3) This section expires January 1, 2027.

**NEW SECTION. Sec. 4.** This act applies prospectively only to care provided on or after July 1, 2022. This act does not affect the ability of a patient who received care prior to July 1, 2022, to receive charity care under RCW 70.170.020 and 70.170.060 as the sections existed before that date.

Passed by the House March 7, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 198

[Substitute House Bill 1617]

### SCHOOL HOLIDAYS—ALIGNING WITH STATE HOLIDAYS

AN ACT Relating to aligning state and school holidays; amending RCW 28A.150.050; creating a new section; and providing an effective date.

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

**NEW SECTION. Sec. 1.** In 2021, the state enacted House Bill No. 1016 to declare Juneteenth a state legal holiday. The legislature finds that there is ambiguity about whether Juneteenth is also a school holiday as a result of that act. The legislature intends to clarify that Juneteenth, like all other state legal holidays, is a school holiday on which school may not be taught.

**Sec. 2.** RCW 28A.150.050 and 2014 c 177 s 3 are each amended to read as follows:

(1) ~~((The following are))~~ All of the state legal holidays set forth in RCW 1.16.050(1) are also school holidays(;) and school may not be taught on these days(;

~~(a) Sunday;~~

~~(b) The first day of January, commonly called New Year's Day;~~

~~(c) The third Monday of January, celebrated as the anniversary of the birth of Martin Luther King, Jr.;~~

~~(d) The third Monday in February, to be known as Presidents' Day and celebrated as the anniversary of the births of Abraham Lincoln and George Washington;~~

~~(e) The last Monday in May, commonly known as Memorial Day;~~

~~(f) The fourth day of July, the anniversary of the Declaration of Independence;~~

~~(g) The first Monday in September, to be known as Labor Day;~~

~~(h) The eleventh day of November, to be known as Veterans' Day;~~

~~(i) The fourth Thursday in November, commonly known as Thanksgiving Day;~~

~~(j) The Friday immediately following the fourth Thursday in November, to be known as Native American Heritage Day; and~~

~~(k) The twenty-fifth day of December, commonly called Christmas Day)).~~

(2) No reduction from a teacher's time or salary may be made by reason of the fact that a school day happens to be one of the days referred to in this section as a day on which school is not taught.

NEW SECTION. Sec. 3. This act takes effect July 1, 2022.

Passed by the House February 2, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 199

[Engrossed Substitute House Bill 1643]

### REAL ESTATE EXCISE TAX—TRANSFERS FOR AFFORDABLE HOUSING

AN ACT Relating to exempting a sale or transfer of real property for affordable housing to a nonprofit entity, housing authority, public corporation, county, or municipal corporation from the real estate excise tax; amending RCW 82.45.010; reenacting and amending RCW 82.45.010; creating new sections; providing effective dates; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) The legislature finds that Washington state has one of the strongest economies in the country. However, despite the strong economy, our state has entered an affordable housing crisis where low-income and middle-income households have the fewest number of housing options. Furthermore, it is estimated that Washington state's housing gap is among the most severe in the nation, with only 29 affordable and available rental homes for every 100 extremely low-income households.

(2) The legislature concludes that in the spirit of one Washington, the health of all Washingtonians will benefit from a larger stock in affordable housing. Therefore, it is the intent of the legislature to incentivize real property transfers to nonprofit housing providers, public housing authorities, or local governments to increase the availability of affordable housing for low-income Washingtonians.

NEW SECTION. Sec. 2. (1) This section is the tax preference performance statement for the tax preferences in sections 3 and 4, chapter . . . , Laws of 2022 (sections 3 and 4 of this act). This performance statement is only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create

a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to encourage sales or transfers of real property to nonprofit entities, housing authorities, or public corporations that intend to use the transferred property for housing for low-income persons.

(4) If a review finds that the number of sales or transfers of real property to qualified entities has not increased, then the legislature intends to repeal the expiration date of the tax preference.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including the transfer or sale of properties reported by county records.

**Sec. 3.** RCW 82.45.010 and 2019 c 424 s 3, 2019 c 390 s 10, and 2019 c 385 s 2 are each reenacted and amended to read as follows:

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any thirty-six month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a thirty-six month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely

independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or

domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a thirty-six month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030.

(s)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

(ii) For purposes of this subsection (3)(s), "qualified low-income housing development" means real property and improvements in respect to which the seller or, in the case of a transfer of a controlling interest, the owner or beneficial owner, was allocated federal low-income housing tax credits authorized under 26 U.S.C. Sec. 42 or successor statute, by the Washington state housing finance commission or successor state-authorized tax credit allocating agency.



(iii) This subsection (3)(s) does not apply to transfers of a qualified low-income housing development or controlling interest in a qualified low-income housing development occurring on or after July 1, 2035.

(iv) The Washington state housing finance commission, in consultation with the department, must gather data on: (A) The fiscal savings, if any, accruing to transferees as a result of the exemption provided in this subsection (3)(s); (B) the extent to which transferors of qualified low-income housing developments receive consideration, including any assumption of debt, as part of a transfer subject to the exemption provided in this subsection (3)(s); and (C) the continued use of the property for low-income housing. The Washington state housing finance commission must provide this information to the joint legislative audit and review committee. The committee must conduct a review of the tax preference created under this subsection (3)(s) in calendar year 2033, as required under chapter 43.136 RCW.

(t)(i) A qualified transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity subject to the following conditions:

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

(B) The title to the residential property is conveyed without the receipt of consideration by the legal representative of a person with developmental disabilities to a qualified entity;

(C) The residential property must have no more than four living units located on it; and

(D) The residential property transferred must remain in continued use for fifty years by the qualified entity as supported living for persons with developmental disabilities by the qualified entity or successor entity. If the qualified entity sells or otherwise conveys ownership of the residential property the proceeds of the sale or conveyance must be used to acquire similar residential property and such similar residential property must be considered the successor for continued use. The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements. If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax based on the value of the property at the time of the transfer into use as residential property for persons with developmental disabilities becomes immediately due and payable by the qualified entity. The tax due is not subject to penalties, fees, or interest under this title.

(ii) For the purposes of this subsection (3)(t) the definitions in RCW 71A.10.020 apply.

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(B) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

(u)(i) The sale by an affordable homeownership facilitator of self-help housing to a low-income household. ~~((The definitions in section 2 of this act apply to this subsection.))~~

(ii) The definitions in this subsection (3)(u) apply to this subsection (3)(u) unless the context clearly requires otherwise.

(A) "Affordable homeownership facilitator" means a nonprofit community or neighborhood-based organization that is exempt from income tax under Title 26 U.S.C. Sec. 501(c) of the internal revenue code of 1986, as amended, as of October 1, 2019, and that is the developer of self-help housing.

(B) "Low-income" means household income as defined by the department, provided that the definition may not exceed eighty percent of median household income, adjusted for household size, for the county in which the dwelling is located.

(C) "Self-help housing" means dwelling residences provided for ownership by low-income individuals and families whose ownership requirement includes labor participation. "Self-help housing" does not include residential rental housing provided on a commercial basis to the general public.

(v)(i) A sale or transfer of real property to a qualifying grantee that uses the property for housing for low-income persons and receives or otherwise qualifies the property for an exemption from real and personal property taxes under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection (3)(v), "qualifying grantee" means a nonprofit entity as defined in RCW 84.36.560, a nonprofit entity or qualified cooperative association as defined in RCW 84.36.049, a housing authority created under RCW 35.82.030 or 35.82.300, a public corporation established under RCW 35.21.660 or 35.21.730, or a county or municipal corporation. A qualifying grantee that is a county or municipal corporation must record a covenant at the time of transfer that prohibits using the property for any purpose other than for low-income housing for a period of at least 10 years. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing. A qualifying grantee must comply with the requirements described in (v)(i)(A), (B), or (C) of this subsection and must also certify, by affidavit at the time of sale or transfer, that it intends to comply with those requirements.

(A) If the qualifying grantee intends to operate existing housing on the property, within one year of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(B) If the qualifying grantee intends to develop new housing on the site, within five years of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(C) If the qualifying grantee intends to substantially rehabilitate the premises as defined in RCW 59.18.200, within three years:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(i) If the qualifying grantee fails to satisfy the requirements described in (v)(i)(A), (B), or (C) of this subsection, within the timelines described in (v)(i)(A), (B), or (C) of this subsection, the qualifying grantee must pay the tax that would have otherwise been due at the time of initial transfer, plus interest calculated from the date of initial transfer pursuant to RCW 82.32.050.

(iii) If a qualifying grantee transfers the property to a different qualifying grantee within the original timelines described in (v)(i)(A), (B), or (C) of this subsection, neither the original qualifying grantee nor the new qualifying grantee is required to pay the tax, so long as the new qualifying grantee satisfies the requirements as described in (v)(i)(A), (B), or (C) of this subsection within the exemption period of the initial transfer. If the new qualifying grantee fails to satisfy the requirements described in (v)(i)(A), (B), or (C) of this subsection, only the new qualifying grantee is liable for the payment of taxes required by (v)(i) of this subsection. There is no limit on the number of transfers between qualifying grantees within the original timelines.

(iv) Each affidavit must be filed with the department upon completion of the sale or transfer of property, including transfers from a qualifying grantee to a different qualifying grantee. The qualifying grantee must provide proof to the department as required by the department once the requirements as described in (v)(i)(A), (B), or (C) of this subsection have been satisfied.

(v) For the purposes of this subsection (3)(v), "low-income" has the same meaning as in (u) of this subsection.

**Sec. 4.** RCW 82.45.010 and 2019 c 424 s 3 are each amended to read as follows:

(1) As used in this chapter, the term "sale" has its ordinary meaning and includes any conveyance, grant, assignment, quitclaim, or transfer of the ownership of or title to real property, including standing timber, or any estate or interest therein for a valuable consideration, and any contract for such conveyance, grant, assignment, quitclaim, or transfer, and any lease with an option to purchase real property, including standing timber, or any estate or interest therein or other contract under which possession of the property is given to the purchaser, or any other person at the purchaser's direction, and title to the property is retained by the vendor as security for the payment of the purchase price. The term also includes the grant, assignment, quitclaim, sale, or transfer of improvements constructed upon leased land.

(2)(a) The term "sale" also includes the transfer or acquisition within any thirty-six month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration.

(b) For the sole purpose of determining whether, pursuant to the exercise of an option, a controlling interest was transferred or acquired within a thirty-six month period, the date that the option agreement was executed is the date on which the transfer or acquisition of the controlling interest is deemed to occur. For all other purposes under this chapter, the date upon which the option is exercised is the date of the transfer or acquisition of the controlling interest.

(c) For purposes of this subsection, all acquisitions of persons acting in concert must be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department must adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department must consider the following:

(i) Persons must be treated as acting in concert when they have a relationship with each other such that one person influences or controls the actions of another through common ownership; and

(ii) When persons are not commonly owned or controlled, they must be treated as acting in concert only when the unity with which the purchasers have negotiated and will consummate the transfer of ownership interests supports a finding that they are acting as a single entity. If the acquisitions are completely independent, with each purchaser buying without regard to the identity of the other purchasers, then the acquisitions are considered separate acquisitions.

(3) The term "sale" does not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer by transfer on death deed, to the extent that it is not in satisfaction of a contractual obligation of the decedent owed to the recipient of the property.

(c) A transfer of any leasehold interest other than of the type mentioned above.

(d) A cancellation or forfeiture of a vendee's interest in a contract for the sale of real property, whether or not such contract contains a forfeiture clause, or deed in lieu of foreclosure of a mortgage.

(e) The partition of property by tenants in common by agreement or as the result of a court decree.

(f) The assignment of property or interest in property from one spouse or one domestic partner to the other spouse or other domestic partner in accordance with the terms of a decree of dissolution of marriage or state registered domestic partnership or in fulfillment of a property settlement agreement.

(g) The assignment or other transfer of a vendor's interest in a contract for the sale of real property, even though accompanied by a conveyance of the vendor's interest in the real property involved.

(h) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(i) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(j) Any transfer or conveyance made pursuant to a deed of trust or an order of sale by the court in any mortgage, deed of trust, or lien foreclosure proceeding or upon execution of a judgment, or deed in lieu of foreclosure to satisfy a mortgage or deed of trust.

(k) A conveyance to the federal housing administration or veterans administration by an authorized mortgagee made pursuant to a contract of insurance or guaranty with the federal housing administration or veterans administration.

(l) A transfer in compliance with the terms of any lease or contract upon which the tax as imposed by this chapter has been paid or where the lease or contract was entered into prior to the date this tax was first imposed.

(m) The sale of any grave or lot in an established cemetery.

(n) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(o) A sale to a regional transit authority or public corporation under RCW 81.112.320 under a sale/leaseback agreement under RCW 81.112.300.

(p) A transfer of real property, however effected, if it consists of a mere change in identity or form of ownership of an entity where there is no change in the beneficial ownership. These include transfers to a corporation or partnership which is wholly owned by the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner. However, if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse or domestic partner, or children of the transferor or the transferor's spouse or domestic partner voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (i) the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, (ii) a trust having the transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner as the only beneficiaries at the time of the transfer to the trust, or (iii) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or domestic partner or children of the transferor or the transferor's spouse or domestic partner, within three years of the original transfer to which this exemption applies, and the tax on the subsequent transfer has not been paid within sixty days of becoming due, excise taxes become due and payable on the original transfer as otherwise provided by law.

(q)(i) A transfer that for federal income tax purposes does not involve the recognition of gain or loss for entity formation, liquidation or dissolution, and reorganization, including but not limited to nonrecognition of gain or loss because of application of 26 U.S.C. Sec. 332, 337, 351, 368(a)(1), 721, or 731 of the internal revenue code of 1986, as amended.

(ii) However, the transfer described in (q)(i) of this subsection cannot be preceded or followed within a thirty-six month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (q)(i) of this subsection, results in the transfer of a controlling interest in the entity for valuable consideration, and in which one or more persons previously holding a controlling interest in the entity receive cash or property in exchange for any interest the person or persons acting in concert hold in the entity. This subsection (3)(q)(ii) does not apply to that part of the transfer involving property received that is the real property interest that the person or persons originally contributed to the entity or when one or more persons who did not contribute real property or belong to the entity at a time

when real property was purchased receive cash or personal property in exchange for that person or persons' interest in the entity. The real estate excise tax under this subsection (3)(q)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(r) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after June 12, 2008, but before December 31, 2018.

(s)(i) A transfer of a qualified low-income housing development or controlling interest in a qualified low-income housing development, unless, due to noncompliance with federal statutory requirements, the seller is subject to recapture, in whole or in part, of its allocated federal low-income housing tax credits within the four years prior to the date of transfer.

(ii) For purposes of this subsection (3)(s), "qualified low-income housing development" means real property and improvements in respect to which the seller or, in the case of a transfer of a controlling interest, the owner or beneficial owner, was allocated federal low-income housing tax credits authorized under 26 U.S.C. Sec. 42 or successor statute, by the Washington state housing finance commission or successor state-authorized tax credit allocating agency.

(iii) This subsection (3)(s) does not apply to transfers of a qualified low-income housing development or controlling interest in a qualified low-income housing development occurring on or after July 1, 2035.

(iv) The Washington state housing finance commission, in consultation with the department, must gather data on: (A) The fiscal savings, if any, accruing to transferees as a result of the exemption provided in this subsection (3)(s); (B) the extent to which transferors of qualified low-income housing developments receive consideration, including any assumption of debt, as part of a transfer subject to the exemption provided in this subsection (3)(s); and (C) the continued use of the property for low-income housing. The Washington state housing finance commission must provide this information to the joint legislative audit and review committee. The committee must conduct a review of the tax preference created under this subsection (3)(s) in calendar year 2033, as required under chapter 43.136 RCW.

(t)(i) A qualified transfer of residential property by a legal representative of a person with developmental disabilities to a qualified entity subject to the following conditions:

(A) The adult child with developmental disabilities of the transferor of the residential property must be allowed to reside in the residence or successor property so long as the placement is safe and appropriate as determined by the department of social and health services;

(B) The title to the residential property is conveyed without the receipt of consideration by the legal representative of a person with developmental disabilities to a qualified entity;

(C) The residential property must have no more than four living units located on it; and

(D) The residential property transferred must remain in continued use for fifty years by the qualified entity as supported living for persons with developmental disabilities by the qualified entity or successor entity. If the qualified entity sells or otherwise conveys ownership of the residential property the proceeds of the sale or conveyance must be used to acquire similar

residential property and such similar residential property must be considered the successor for continued use. The property will not be considered in continued use if the department of social and health services finds that the property has failed, after a reasonable time to remedy, to meet any health and safety statutory or regulatory requirements. If the department of social and health services determines that the property fails to meet the requirements for continued use, the department of social and health services must notify the department and the real estate excise tax based on the value of the property at the time of the transfer into use as residential property for persons with developmental disabilities becomes immediately due and payable by the qualified entity. The tax due is not subject to penalties, fees, or interest under this title.

(ii) For the purposes of this subsection (3)(t) the definitions in RCW 71A.10.020 apply.

(iii) A "qualified entity" is:

(A) A nonprofit organization under Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended, as of June 7, 2018, or a subsidiary under the same taxpayer identification number that provides residential supported living for persons with developmental disabilities; or

(B) A nonprofit adult family home, as defined in RCW 70.128.010, that exclusively serves persons with developmental disabilities.

(iv) In order to receive an exemption under this subsection (3)(t) an affidavit must be submitted by the transferor of the residential property and must include a copy of the transfer agreement and any other documentation as required by the department.

(u)(i) A sale or transfer of real property to a qualifying grantee that uses the property for housing for low-income persons and receives or otherwise qualifies the property for an exemption from real and personal property taxes under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010. For purposes of this subsection (3)(u), "qualifying grantee" means a nonprofit entity as defined in RCW 84.36.560, a nonprofit entity or qualified cooperative association as defined in RCW 84.36.049, a housing authority created under RCW 35.82.030 or 35.82.300, a public corporation established under RCW 35.21.660 or 35.21.730, or a county or municipal corporation. A qualifying grantee that is a county or municipal corporation must record a covenant at the time of transfer that prohibits using the property for any purpose other than for low-income housing for a period of at least 10 years. At a minimum, the covenant must address price restrictions and household income limits for the low-income housing. A qualifying grantee must comply with the requirements described in (u)(i)(A), (B), or (C) of this subsection and must also certify, by affidavit at the time of sale or transfer, that it intends to comply with those requirements.

(A) If the qualifying grantee intends to operate existing housing on the property, within one year of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(B) If the qualifying grantee intends to develop new housing on the site, within five years of the sale or transfer:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(C) If the qualifying grantee intends to substantially rehabilitate the premises as defined in RCW 59.18.200, within three years:

(I) The qualifying grantee must receive or qualify the property for a tax exemption under RCW 84.36.560, 84.36.049, 35.82.210, 35.21.755, or 84.36.010; and

(II) The property must be used as housing for low-income persons.

(ii) If the qualifying grantee fails to satisfy the requirements described in (u)(i)(A), (B), or (C) of this subsection, within the timelines described in (u)(i)(A), (B), or (C) of this subsection, the qualifying grantee must pay the tax that would have otherwise been due at the time of initial transfer, plus interest calculated from the date of initial transfer pursuant to RCW 82.32.050.

(iii) If a qualifying grantee transfers the property to a different qualifying grantee within the original timelines described in (u)(i)(A), (B), or (C) of this subsection, neither the original qualifying grantee nor the new qualifying grantee is required to pay the tax, so long as the new qualifying grantee satisfies the requirements as described in (u)(i)(A), (B), or (C) of this subsection within the exemption period of the initial transfer. If the new qualifying grantee fails to satisfy the requirements described in (u)(i)(A), (B), or (C) of this subsection, only the new qualifying grantee is liable for the payment of taxes required by (u)(ii) of this subsection. There is no limit on the number of transfers between qualifying grantees within the original timelines.

(iv) Each affidavit must be filed with the department upon completion of the sale or transfer of property, including transfers from a qualifying grantee to a different qualifying grantee. The qualifying grantee must provide proof to the department as required by the department once the requirements as described in (u)(i)(A), (B), or (C) of this subsection have been satisfied.

(v) For the purposes of this subsection (3)(u), "low-income" means household income as defined by the department, provided that the definition may not exceed 80 percent of median household income, adjusted for household size, for the county in which the dwelling is located.

NEW SECTION. Sec. 5. The expiration date provisions of RCW 82.32.805(1)(a) do not apply to the tax preferences in sections 3 and 4, chapter . . ., Laws of 2022 (sections 3 and 4 of this act).

NEW SECTION. Sec. 6. Section 3 of this act takes effect January 1, 2023.

NEW SECTION. Sec. 7. Section 3 of this act expires January 1, 2030.

NEW SECTION. Sec. 8. Section 4 of this act takes effect January 1, 2030.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.



## CHAPTER 200

[Substitute House Bill 1644]

## SCHOOL DISTRICTS—TRANSPORTATION VEHICLE FUND—ELECTRIC AND ZERO-EMISSION VEHICLES

AN ACT Relating to permitting funds in the transportation vehicle fund to be used for electric and other clean pupil transportation vehicle feasibility planning and fueling station infrastructure; and amending RCW 28A.160.130.

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

**Sec. 1.** RCW 28A.160.130 and 2009 c 564 s 919 are each amended to read as follows:

(1) There is created a fund on deposit with each county treasurer for each school district of the county, which shall be known as the transportation vehicle fund. Money to be deposited into the transportation vehicle fund shall include, but is not limited to, the following:

(a) The balance of accounts held in the general fund of each school district for the purchase of approved transportation equipment and for major transportation equipment repairs under RCW 28A.150.280. The amount transferred shall be the balance of the account as of September 1, 1982;

(b) Reimbursement payments provided for in RCW 28A.160.200 except those provided under RCW 28A.160.200(3) that are necessary for contracted payments to private carriers;

(c) Earnings from transportation vehicle fund investments as authorized in RCW 28A.320.300; and

(d) The district's share of the proceeds from the sale of transportation vehicles, as determined by the superintendent of public instruction.

(2) Funds in the transportation vehicle fund may be used for the following purposes:

(a) Purchase of pupil transportation vehicles pursuant to RCW 28A.160.200 and 28A.150.280;

(b) Payment of conditional sales contracts as authorized in RCW 28A.335.200 or payment of obligations authorized in RCW 28A.530.080, entered into or issued for the purpose of pupil transportation vehicles;

(c) Major repairs to pupil transportation vehicles;

(d) ~~((For the 2009-2011 biennium, a school district that is wholly contained on an island and has a student enrollment greater than two hundred fifty students and fewer than five hundred and fifty students may transfer from the transportation vehicle fund to the school district's general fund such amounts as necessary for instructional costs))~~ To complete a feasibility plan to transition from gas or diesel pupil transportation vehicles to electric or zero emission pupil transportation vehicles;

(e) Purchase, installation, and repair of electric pupil transportation vehicle charging stations and other zero emission pupil transportation vehicle fueling stations and for other costs necessary for station installation; and

(f) Converting or repowering existing gas or diesel pupil transportation vehicles to electric or zero emission pupil transportation vehicles.

(3) The superintendent of public instruction shall adopt rules which shall establish the standards, conditions, and procedures governing the establishment and use of the transportation vehicle fund. The rules shall not permit the transfer

of funds from the transportation vehicle fund to any other fund of the district(~~(; except as provided under subsection (2)(d) of this section)~~).

Passed by the House March 7, 2022.

Passed by the Senate March 2, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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**CHAPTER 201**

[Engrossed Substitute House Bill 1673]

**PUBLIC WORKS BOARD—BROADBAND INFRASTRUCTURE LOANS AND GRANTS—  
MODIFICATION**

AN ACT Relating to broadband infrastructure loans and grants made by the public works board; and amending RCW 43.155.160 and 42.56.270.

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

**Sec. 1.** RCW 43.155.160 and 2021 c 332 s 7040 are each amended to read as follows:

(1) The board, in collaboration with the office, shall establish a competitive grant and loan program to award funding to eligible applicants in order to promote the expansion of access to broadband service in unserved areas of the state.

(2)(a) Grants and loans may be awarded under this section to assist in funding acquisition, installation, and construction of middle mile and last mile infrastructure that supports broadband services and to assist in funding strategic planning for deploying broadband service in unserved areas.

(b) The board may choose to fund all or part of an application for funding, provided that the application meets the requirements of subsection ~~((9))~~ (11) of this section.

(3) Eligible applicants for grants and loans awarded under this section include:

- (a) Local governments;
- (b) Tribes;
- (c) Nonprofit organizations;
- (d) Cooperative associations;
- (e) Multiparty entities comprised of public entity members;
- (f) Limited liability corporations organized for the purpose of expanding broadband access; and
- (g) Incorporated businesses or partnerships.

(4)(a) The board shall develop administrative procedures governing the ~~((application))~~ preapplication and award process. The board shall act as fiscal agent for the program and is responsible for receiving and reviewing applications and awarding funds under this section.

(b) At least sixty days prior to the first day ~~((applications))~~ preapplications may be submitted each fiscal year, the board must publish on its website the specific criteria and any quantitative weighting scheme or scoring system that the board will use to evaluate or rank applications and award funding.

(c) The board may maintain separate accounting in the statewide broadband account created in RCW 43.155.165 as the board deems necessary to carry out the purposes of this section.

(d) The board must provide a method for the allocation of loans, grants, provision of technical assistance, and interest rates under this section.

(5) An applicant for a grant or loan under this section must provide the following information on the ~~((application))~~ preapplication:

(a) The location and description of the project;

(b) Evidence regarding the unserved nature of the community in which the project is to be located;

(c) Evidence that proposed infrastructure will be capable of scaling to greater download and upload speeds;

(d) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;

~~(e) ((The estimated cost of retail services to end users facilitated by a project;~~

~~(f) The proposed actual download and upload speeds experienced by end users;~~

~~(g) Evidence of significant community institutions that will benefit from the proposed project;~~

~~(h) Anticipated economic, educational, health care, or public safety benefits created by the project;~~

~~(i) Evidence of community support for the project;~~

~~(j) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;~~

~~(k) The estimated total cost of the project;~~

~~(l) Other sources of funding for the project that will supplement any grant or loan award;~~

~~(m) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;~~

~~(n) A strategic plan to maintain long-term operation of the infrastructure;~~

~~(o)) Evidence that ((no later than six weeks)) before submission of the application, the applicant contacted, in writing, all entities providing broadband service near the proposed project area to ask each broadband service provider's plan to upgrade broadband service in the project area to speeds that meet or exceed the state's definition for broadband service as defined in RCW 43.330.530, within the time frame specified in the proposed grant or loan activities;~~

~~((p)) (f) If applicable, the broadband service providers' written responses to the inquiry made under ((o)) (e) of this subsection; ((and~~

~~(q)) (g) The proposed geographic broadband service area and the proposed broadband speeds in the form and manner prescribed by the board;~~

~~(h) Evidence of community support for the project; and~~

~~(i) Any additional information requested by the board.~~

(6) An applicant for a grant or loan under this section must provide the following information on the application:

~~(a) ((Within thirty days of the close of the grant and loan application process, the))~~ The final location and description of the project;

(b) Evidence that the proposed infrastructure will be capable of scaling to greater download and upload speeds;

(c) The number of households passed that will gain access to broadband service as a result of the project or whose broadband service will be upgraded as a result of the project;

(d) The estimated cost of retail services to end users facilitated by a project;

(e) The proposed actual download and upload speeds experienced by end users;

(f) Evidence of significant community institutions that will benefit from the proposed project;

(g) Anticipated economic, educational, health care, or public safety benefits created by the project;

(h) If available, a description of the applicant's user adoption assistance program and efforts to promote the use of newly available broadband services created by the project;

(i) The estimated total cost of the project;

(j) Other sources of funding for the project that will supplement any grant or loan award;

(k) A demonstration of the project's long-term sustainability, including the applicant's financial soundness, organizational capacity, and technical expertise;

(l) A strategic plan to maintain long-term operation of the infrastructure;

(m) If applicable, documentation describing the outcome of the broadband service providers' written responses to the inquiry made prior to or during the preapplication phase; and

(n) Any additional information requested by the board.

(7)(a) The board shall publish on its website for at least 30 days the proposed geographic broadband service area and the proposed broadband speeds for each ~~((application))~~ proposed broadband project submitted in the preapplication period.

(b) The board shall, within three business days following the close of the preapplication cycle, publish on its website preapplications as described in subsection (5) of this section.

(c) The board shall set an objection period of at least 30 days.

~~((b))~~ (8)(a) Any existing broadband service provider near the proposed project area may~~((, within thirty days of publication of the information under (a) of this subsection,))~~ submit in writing to the board an objection to ~~((an application))~~ a proposed broadband project. An objection must contain information demonstrating that:

(i) The project would result in overbuild, meaning that the objecting provider currently provides, or has begun construction to provide, broadband service to end users in the proposed project area at speeds equal to or greater than ~~((the state speed goals contained in RCW 43.330.536))~~ the speeds contained in the definition of broadband in RCW 43.330.530(2); or

(ii) The objecting provider commits to complete construction of broadband infrastructure and provide broadband service to end users in the proposed project area at speeds equal to or greater than ~~((the state speed goals contained in RCW 43.330.536))~~ the speeds contained in the definition of broadband in RCW

43.330.530(2), no later than twenty-four months after the date awards are made under this section for the grant and loan cycle under which the ~~((application))~~ preapplication was submitted.

~~((e))~~ (b) Objections submitted to the board under this subsection must be certified by affidavit.

~~((d))~~ (c) The board may evaluate the information submitted under this section by the objecting provider and must consider it in making a determination on the ~~((application))~~ proposed broadband project objected to. The board may request clarification or additional information. The board may choose to not fund a project if the board determines that the objecting provider's commitment to provide broadband service that meets the requirements of ~~((b))~~ (a) of this subsection in the proposed project area is credible. In assessing the commitment, the board may consider whether the objecting provider has or will provide a bond, letter of credit, or other indicia of financial commitment guaranteeing the project's completion.

~~((e))~~ (d) If the board denies funding to an applicant as a result of a broadband service provider's objection made under this section, and the broadband service provider does not fulfill its commitment to provide broadband service in the project area, then for the following two grant and loan cycles, the board is prohibited from denying funding to an applicant on the basis of a challenge by the same broadband service provider, unless the board determines that the broadband service provider's failure to fulfill the provider's commitment was the result of factors beyond the broadband service provider's control. The board is not prohibited from denying funding to an applicant for reasons other than an objection by the same broadband service provider.

~~((f))~~ (e) An applicant or broadband service provider that objected to the application may request a debriefing conference regarding the board's decision on the application. Requests for debriefing must be coordinated by the office and must be submitted in writing in accordance with procedures specified by the office.

~~((g))~~ (f) Confidential business and financial information submitted by an objecting provider under this subsection is exempt from disclosure under chapter 42.56 RCW.

~~((7))~~ (9)(a) In evaluating applications and awarding funds, the board shall give priority to applications that are constructed in areas identified as unserved.

(b) In evaluating applications and awarding funds, the board may give priority to applications that:

(i) Provide assistance to public-private partnerships deploying broadband infrastructure from areas currently served with broadband service to areas currently lacking access to broadband services;

(ii) Demonstrate project readiness to proceed;

(iii) Construct infrastructure that is open access, meaning that during the useful life of the infrastructure, service providers may use network services and facilities at rates, terms, and conditions that are not discriminatory or preferential between providers, and employing accountable interconnection arrangements published and available publicly;

(iv) Are submitted by tribal governments whose reservations are in rural and remote areas where reliable and efficient broadband services are unavailable to many or most residents;

(v) Bring broadband service to tribal lands, particularly to rural and remote tribal lands or areas servicing rural and remote tribal entities;

(vi) Are submitted by tribal governments in rural and remote areas that have spent significant amounts of tribal funds to address the problem but cannot provide necessary broadband services without either additional state support, additional federal support, or both;

(vii) Serve economically distressed areas of the state as the term "distressed area" is defined in RCW 43.168.020;

(viii) Offer new or substantially upgraded broadband service to important community anchor institutions including, but not limited to, libraries, educational institutions, public safety facilities, and health care facilities;

(ix) Facilitate the use of telemedicine and electronic health records, especially in deliverance of behavioral health services and services to veterans;

(x) Provide technical support and train residents, businesses, and institutions in the community served by the project to utilize broadband service;

(xi) Include a component to actively promote the adoption of newly available broadband services in the community;

(xii) Provide evidence of strong support for the project from citizens, government, businesses, and community institutions;

(xiii) Provide access to broadband service to a greater number of unserved households and businesses, including farms;

(xiv) Utilize equipment and technology demonstrating greater longevity of service;

(xv) Seek the lowest amount of state investment per new location served and leverage greater amounts of funding for the project from other private and public sources;

(xvi) Include evidence of a customer service plan;

(xvii) Consider leveraging existing broadband infrastructure and other unique solutions;

(xviii) Benefit public safety and fire preparedness; or

(xix) Demonstrate other priorities as the board, in collaboration with the office, may prescribe by rule.

(c) The board shall endeavor to award funds under this section to qualified applicants in all regions of the state.

(d) The board shall consider affordability and quality of service to end users in making a determination on any application.

(e) The board, in collaboration with the office, may develop additional rules for eligibility, project preapplications, project applications, the associated objection process, and funding priority, as provided under this subsection and subsections (3), (5), ~~((and))~~ (6), ~~(7), and (8)~~ of this section.

(f) The board, in collaboration with the office, may adopt rules for a voluntary nonbinding mediation between incumbent providers and applicants to the grant and loan program created in this section.

~~((8))~~ (10) To ensure a grant or loan to a private entity under this section primarily serves the public interest and benefits the public, any such grant or loan must be conditioned on a guarantee that the asset or infrastructure to be developed will be maintained for public use for a period of at least fifteen years.

~~((9))~~ (11)(a) No funds awarded under this section may fund more than fifty percent of the total cost of the project, except as provided in (b) of this subsection.

(b) The board may choose to fund up to ninety percent of the total cost of a project in financially distressed areas as the term "distressed area" is defined in RCW 43.168.020, and in areas identified as Indian country as the term "Indian country" is defined in WAC 458-20-192.

(c) Funds awarded to a single project under this section must not exceed two million dollars, except that the board may choose to fund projects qualifying for the exception in (b) of this subsection up to, but not to exceed, five million dollars.

~~((10) Except for during the 2021-2023 fiscal biennium, prior to awarding funds under this section, the board must consult with the Washington utilities and transportation commission. The commission must provide to the board an assessment of the technical feasibility of a proposed application. The board must consider the commission's assessment as part of its evaluation of a proposed application.~~

~~((11))~~ (12) The board shall have such rights of recovery in the event of default in payment or other breach of financing agreement as may be provided in the agreement or otherwise by law.

~~((12))~~ (13) The community economic revitalization board shall facilitate the timely transmission of information and documents from its broadband program to the board in order to effectuate an orderly transition.

~~((13))~~ (14)(a) Subject to rules promulgated by the board, the board may make low-interest or interest-free loans or grants to eligible applicants for emergency public works broadband projects. While developing rules, the board shall consider prioritizing broadband infrastructure projects that replace existing infrastructure impacted by an emergency, as described in (b) of this subsection.

(b) Emergency public works broadband projects include construction, repair, reconstruction, replacement, rehabilitation, or improvement to critical broadband infrastructure that has been made necessary by a natural disaster or damaged by unforeseen events. To ensure limited resources are provided as efficiently as possible, the board shall grant priority to emergency public works projects that replace existing infrastructure of the provider whose facilities were damaged by the unforeseen event and shall not provide funds to a new provider to overbuild the existing provider. The loans or grants may be used to help fund all or part of an emergency public works broadband infrastructure project less any reimbursement from any of the following sources: (i) Federal disaster or emergency funds, including funds from the federal emergency management agency; (ii) state disaster or emergency funds; (iii) insurance settlements; and (iv) litigation.

(c) Eligible applicants for grants and loans awarded under this subsection are the same as those described in subsection (3) of this section.

(15) The definitions in RCW 43.330.530 apply throughout this section unless the context clearly requires otherwise.

(16) For purposes of this section, a "proposed broadband project" means a project that has been submitted as a preapplication to the public works board.

**Sec. 2.** RCW 42.56.270 and 2021 c 308 s 4 are each amended to read as follows:

The following financial, commercial, and proprietary information is exempt from disclosure under this chapter:

(1) Valuable formulae, designs, drawings, computer source code or object code, and research data obtained by any agency within five years of the request for disclosure when disclosure would produce private gain and public loss;

(2) Financial information supplied by or on behalf of a person, firm, or corporation for the purpose of qualifying to submit a bid or proposal for (a) a ferry system construction or repair contract as required by RCW 47.60.680 through 47.60.750; (b) highway construction or improvement as required by RCW 47.28.070; or (c) alternative public works contracting procedures as required by RCW 39.10.200 through 39.10.905;

(3) Financial and commercial information and records supplied by private persons pertaining to export services provided under chapters 43.163 and 53.31 RCW, and by persons pertaining to export projects under RCW 43.23.035;

(4) Financial and commercial information and records supplied by businesses or individuals during application for loans or program services provided by chapters 43.325, 43.163, 43.160, 43.330, and 43.168 RCW and RCW 43.155.160, or during application for economic development loans or program services provided by any local agency;

(5) Financial information, business plans, examination reports, and any information produced or obtained in evaluating or examining a business and industrial development corporation organized or seeking certification under chapter 31.24 RCW;

(6) Financial and commercial information supplied to the state investment board by any person when the information relates to the investment of public trust or retirement funds and when disclosure would result in loss to such funds or in private loss to the providers of this information;

(7) Financial and valuable trade information under RCW 51.36.120;

(8) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the clean Washington center in applications for, or delivery of, program services under chapter 70.95H RCW;

(9) Financial and commercial information requested by the public stadium authority from any person or organization that leases or uses the stadium and exhibition center as defined in RCW 36.102.010;

(10)(a) Financial information, including but not limited to account numbers and values, and other identification numbers supplied by or on behalf of a person, firm, corporation, limited liability company, partnership, or other entity related to an application for a horse racing license submitted pursuant to RCW 67.16.260(1)(b), marijuana producer, processor, or retailer license, liquor license, gambling license, or lottery retail license;

(b) Internal control documents, independent auditors' reports and financial statements, and supporting documents: (i) Of house-banked social card game licensees required by the gambling commission pursuant to rules adopted under chapter 9.46 RCW; or (ii) submitted by tribes with an approved tribal/state compact for class III gaming;

(c) Valuable formulae or financial or proprietary commercial information records received during a consultative visit or while providing consultative services to a licensed marijuana business in accordance with RCW 69.50.561;



(11) Proprietary data, trade secrets, or other information that relates to: (a) A vendor's unique methods of conducting business; (b) data unique to the product or services of the vendor; or (c) determining prices or rates to be charged for services, submitted by any vendor to the department of social and health services or the health care authority for purposes of the development, acquisition, or implementation of state purchased health care as defined in RCW 41.05.011;

(12)(a) When supplied to and in the records of the department of commerce:

(i) Financial and proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.330.050(8);

(ii) Financial or proprietary information collected from any person and provided to the department of commerce or the office of the governor in connection with the siting, recruitment, expansion, retention, or relocation of that person's business and until a siting decision is made, identifying information of any person supplying information under this subsection and the locations being considered for siting, relocation, or expansion of a business; and

(iii) Financial or proprietary information collected from any person and provided to the department of commerce pursuant to RCW 43.31.625 (3)(b) and (4);

(b) When developed by the department of commerce based on information as described in (a)(i) of this subsection, any work product is not exempt from disclosure;

(c) For the purposes of this subsection, "siting decision" means the decision to acquire or not to acquire a site;

(d) If there is no written contact for a period of sixty days to the department of commerce from a person connected with siting, recruitment, expansion, retention, or relocation of that person's business, information described in (a)(ii) of this subsection will be available to the public under this chapter;

(13) Financial and proprietary information submitted to or obtained by the department of ecology or the authority created under chapter 70A.500 RCW to implement chapter 70A.500 RCW;

(14) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the life sciences discovery fund authority in applications for, or delivery of, grants under RCW 43.330.502, to the extent that such information, if revealed, would reasonably be expected to result in private loss to the providers of this information;

(15) Financial and commercial information provided as evidence to the department of licensing as required by RCW 19.112.110 or 19.112.120, except information disclosed in aggregate form that does not permit the identification of information related to individual fuel licensees;

(16) Any production records, mineral assessments, and trade secrets submitted by a permit holder, mine operator, or landowner to the department of natural resources under RCW 78.44.085;

(17)(a) Farm plans developed by conservation districts, unless permission to release the farm plan is granted by the landowner or operator who requested the plan, or the farm plan is used for the application or issuance of a permit;

(b) Farm plans developed under chapter 90.48 RCW and not under the federal clean water act, 33 U.S.C. Sec. 1251 et seq., are subject to RCW 42.56.610 and 90.64.190;

(18) Financial, commercial, operations, and technical and research information and data submitted to or obtained by a health sciences and services authority in applications for, or delivery of, grants under RCW 35.104.010 through 35.104.060, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(19) Information gathered under chapter 19.85 RCW or RCW 34.05.328 that can be identified to a particular business;

(20) Financial and commercial information submitted to or obtained by the University of Washington, other than information the university is required to disclose under RCW 28B.20.150, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the University of Washington consolidated endowment fund or to result in private loss to the providers of this information;

(21) Market share data submitted by a manufacturer under RCW 70A.500.190(4);

(22) Financial information supplied to the department of financial institutions, when filed by or on behalf of an issuer of securities for the purpose of obtaining the exemption from state securities registration for small securities offerings provided under RCW 21.20.880 or when filed by or on behalf of an investor for the purpose of purchasing such securities;

(23) Unaggregated or individual notices of a transfer of crude oil that is financial, proprietary, or commercial information, submitted to the department of ecology pursuant to RCW 90.56.565(1)(a), and that is in the possession of the department of ecology or any entity with which the department of ecology has shared the notice pursuant to RCW 90.56.565;

(24) Financial institution and retirement account information, and building security plan information, supplied to the liquor and cannabis board pursuant to RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345, when filed by or on behalf of a licensee or prospective licensee for the purpose of obtaining, maintaining, or renewing a license to produce, process, transport, or sell marijuana as allowed under chapter 69.50 RCW;

(25) Marijuana transport information, vehicle and driver identification data, and account numbers or unique access identifiers issued to private entities for traceability system access, submitted by an individual or business to the liquor and cannabis board under the requirements of RCW 69.50.325, 69.50.331, 69.50.342, and 69.50.345 for the purpose of marijuana product traceability. Disclosure to local, state, and federal officials is not considered public disclosure for purposes of this section;

(26) Financial and commercial information submitted to or obtained by the retirement board of any city that is responsible for the management of an employees' retirement system pursuant to the authority of chapter 35.39 RCW, when the information relates to investments in private funds, to the extent that such information, if revealed, would reasonably be expected to result in loss to the retirement fund or to result in private loss to the providers of this information except that (a) the names and commitment amounts of the private funds in which retirement funds are invested and (b) the aggregate quarterly performance results for a retirement fund's portfolio of investments in such funds are subject to disclosure;

(27) Proprietary financial, commercial, operations, and technical and research information and data submitted to or obtained by the liquor and cannabis board in applications for marijuana research licenses under RCW 69.50.372, or in reports submitted by marijuana research licensees in accordance with rules adopted by the liquor and cannabis board under RCW 69.50.372;

(28) Trade secrets, technology, proprietary information, and financial considerations contained in any agreements or contracts, entered into by a licensed marijuana business under RCW 69.50.395, which may be submitted to or obtained by the state liquor and cannabis board;

(29) Financial, commercial, operations, and technical and research information and data submitted to or obtained by the Andy Hill cancer research endowment program in applications for, or delivery of, grants under chapter 43.348 RCW, to the extent that such information, if revealed, would reasonably be expected to result in private loss to providers of this information;

(30) Proprietary information filed with the department of health under chapter 69.48 RCW;

(31) Records filed with the department of ecology under chapter 70A.515 RCW that a court has determined are confidential valuable commercial information under RCW 70A.515.130; and

(32) Unaggregated financial, proprietary, or commercial information submitted to or obtained by the liquor and cannabis board in applications for licenses under RCW 66.24.140 or 66.24.145, or in any reports or remittances submitted by a person licensed under RCW 66.24.140 or 66.24.145 under rules adopted by the liquor and cannabis board under chapter 66.08 RCW.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

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## CHAPTER 202

[Engrossed Second Substitute House Bill 1691]

### OIL SPILLS—FINANCIAL RESPONSIBILITY DEMONSTRATION—VARIOUS PROVISIONS

AN ACT Relating to financial responsibility requirements related to oil spills; amending RCW 88.40.011, 88.40.025, 88.40.030, and 88.40.040; reenacting and amending RCW 88.40.020; adding a new section to chapter 88.40 RCW; and prescribing penalties.

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

**Sec. 1.** RCW 88.40.011 and 2020 c 20 s 1489 are each amended to read as follows:

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

(1) "Barge" means a vessel that is not self-propelled.

(2) "Bulk" means material that is stored or transported in a loose, unpackaged liquid, powder, or granular form capable of being conveyed by a pipe, bucket, chute, or belt system.

(3) "Cargo vessel" means a self-propelled ship in commerce, other than a tank vessel, fishing vessel, or a passenger vessel, of three hundred or more gross tons.

(4) "Covered vessel" means a tank vessel, cargo vessel, or passenger vessel.

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

(6) "Director" means the director of the department of ecology.

(7)(a) "Facility" means any structure, group of structures, equipment, pipeline, or device, other than a vessel, located on or near the navigable waters of the state that transfers oil in bulk to or from any vessel with an oil carrying capacity over two hundred fifty barrels or pipeline, that is used for producing, storing, handling, transferring, processing, or transporting oil in bulk.

(b) A facility does not include any: (i) Railroad car, motor vehicle, or other rolling stock while transporting oil over the highways or rail lines of this state; (ii) retail motor vehicle motor fuel outlet; (iii) facility that is operated as part of an exempt agricultural activity as provided in RCW 82.04.330; (iv) underground storage tank regulated by the department or a local government under chapter 70A.355 RCW; or (v) marine fuel outlet that does not dispense more than three thousand gallons of fuel to a ship that is not a covered vessel, in a single transaction.

(8) "Fishing vessel" means a self-propelled commercial vessel of three hundred or more gross tons that is used for catching or processing fish.

(9) "Gross tons" means tonnage as determined by the United States coast guard under 33 C.F.R. section 138.30.

(10) "Hazardous substances" means any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499. The following are not hazardous substances for purposes of this chapter:

(a) Wastes listed as F001 through F028 in Table 302.4; and

(b) Wastes listed as K001 through K136 in Table 302.4.

(11) "Navigable waters of the state" means those waters of the state, and their adjoining shorelines, that are subject to the ebb and flow of the tide and/or are presently used, have been used in the past, or may be susceptible for use to transport intrastate, interstate, or foreign commerce.

(12) "Offshore facility" means any facility located in, on, or under any of the navigable waters of the state, but does not include a facility any part of which is located in, on, or under any land of the state, other than submerged land.

(13) "Oil" or "oils" means oil of any kind that is liquid at twenty-five degrees Celsius and one atmosphere of pressure and any fractionation thereof, including, but not limited to, crude oil, bitumen, synthetic crude oil, natural gas well condensate, petroleum, gasoline, fuel oil, diesel oil, biological oils and blends, oil sludge, oil refuse, and oil mixed with wastes other than dredged spoil. Oil does not include any substance listed as of March 1, 2003, in Table 302.4 of 40 C.F.R. Part 302 adopted under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980, as amended by P.L. 99-499.

(14) "Onshore facility" means any facility any part of which is located in, on, or under any land of the state, other than submerged land, that because of its location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable waters of the state or the adjoining shorelines.

(15)(a) "Owner or operator" means (i) in the case of a vessel, any person owning, operating, or chartering by demise, the vessel; (ii) in the case of an onshore or offshore facility, any person owning or operating the facility; and (iii) in the case of an abandoned vessel or onshore or offshore facility, the person who owned or operated the vessel or facility immediately before its abandonment.

(b) "Operator" does not include any person who owns the land underlying a facility if the person is not involved in the operations of the facility.

(16) "Passenger vessel" means a ship of three hundred or more gross tons with a fuel capacity of at least six thousand gallons carrying passengers for compensation.

(17) "Ship" means any boat, ship, vessel, barge, or other floating craft of any kind.

(18) "Spill" means an unauthorized discharge of oil into the waters of the state.

(19) "Tank vessel" means a ship that is constructed or adapted to carry, or that carries, oil in bulk as cargo or cargo residue, and that:

(a) Operates on the waters of the state; or

(b) Transfers oil in a port or place subject to the jurisdiction of this state.

(20) "Waters of the state" includes lakes, rivers, ponds, streams, inland waters, underground water, salt waters, estuaries, tidal flats, beaches and lands adjoining the seacoast of the state, sewers, and all other surface waters and watercourses within the jurisdiction of the state of Washington.

(21) "Certificate of financial responsibility" means an official written acknowledgment issued by the director or the director's designee that an owner or operator of a covered vessel or facility, or the owner of the oil, has demonstrated to the satisfaction of the director or the director's designee that the relevant entity has the financial ability to pay for costs and damages caused by an oil spill.

**Sec. 2.** RCW 88.40.020 and 2003 c 91 s 3 and 2003 c 56 s 3 are each reenacted and amended to read as follows:

(1) ~~((Any))~~ The owner or operator of any barge that transports hazardous substances in bulk as cargo, using any port or place in the state of Washington or the navigable waters of the state shall ~~((establish evidence of))~~ demonstrate financial responsibility in the amount of the greater of ~~((five million dollars))~~ \$5,000,000, or ~~((three hundred dollars))~~ \$300 per gross ton of such vessel.

(2)(a) Except as provided in (b) or (c) of this subsection, the owner or operator of a tank vessel that carries oil as cargo in bulk shall demonstrate financial responsibility to pay at least ~~((five hundred million dollars. The amount of financial responsibility required under this subsection is one billion dollars after January 1, 2004))~~ \$1,000,000,000.

(b) The director by rule may establish a lesser standard of financial responsibility for tank vessels of ~~((three hundred))~~ 300 gross tons or less. The standard shall set the level of financial responsibility based on the quantity of cargo the tank vessel is capable of carrying. The director shall not set the standard for tank vessels of ~~((three hundred))~~ 300 gross tons or less below that required under federal law.

(c) The owner or operator of a tank vessel who is a member of an international protection and indemnity mutual organization and is covered for oil

pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a tank vessel to prove membership in such an organization.

(3)(a) ~~((A))~~ The owner or operator of a cargo vessel or passenger vessel that carries oil as fuel shall demonstrate financial responsibility to pay at least ~~((three hundred million dollars))~~ \$300,000,000. However, the owner or operator of a passenger vessel that transports passengers and vehicles between Washington state and a foreign country shall demonstrate financial responsibility to pay the greater of at least ~~((six hundred dollars))~~ \$600 per gross ton or ~~((five hundred thousand dollars))~~ \$500,000.

(b) The owner or operator of a cargo vessel or passenger vessel who is a member of an international protection and indemnity mutual organization and is covered for oil pollution risks up to the amounts required under this section is not required to demonstrate financial responsibility under this chapter. The director may require the owner or operator of a cargo vessel or passenger vessel to prove membership in such an organization.

(4) ~~((A))~~ The owner or operator of a fishing vessel while on the navigable waters of the state must demonstrate financial responsibility in the following amounts: (a) For a fishing vessel carrying predominantly nonpersistent product, ~~((one hundred thirty three dollars and forty cents))~~ \$133.40 per incident, for each barrel of total oil storage capacity, persistent and nonpersistent product, on the vessel or ~~((one million three hundred thirty four thousand dollars))~~ \$1,334,000, whichever is greater; or (b) for a fishing vessel carrying predominantly persistent product, ~~((four hundred dollars and twenty cents))~~ \$400.20 per incident, for each barrel of total oil storage capacity, persistent product and nonpersistent product, on the vessel or ~~((six million six hundred seventy thousand dollars))~~ \$6,670,000, whichever is greater.

(5) ~~((The documentation of financial responsibility shall demonstrate the ability of the document holder to meet state and federal financial liability requirements for the actual costs for removal of oil spills, for natural resource damages, and for necessary expenses.))~~ In order to demonstrate financial responsibility as required under this section, the owner or operator of a vessel must, effective upon a date specified in rules adopted by the department, obtain a certificate of financial responsibility from the department, except as provided in RCW 88.40.040. The certificate of financial responsibility is conclusive evidence that the person or entity holding the certificate is the party responsible for the specified vessel, facility, or oil for purposes of determining liability under chapter 90.48 RCW.

(6) ~~((This))~~ The requirements of this section ~~((shall))~~ do not apply to a covered vessel owned or operated by the federal government or by a state or local government.

(7) The department may by rule update the hazardous substances subject to the requirements of this section to maintain consistency with any changes to federal regulations adopted after 2003 to the hazardous substances identified under section 102(a) of the federal comprehensive environmental response, compensation, and liability act of 1980.

**Sec. 3.** RCW 88.40.025 and 1991 c 200 s 704 are each amended to read as follows:

An onshore or offshore facility shall demonstrate financial responsibility in an amount determined by the department as necessary to compensate the state and affected federally recognized Indian tribes, counties, and cities for damages that might occur during a reasonable worst case spill of oil from that facility into the navigable waters of the state. The department shall ~~((consider))~~ adopt a rule that considers such matters as the worst case amount of oil that could be spilled ~~((into the navigable waters from the facility))~~, as calculated in the applicant's oil spill contingency plan approved under chapter 90.56 RCW, the cost of cleaning up the spilled oil, the frequency of operations at the facility, the damages that could result from the spill, and the commercial availability and affordability of financial responsibility. ~~((This section shall))~~ In order to demonstrate financial responsibility as required under this section, the owner or operator of a facility must obtain a certificate of financial responsibility from the department. The requirements of this section do not apply to an onshore or offshore facility owned or operated by the federal government or by the state or local government.

**Sec. 4.** RCW 88.40.030 and 2000 c 69 s 32 are each amended to read as follows:

~~((Financial responsibility required by this chapter may be established by any one of, or a combination of, the following methods acceptable to the department of ecology: (1) Evidence of insurance; (2) surety bonds; (3) qualification as a self-insurer; or (4) other evidence of financial responsibility. Any bond filed shall be issued by a bonding company authorized to do business in the United States. Documentation of such financial responsibility shall)) (1) The owner or operator of a vessel or facility that is required to demonstrate financial responsibility under this chapter may do so by any one of, or a combination of, the following methods acceptable to the department:~~

- ~~(a) Evidence of insurance;~~
- ~~(b) Surety bonds;~~
- ~~(c) Guaranty;~~
- ~~(d) Letter of credit;~~
- ~~(e) Certificates of deposit;~~
- ~~(f) Protection and indemnity club membership;~~

~~(g) A certificate evidencing compliance with the requirements of another state's financial responsibility requirements or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter; or~~

~~(h) Other evidence of financial responsibility deemed acceptable by the department.~~

(2) In addition to the options provided in subsection (1) of this section, the owner or operator of a vessel or facility may demonstrate financial responsibility under this chapter through qualification as a self-insurer. Rules adopted by the department that provide a self-insurance option for vessels and facilities must require the applicant to thoroughly demonstrate the security of the applicant's financial position, which may include a demonstration of a combination of the applicant's assets, cash flow, equity, liabilities, and bond ratings. The department may require a certificate applicant relying on qualification as a self-insurer to demonstrate a greater monetary amount of financial responsibility than is required of applicants relying on a form of financial responsibility described in

subsection (1) of this section. In adopting rules pertaining to self-insurance requirements, the department must establish standards that are no less protective than the qualification standards for self-insurance established in other jurisdictions with similar programs as of January 1, 2022, and from which Washington imports significant volumes of oil or petroleum products or to which Washington exports significant volumes of oil or petroleum products.

(3) Upon determining that the owner or operator of a vessel or facility has adequately demonstrated financial responsibility to the department, the department must issue a certificate of financial responsibility to the owner or operator of the vessel or facility.

(4) Any bond filed with the department to demonstrate financial responsibility under this chapter must be issued by a bonding company authorized to do business in the United States.

(5) A certificate of financial responsibility, or a certificate specified in subsection (1)(g) of this section, must be kept on any covered vessel and filed with the department at least ~~((twenty-four))~~ 24 hours before entry of the vessel into the navigable waters of the state. ~~((A))~~ The owner or operator of a covered vessel must notify the department but is not required to file ~~((documentation of))~~ a certificate of financial responsibility ~~((twenty-four))~~ 24 hours before entry of the vessel into the navigable waters of the state, if the vessel has filed documentation of financial responsibility with the federal government, and the level of financial responsibility required by the federal government is the same as or exceeds state requirements. ~~((The owner or operator of the vessel may file with the department a certificate evidencing compliance with the requirements of another state's or federal financial responsibility requirements if the state or federal government requires a level of financial responsibility the same as or greater than that required under this chapter.))~~

(6) A certificate of financial responsibility issued by the department under this chapter or otherwise used for compliance with this chapter may not have a term greater than two years.

**Sec. 5.** RCW 88.40.040 and 2003 c 56 s 4 are each amended to read as follows:

(1) ~~((It is unlawful for any vessel required to have financial responsibility under this chapter to enter or operate on Washington waters without meeting the requirements of this chapter or rules adopted under this chapter, except))~~ The owner or operator of a vessel is not required to demonstrate financial responsibility under this chapter prior to using any port or place in Washington or state waters when necessary to avoid injury to the vessel's crew or passengers. Any vessel owner or operator that does not meet the financial responsibility requirements of this chapter and any rules prescribed thereunder or the federal oil pollution act of 1990 shall be reported by the department to the United States coast guard.

(2) The department ~~((shall))~~ may enforce section 1016 of the federal oil pollution act of 1990 as authorized by section 1019 of the federal act.

(3)(a)(i) The holder of a certificate under this chapter must notify the director of an oil spill or discharge in state waters consistent with chapters 90.48 and 90.56 RCW.

(ii) The holder of a certificate of financial responsibility for more than one covered vessel or facility must notify the director if it experiences a spill or spill



from a vessel or facility in another jurisdiction for which it may be liable and which may incur damages that exceed 15 percent of the financial resources reflected by the certificate.

(b) Upon notification of an oil spill or discharge or other potential liability by the owner or operator of a vessel or facility that holds a certificate of financial responsibility under (a) of this subsection, the director may reevaluate the validity of the certificate of financial responsibility under this chapter. The director must reevaluate the validity of a certificate of financial responsibility under this chapter upon notification of a spill for which the certificate holder may be liable and which may incur damages that exceed 25 percent of the financial resources reflected by the certificate. The director may suspend or revoke a certificate of financial responsibility if the director determines that, because of a spill, discharge, or other action or potential liability, the holder of the certificate is likely to no longer have the financial resources to both pay damages for the oil spill or discharge or other action or potential liability and have resources remaining available in an amount sufficient to meet the requirements of this chapter, effective 10 days after its determination.

(c) Upon a determination by the director under (a) of this subsection that a certificate has been suspended or revoked as a result of a spill, the owner or operator of a facility or vessel required to obtain a certificate of financial responsibility under this chapter may receive a new certificate of financial responsibility from the director upon a demonstration to the satisfaction of the director the amount of financial ability required pursuant to this chapter, as well as the financial ability to pay all reasonably estimated anticipated damages that arise or have arisen from the spill or spills that have occurred. The department must expeditiously review any applications from owners or operators whose certificates have been suspended or revoked by the department under this section. The department may issue a temporary certificate of financial responsibility to an owner or operator whose certificate has previously been revoked or suspended in order to allow the owner or operator to continue to operate a facility or vessel while the department evaluates a pending application from the owner or operator for a new certificate. It is in the interest of the state to issue and manage certificates of financial responsibility in a manner that does not create or contribute to delays in commerce for vessels and facilities subject to the requirements of this chapter. The department is directed to adopt rules to implement this chapter accordingly.

(4) An owner or operator of more than one vessel subject to the requirements of this chapter, more than one facility subject to the requirements of this chapter, or more than one vessel and facility subject to the requirements of this chapter, may:

(a) Obtain a single certificate of financial responsibility that applies to all of the owner's or operator's vessels and facilities. The department must base the terms of such a certificate upon the vessel or facility that represents the greatest financial risk in the event of a spill; or

(b) Obtain separate certificates that each apply to a subset of the owner's or operator's vessels or facilities, provided that each vessel or facility of the owner or operator is covered by at least one valid certificate.

**NEW SECTION, Sec. 6.** A new section is added to chapter 88.40 RCW to read as follows:

(1) Violations of the requirements of this chapter are subject to criminal penalties as provided in RCW 90.56.300 and civil penalties as provided in RCW 90.56.310.

(2) A determination by the department to issue, modify, suspend, revoke, or terminate a certificate issued under this chapter is appealable to the pollution control hearings board, as provided in RCW 43.21B.110(1)(c).

**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 by the House March 8, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 203

[Substitute House Bill 1703]

### 911 EMERGENCY COMMUNICATIONS SYSTEM—VARIOUS PROVISIONS

AN ACT Relating to the modernization of the statewide 911 emergency communications system; amending RCW 38.52.030, 38.52.440, 38.52.500, 38.52.501, 38.52.505, 38.52.510, 38.52.520, 38.52.525, 38.52.532, 38.52.535, 38.52.540, 38.52.545, 38.52.550, 38.52.561, 38.52.575, 82.14B.010, 82.14B.020, 82.14B.030, 82.14B.040, 82.14B.042, 82.14B.050, 82.14B.060, 82.14B.061, 82.14B.063, 82.14B.065, 82.14B.150, 82.14B.200, and 82.14B.210; reenacting and amending RCW 38.52.010; adding a new section to chapter 38.52 RCW; creating a new section; and repealing RCW 38.52.530.

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

**NEW SECTION. Sec. 1.** The ongoing modernization of the statewide 911 emergency communications system is essential to public safety. Implementing new technologies with the modernization to next generation 911 requires clarifying changes to update requirements and definitions currently in statute.

**Sec. 2.** RCW 38.52.010 and 2019 c 471 s 2 and 2019 c 207 s 1 are each reenacted and amended to read as follows:

As used in this chapter:

(1) "911 emergency communications system" means a public 911 communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 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 voice and data to the appropriate public safety answering point that operates in a defined 911 service area and the capability to automatically display the name, location, and telephone number of incoming 911 voice and data at the appropriate public safety answering point.

(2) "Automatic location identification" means information about a caller's location that is part of or associated with an enhanced or next generation 911 emergency communications system as defined in this section and RCW 82.14B.020 and intended for the purpose of display at a public safety answering point with incoming 911 voice or data, or both.

(3) "Automatic number identification" means a method for uniquely associating a communication device that has accessed 911 with the incoming

911 voice or data, or both, and intended for the purpose of display at a public safety answering point.

(4) "Baseline level of 911 service" means access to 911 dialing from all communication devices with service from a telecommunications provider within a county's jurisdiction so that incoming 911 voice and data communication is answered, received, and displayed on 911 equipment at a public safety answering point designated by the county.

(5) "Broadcaster" means a person or entity that holds a license issued by the federal communications commission under 47 C.F.R. Part 73, 74, 76, or 78.

~~((2))~~ (6)(a) "Catastrophic incident" means any natural or human-caused incident, including terrorism and enemy attack, that results in extraordinary levels of mass casualties, damage, or disruption severely affecting the population, infrastructure, environment, economy, or government functions.

(b) "Catastrophic incident" does not include an event resulting from individuals exercising their rights, under the first amendment, of freedom of speech, and of the people to peaceably assemble.

~~((3))~~ (7) "Communication plan," as used in RCW 38.52.070, means a section in a local comprehensive emergency management plan that addresses emergency notification of life safety information.

~~((4))~~ (8) "Continuity of government planning" means the internal effort of all levels and branches of government to provide that the capability exists to continue essential functions and services following a catastrophic incident. These efforts include, but are not limited to, providing for: (a) Orderly succession and appropriate changes of leadership whether appointed or elected; (b) filling vacancies; (c) interoperability communications; and (d) processes and procedures to reconvene government following periods of disruption that may be caused by a catastrophic incident. Continuity of government planning is intended to preserve the constitutional and statutory authority of elected officials at the state and local level and provide for the continued performance of essential functions and services by each level and branch of government.

~~((5))~~ (9) "Continuity of operations planning" means the internal effort of an organization to provide that the capability exists to continue essential functions and services in response to a comprehensive array of potential emergencies or disasters.

~~((6))~~ (10) "Department" means the state military department.

~~((7))~~ (11) "Director" means the adjutant general.

~~((8))~~ (12) "Emergency management" or "comprehensive emergency management" means the preparation for and the carrying out of all emergency functions, other than functions for which the military forces are primarily responsible, to mitigate, prepare for, respond to, and recover from emergencies and disasters, and to aid victims suffering from injury or damage, resulting from disasters caused by all hazards, whether natural, technological, or human caused, and to provide support for search and rescue operations for persons and property in distress. However, "emergency management" or "comprehensive emergency management" does not mean preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack.

~~((9))~~ (13)(a) "Emergency or disaster" as used in all sections of this chapter except RCW 38.52.430 means an event or set of circumstances which: (i) Demands immediate action to preserve public health, protect life, protect public

property, or to provide relief to any stricken community overtaken by such occurrences; or (ii) reaches such a dimension or degree of destructiveness as to warrant the governor proclaiming a state of emergency pursuant to RCW 43.06.010.

(b) "Emergency" as used in RCW 38.52.430 means an incident that requires a normal police, coroner, fire, rescue, emergency medical services, or utility response as a result of a violation of one of the statutes enumerated in RCW 38.52.430.

~~((10))~~ (14) "Emergency response" as used in RCW 38.52.430 means a public agency's use of emergency services during an emergency or disaster as defined in subsection ~~((9))~~ (13)(b) of this section.

~~((11))~~ (15) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced or next generation 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

(16) "Emergency services communications system data" includes voice or audio; multimedia, including pictures and video; text messages; telematics or telemetrics; or other information that is received or displayed, or both, at a public safety answering point in association with a 911 access.

(17) "Emergency worker" means any person who is registered with a local emergency management organization or the department and holds an identification card issued by the local emergency management director or the department for the purpose of engaging in authorized emergency management activities or is an employee of the state of Washington or any political subdivision thereof who is called upon to perform emergency management activities.

~~((12))~~ (18) "Executive head" and "executive heads" means the county executive in those charter counties with an elective office of county executive, however designated, and, in the case of other counties, the county legislative authority. In the case of cities and towns, it means the mayor in those cities and towns with mayor-council or commission forms of government, where the mayor is directly elected, and it means the city manager in those cities and towns with council manager forms of government. Cities and towns may also designate an executive head for the purposes of this chapter by ordinance.

~~((13))~~ (19) "Expense of an emergency response" as used in RCW 38.52.430 means reasonable costs incurred by a public agency in reasonably making an appropriate emergency response to the incident, but shall only include those costs directly arising from the response to the particular incident. Reasonable costs shall include the costs of providing police, coroner, firefighting, rescue, emergency medical services, or utility response at the scene of the incident, as well as the salaries of the personnel responding to the incident.

~~((14))~~ (20) "First informer broadcaster" means an individual who:

(a) Is employed by, or acting pursuant to a contract under the direction of, a broadcaster; and

(b)(i) Maintains, including repairing or resupplying, transmitters, generators, or other essential equipment at a broadcast station or facility; or (ii) provides technical support services to broadcasters needed during a period of proclaimed emergency.

~~((45))~~ (21) "Incident command system" means: (a) An all-hazards, on-scene functional management system that establishes common standards in organization, terminology, and procedures; provides a means (unified command) for the establishment of a common set of incident objectives and strategies during multiagency/multijurisdiction operations while maintaining individual agency/jurisdiction authority, responsibility, and accountability; and is a component of the national interagency incident management system; or (b) an equivalent and compatible all-hazards, on-scene functional management system.

~~((46))~~ (22) "Injury" as used in this chapter shall mean and include accidental injuries and/or occupational diseases arising out of emergency management activities.

~~((47))~~ (23) "Interconnected voice over internet protocol service provider" means a provider of interconnected voice over internet protocol service as defined by the federal communications commission in 47 C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

(24) "Life safety information" means information provided to people during a response to a life-threatening emergency or disaster informing them of actions they can take to preserve their safety. Such information may include, but is not limited to, information regarding evacuation, sheltering, sheltering-in-place, facility lockdown, and where to obtain food and water.

~~((48))~~ (25) "Local director" means the director of a local organization of emergency management or emergency services.

~~((49))~~ (26) "Local organization for emergency services or management" means an organization created in accordance with the provisions of this chapter by state or local authority to perform local emergency management functions.

~~((20))~~ (27) "Next generation 911" means an internet protocol-based system comprised of managed emergency services internet protocol networks, functional elements (applications), and databases that replicate enhanced 911 features and functions as defined in RCW 82.14B.020(4) that provide additional capabilities designed to provide access to emergency services from all connected communications sources and provide multimedia data capabilities for public safety answering points.

(28) "Next generation 911 demarcation point" means the location and equipment that separates the next generation 911 network from:

(a) A telecommunications provider's network, known as the ingress next generation 911 demarcation point; and

(b) A public safety answering point, known as the egress next generation 911 demarcation point.

(29) "Next generation 911 emergency communications system" means a public communications system consisting of networks, databases, and public safety answering point 911 hardware, software, and technology that is accessed by the public in the state through 911. The system includes the capability to: Route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area; answer incoming 911 voice and data; and receive and display incoming 911 voice and data, including automatic location identification and automatic number identification, at a public safety answering point. "Next generation 911 emergency communications system" includes future modernizations to the 911 system.

(30) "Next generation 911 emergency services internet protocol network" means a managed internet protocol network used for 911 emergency services communications that is managed and maintained, including security and credentialing functions, by the state 911 coordination office to provide next generation 911 emergency communications from the ingress next generation 911 demarcation point to the egress next generation 911 demarcation point. It provides the internet protocol transport infrastructure upon which application platforms and core services are necessary for providing next generation 911 services. Next generation 911 emergency services internet protocol networks may be constructed from a mix of dedicated and shared facilities and may be interconnected at local, regional, state, federal, national, and international levels to form an internet protocol-based inter-network (network of networks).

(31) "Next generation 911 service" means public access to the next generation 911 emergency communications system and its capabilities by accessing 911 from communication devices to report police, fire, medical, or other emergency situations to a public safety answering point.

(32) "Political subdivision" means any county, city or town.

((24)) (33) "Public agency" means the state, and a city, county, municipal corporation, district, town, or public authority located, in whole or in part, within this state which provides or may provide firefighting, police, ambulance, medical, or other emergency services.

((22)) (34) "Public safety answering point" means the public safety location that receives and answers 911 voice and data originating in a given area as designated by the county. Public safety answering points must be equipped with 911 hardware, software, and technology that is accessed through 911 and is capable of answering incoming 911 calls and receiving and displaying incoming 911 data.

(a) "Primary public safety answering point" means a public safety answering point, as designated by the county, to which 911 calls and data originating in a given area and entering the next generation 911 network are initially routed for answering.

(b) "Secondary public safety answering point" means a public safety answering point, as designated by the county, that only receives 911 voice and data that has been transferred by other public safety answering points.

(35) "Radio communications service company" ((has the meaning ascribed to it in RCW 82.14B.020)) means every corporation, company, association, joint stock, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), or cellular communications services for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio paging providers.

((23)) (36) "Search and rescue" means the acts of searching for, rescuing, or recovering by means of ground, marine, or air activity any person who becomes lost, injured, or is killed while outdoors or as a result of a natural, technological, or human caused disaster, including instances involving searches for downed aircraft when ground personnel are used. Nothing in this section shall affect appropriate activity by the department of transportation under chapter 47.68 RCW.

(37) "Telecommunications provider" means a telecommunications company as defined in RCW 80.04.010, a radio communications service company as defined in RCW 38.52.010, a commercial mobile radio service provider as defined in 47 C.F.R. Sec. 20.3, providers of interconnected voice over internet protocol service as defined in RCW 38.52.010, and providers of data services.

(38) "Washington state patrol public safety answering points" means those designated as primary or secondary public safety answering points by the counties in which they provide service.

**Sec. 3.** RCW 38.52.030 and 2019 c 471 s 3 are each amended to read as follows:

(1) The director may employ such personnel and may make such expenditures within the appropriation therefor, or from other funds made available for purposes of emergency management, as may be necessary to carry out the purposes of this chapter.

(2) The director, subject to the direction and control of the governor, shall be responsible to the governor for carrying out the program for emergency management of this state. The director shall coordinate the activities of all organizations for emergency management within the state, and shall maintain liaison with and cooperate with emergency management agencies and organizations of other states and of the federal government, and shall have such additional authority, duties, and responsibilities authorized by this chapter, as may be prescribed by the governor.

(3) The director shall develop and maintain a comprehensive, all-hazard emergency plan for the state which shall include an analysis of the natural, technological, or human caused hazards which could affect the state of Washington, and shall include the procedures to be used during emergencies for coordinating local resources, as necessary, and the resources of all state agencies, departments, commissions, and boards. The comprehensive emergency management plan shall direct the department in times of state emergency to administer and manage the state's emergency operations center. This will include representation from all appropriate state agencies and be available as a single point of contact for the authorizing of state resources or actions, including emergency permits. The comprehensive emergency management plan must specify the use of the incident command system for multiagency/multijurisdiction operations. The comprehensive, all-hazard emergency plan authorized under this subsection may not include preparation for emergency evacuation or relocation of residents in anticipation of nuclear attack. This plan shall be known as the comprehensive emergency management plan.

(4) In accordance with the comprehensive emergency management plans and the programs for the emergency management of this state, the director shall procure supplies and equipment, institute training programs and public information programs, and shall take all other preparatory steps, including the partial or full mobilization of emergency management organizations in advance of actual disaster, to insure the furnishing of adequately trained and equipped forces of emergency management personnel in time of need.

(5) The director shall make such studies and surveys of the industries, resources, and facilities in this state as may be necessary to ascertain the capabilities of the state for emergency management, and shall plan for the most efficient emergency use thereof.

(6) The emergency management council shall advise the director on all aspects of the communications and warning systems and facilities operated or controlled under the provisions of this chapter.

(7) The director, through the state (~~enhanced~~) 911 coordinator, shall coordinate and facilitate implementation and operation of a statewide (~~enhanced~~) 911 emergency communications network.

(8) The director shall appoint a state coordinator of search and rescue operations to coordinate those state resources, services and facilities (other than those for which the state director of aeronautics is directly responsible) requested by political subdivisions in support of search and rescue operations, and on request to maintain liaison with and coordinate the resources, services, and facilities of political subdivisions when more than one political subdivision is engaged in joint search and rescue operations.

(9) The director, subject to the direction and control of the governor, shall prepare and administer a state program for emergency assistance to individuals within the state who are victims of a natural, technological, or human caused disaster, as defined by RCW 38.52.010(~~(6)~~) (13). Such program may be integrated into and coordinated with disaster assistance plans and programs of the federal government which provide to the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan for purposes of assistance to individuals affected by a disaster. Further, such program may include, but shall not be limited to, grants, loans, or gifts of services, equipment, supplies, materials, or funds of the state, or any political subdivision thereof, to individuals who, as a result of a disaster, are in need of assistance and who meet standards of eligibility for disaster assistance established by the department of social and health services: PROVIDED, HOWEVER, That nothing herein shall be construed in any manner inconsistent with the provisions of Article VIII, section 5 or section 7 of the Washington state Constitution.

(10) The director shall appoint a state coordinator for radioactive and hazardous waste emergency response programs. The coordinator shall consult with the state radiation control officer in matters relating to radioactive materials. The duties of the state coordinator for radioactive and hazardous waste emergency response programs shall include:

(a) Assessing the current needs and capabilities of state and local radioactive and hazardous waste emergency response teams on an ongoing basis;

(b) Coordinating training programs for state and local officials for the purpose of updating skills relating to emergency mitigation, preparedness, response, and recovery;

(c) Utilizing appropriate training programs such as those offered by the federal emergency management agency, the department of transportation and the environmental protection agency; and

(d) Undertaking other duties in this area that are deemed appropriate by the director.

(11) The director is responsible to the governor to lead the development and management of a program for interagency coordination and prioritization of continuity of operations planning by state agencies. Each state agency is responsible for developing an organizational continuity of operations plan that is



updated and exercised annually in compliance with the program for interagency coordination of continuity of operations planning.

(12) The director shall maintain a copy of the continuity of operations plan for election operations for each county that has a plan available.

(13) Subject to the availability of amounts appropriated for this specific purpose, the director is responsible to the governor to lead the development and management of a program to provide information and education to state and local government officials regarding catastrophic incidents and continuity of government planning to assist with statewide development of continuity of government plans by all levels and branches of state and local government that address how essential government functions and services will continue to be provided following a catastrophic incident.

**Sec. 4.** RCW 38.52.440 and 2017 c 295 s 3 are each amended to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the director, through the state (~~enhanced~~) 911 coordinator, and in collaboration with the department of health, the department of social and health services, the Washington state patrol, the Washington association of sheriffs and police chiefs, the Washington council of police and sheriffs, the state fire marshal's office, a representative of a first responder organization with experience in addressing the needs of a person with a disability, and other individuals and entities at the discretion of the director, must assess, and report back to the appropriate committees of the legislature by December 1, 2018, regarding:

(a) The resources, capabilities, techniques, protocols, and procedures available or required in order to include as part of the enhanced 911 emergency service the ability to allow an immediate display on the screen indicating that a person with a disability may be present at the scene of an emergency, the caller's identification, location, phone number, address, and if made available, additional information on the person with a disability that would assist the first responder in the emergency response;

(b) How best to acquire, implement, and safeguard a secure website and the information in the system provided by a person with a disability, or a parent, guardian, or caretaker of a person with a disability in order to make such information directly available to first responders at the scene of an emergency or on the way to the scene of an emergency;

(c) What information provided by a person must remain confidential under state or federal law, or otherwise should remain confidential without written permission to release it for purposes of chapter 295, Laws of 2017 or the information is otherwise releasable or available under other provisions of law; and

(d) The need to provide various agencies and employees that are first responders and emergency personnel immunity from civil liability for acts or omissions in the performance of their duties, and what standard should apply, such as if the act or omission is the result of simple negligence, gross negligence, or willful misconduct.

(2) For purposes of this section:

(a) Both "accident" and "emergency" mean an unforeseen combination of circumstances or a resulting situation that results in a need for assistance or relief and calls for immediate action; and

(b) "Person with a disability" means an individual who has been diagnosed medically to have a physical, mental, emotional, intellectual, behavioral, developmental, or sensory disability.

**Sec. 5.** RCW 38.52.500 and 1991 c 54 s 1 are each amended to read as follows:

The legislature finds that a statewide emergency communications network of ((enhanced)) 911 telephone service, which allows an immediate display of a caller's identification and location, would serve to further the safety, health, and welfare of the state's citizens, and would save lives. The legislature, after reviewing the study outlined in section 1, chapter 260, Laws of 1990, further finds that statewide implementation of ((enhanced)) 911 telephone service is feasible and should be accomplished as soon as practicable.

**Sec. 6.** RCW 38.52.501 and 2002 c 341 s 1 are each amended to read as follows:

The legislature finds that statewide ((enhanced)) 911 emergency communications service has proven to be a lifesaving service and that routing a 911 call to the appropriate public safety answering point with a display of the caller's identification and location should be available for all users of telecommunications services, regardless of the technology used to make and transmit the 911 call. The legislature also finds that it is in the best public interest to ensure that there is adequate ongoing funding to support ((enhanced 911 service)) necessary 911 system upgrades as technology evolves to next generation 911 technology and beyond for 911 emergency communications baseline service statewide that supports emerging communications devices.

**Sec. 7.** RCW 38.52.505 and 1999 c 24 s 2 are each amended to read as follows:

The adjutant general shall establish rules on minimum information requirements of automatic location identification for the purposes of ((enhanced)) 911 emergency service. Such rules shall permit the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to take into consideration local circumstances when approving the accuracy of location information generated when calls are made to 911 from facilities within his or her service area.

**Sec. 8.** RCW 38.52.510 and 2010 1st sp.s. c 19 s 14 are each amended to read as follows:

(1) Each county, singly or in combination with one or more ((adjacent)) counties, must ((implement)) provide or participate in countywide or multicounty-wide ((enhanced)) 911 emergency communications systems so that ((enhanced)) 911 is available throughout the state. The county must provide funding for the ((enhanced)) 911 communications system in the county in an amount equal to the amount the maximum tax under RCW 82.14B.030(1) would generate in the county less any applicable administrative fee charged by the department of revenue or the amount necessary to provide full funding of the system in the county. The state ((enhanced)) 911 coordination office established

by RCW 38.52.520 must assist and facilitate (~~enhanced~~) 911 implementation throughout the state.

(2) A county may request a Washington state patrol public safety answering point to become a primary public safety answering point and receive 911 calls from a specific geographical area and may cancel that designation at any time.

**Sec. 9.** RCW 38.52.520 and 2010 1st sp.s. c 19 s 15 are each amended to read as follows:

A state (~~enhanced~~) 911 coordination office, headed by the state (~~enhanced~~) 911 coordinator, is established in the emergency management division of the department. Duties of the office include:

~~(1) ((Coordinating and facilitating the implementation and operation of enhanced 911 emergency communications systems throughout the state))~~  
Administering the 911 account established in RCW 38.52.540;

(2) Seeking advice and assistance from, and providing staff support for((;)) the enhanced 911 advisory committee;

(3) Providing and supporting 911 emergency communications systems, which may include procurement, funding, ownership, and management;

(4) Assisting the counties and Washington state patrol public safety answering points by distributing state 911 emergency communications system funding within the priorities identified in RCW 38.52.545. When designated as a primary public safety answering point by the county, the state 911 coordination office may provide funding for Washington state patrol public safety answering point 911 emergency communications systems;

(5) Develop forms, submission dates, and methods as necessary for all public safety answering points to submit reports;

(6) Recommending to the utilities and transportation commission by August 31st of each year the level of the state (~~enhanced~~) 911 emergency communications system excise tax established in RCW 82.14B.030(5) for the following year;

~~((4) Considering base needs of individual counties for specific assistance, specify rules defining the purposes for which available state enhanced 911 funding may be expended, with the advice and assistance of the enhanced 911 advisory committee; and~~

~~(5) Providing an annual update to the enhanced))~~ (7) Establishing rules that:

(a) Determine eligible components of the 911 emergency communications system, its administration, and operation that the state and county 911 excise taxes, under RCW 82.14B.030, may be used to fund;

(b) Determine how appropriated funds from the state 911 account shall be distributed, considering the baseline level of 911 emergency communications system service needs of individual counties and county-designated Washington state patrol primary public safety answering points for specific assistance; and

(c) Specify statewide 911 emergency communications system and service standards, consistent with applicable state and federal law. The authority given to the state 911 coordinator in this section is limited to setting standards as set forth in this section and does not constitute authority to regulate radio communications service companies or interconnected voice over internet protocol service companies; and

(8) Annually providing a complete report to the 911 advisory committee on ((how much money each county has spent on)):

(a) Efforts to modernize their existing enhanced 911 emergency communications system; ~~(and~~

~~(b) Enhanced 911 operational costs)~~ (b) All public safety answering points expenditures for administrative and operational costs and expenses of the 911 emergency communications system; and

(c) Any additional data that may be identified by the 911 advisory committee.

**Sec. 10.** RCW 38.52.525 and 1995 c 243 s 9 are each amended to read as follows:

The state ~~((enhanced))~~ 911 coordination office may develop and ~~((implement))~~ provide public education materials ~~((regarding the capability of specific equipment used as part of a private telecommunications system or in the provision of private shared telecommunications services to forward automatic location identification and automatic number identification))~~ relating to the 911 emergency communications system.

NEW SECTION. **Sec. 11.** A new section is added to chapter 38.52 RCW to read as follows:

The 911 advisory committee is created to advise and assist the state 911 coordinator in coordinating and facilitating the implementation and operation of 911 throughout the state. The director shall appoint:

(1) County 911 representatives from diverse urban and rural geographical counties;

(2) The statewide 988 coordinator or designee identified by the office of the governor;

(3) Those who represent diverse geographical areas of the state and include state residents who are members of the national emergency number association, the association of public communications officials Washington chapter, the Washington state fire chiefs association, the Washington association of sheriffs and police chiefs, the Washington state council of firefighters, the Washington state council of police officers, the Washington ambulance association, the Washington state firefighters association, the Washington state association of fire marshals, the Washington fire commissioners association, the Washington state patrol, the association of Washington cities, and the Washington state association of counties;

(4) The utilities and transportation commission or commission staff;

(5) A representative of a voice over internet protocol company;

(6) An equal number of representatives of large and small local exchange telephone companies and large and small radio communications service companies offering commercial mobile radio service in the state;

(7) A representative of the Washington state department of health; and

(8) Other members identified and appointed by the director.

**Sec. 12.** RCW 38.52.532 and 2010 1st sp.s. c 19 s 17 are each amended to read as follows:

~~((On an annual basis))~~ (1) Annually, the ~~((enhanced))~~ 911 advisory committee must provide an update on the status of ~~((enhanced))~~ 911 service in the state to the appropriate committees in the legislature. The update must include progress by the state 911 coordination office and the counties towards ~~((creating greater efficiencies in enhanced))~~ continual growth and maintenance

of a 911 emergency communications system with greater efficiencies in 911 operations including, but not limited to, regionalization of facilities, centralization of equipment, ~~((and))~~ statewide purchasing, strategic plan performance, and fiscal health of the 911 emergency communications system.

(2) To assist with modernization of the 911 emergency communications system, all counties operating public safety answering points in Washington state, with the exception of tribal nations, must assist the 911 advisory committee to update the legislature annually within the requirements of RCW 38.52.520(8) by providing annual public safety answering point expenditure reports and additional information as necessary requested by the state 911 coordinator's office.

(3) To assist with modernization of the 911 emergency communications system, public safety answering points providing service in multiple counties shall report to the county where they are physically located. Public safety answering points providing services outside of Washington state borders shall limit reporting to those areas within the boundaries of Washington state. Counties receiving services from a public safety answering point outside of Washington state must report the cost of services into their county.

**Sec. 13.** RCW 38.52.535 and 1998 c 245 s 32 are each amended to read as follows:

The state ~~((enhanced))~~ 911 coordination office and the ~~((enhanced))~~ 911 advisory committee may participate in efforts to set uniform national standards for ~~((automatic number identification and automatic location identification data transmission for private telecommunications systems and private shared telecommunications services))~~ the 911 emergency communications system.

**Sec. 14.** RCW 38.52.540 and 2015 3rd sp.s. c 4 s 949 are each amended to read as follows:

(1) The ~~((enhanced))~~ 911 account is created in the state treasury. All receipts from the state ~~((enhanced))~~ 911 excise taxes imposed by RCW 82.14B.030 must be deposited into the account. Moneys in the account must be used ~~((only))~~ to support the priorities established in RCW 38.52.545, procure, fund, and manage the statewide 911 emergency communications system network, purchase goods and services that support the counties and Washington state patrol public safety answering points in providing 911 baseline level of service statewide, assist the counties and Washington state patrol public safety answering points to provide 911 emergency communications systems and associated administrative and operational costs, acquire 911 hardware, software, and technology appropriate to support a 911 emergency communications system, 911 emergency communications training and public education, support the statewide coordination and management of the ~~((enhanced))~~ 911 emergency communications system, ~~((for the implementation of wireless enhanced 911 statewide,))~~ and for ~~((the))~~ modernization needs as technology evolves of ~~((enhanced))~~ the 911 emergency communications systems statewide~~(, and to help supplement, within available funds, the operational costs of the system, including adequate funding of counties to enable implementation of wireless enhanced 911 service and reimbursement of radio communications service companies for costs incurred in providing wireless enhanced 911 service pursuant to negotiated contracts between the counties or their agents and the~~

radio communications service companies. For the 2013-2015 and the 2015-2017 fiscal biennia, the account may be used for a criminal history system upgrade in the Washington state patrol and for activities and programs in the military department. A county must show just cause, including but not limited to a true and accurate accounting of the funds expended, for any inability to provide reimbursement to radio communications service companies of costs incurred in providing enhanced 911 service).

(2) Funds generated by the ~~((enhanced))~~ 911 excise tax imposed by RCW 82.14B.030(5), ~~(6), and (8)~~ may not be distributed to any county that has not imposed the maximum county ~~((enhanced))~~ 911 excise tax allowed under RCW 82.14B.030(1) through (3). ~~((Funds generated by the enhanced 911 excise tax imposed by RCW 82.14B.030(6) may not be distributed to any county that has not imposed the maximum county enhanced 911 excise tax allowed under RCW 82.14B.030(2).))~~

(3) The state ~~((enhanced))~~ 911 coordinator, with the advice and assistance of the ~~((enhanced))~~ 911 advisory committee, is authorized to enter into statewide agreements to improve the efficiency of ~~((enhanced))~~ the 911 ((services for all counties)) emergency communications system and shall specify by rule the additional purposes for which moneys, if available, may be expended from this account.

**Sec. 15.** RCW 38.52.545 and 2010 1st sp.s. c 19 s 19 are each amended to read as follows:

In specifying rules defining the purposes for which available state ~~((enhanced))~~ 911 moneys may be expended, the state ~~((enhanced))~~ 911 coordinator, with the advice and assistance of the ~~((enhanced))~~ 911 advisory committee, must consider ~~((base))~~ needs ~~((of individual counties for specific assistance))~~ necessary to provide a baseline level of 911 service by individual counties and their designated Washington state patrol public safety answering points. Priorities for available ~~((enhanced))~~ 911 emergency communications system funding are as follows:

(1) To procure, fund, and manage the statewide 911 network and supporting services, and assure that 911 dialing is operational statewide;

(2) To assist counties and Washington state patrol public safety answering points to provide 911 emergency communications systems and associated administrative and operational costs as necessary to assure that they can achieve a ((basic service)) baseline level of service for 911 operations; and

(3) To assist counties ((as practicable to acquire items of a capital nature appropriate to modernize 911 systems and increase 911 effectiveness)) and their designated Washington state patrol public safety answering points to acquire 911 hardware, software, and technology to support a 911 emergency communications system baseline level of service.

**Sec. 16.** RCW 38.52.550 and 2010 1st sp.s. c 19 s 20 are each amended to read as follows:

A telecommunications company, radio communications service company, or interconnected voice over internet protocol service company, providing emergency communications systems or services or a business or individual providing database information to ~~((enhanced))~~ 911 emergency communications personnel is not liable for civil damages caused by an act or omission of the

company, business, or individual, the state, political subdivisions and any 911 public corporations in the:

(1) Good faith release of information not in the public record, including unpublished or unlisted subscriber information to emergency service providers responding to calls placed to an ~~((enhanced))~~ 911 emergency communications service; or

(2) Design, development, installation, maintenance, or provision of consolidated ~~((enhanced))~~ 911 emergency communications systems or services other than an act or omission constituting gross negligence or wanton or willful misconduct.

**Sec. 17.** RCW 38.52.561 and 2010 1st sp.s. c 19 s 21 are each amended to read as follows:

The state ~~((enhanced))~~ 911 coordinator, with the advice and assistance of the ~~((enhanced))~~ 911 advisory committee, must set nondiscriminatory, uniform technical and operational standards consistent with the rules of the federal communications commission for the transmission of 911 calls from radio communications service companies and interconnected voice over internet protocol service companies to ~~((enhanced))~~ 911 emergency communications systems. These standards must be modernized to align with national standards adopted by the state of Washington in rule making and not exceed the requirements set by the federal communications commission. The authority given to the state ~~((enhanced))~~ 911 coordinator in this section is limited to setting standards as set forth in this section and does not constitute authority to regulate radio communications service companies or interconnected voice over internet protocol service companies.

**Sec. 18.** RCW 38.52.575 and 2015 c 224 s 6 are each amended to read as follows:

(1) Information contained in an automatic number identification or automatic location identification database that is part of a county ~~((enhanced))~~ 911 emergency communications system as defined in RCW 82.14B.020 and intended for display at a public safety answering point with incoming 911 voice or data is exempt from public inspection and copying under chapter 42.56 RCW.

(2) Information voluntarily submitted to be contained in a database that is part of or associated with a county ~~((enhanced))~~ 911 emergency communications system as defined in RCW 82.14B.020 and intended for the purpose of display at a public safety answering point with incoming 911 voice or data is exempt from public inspection and copying under chapter 42.56 RCW.

(3) This section shall not be interpreted to prohibit:

(a) Display of information at a public safety answering point;

(b) Dissemination of information by the public safety answering point to police, fire, or emergency medical responders for display on a device used by police, fire, or emergency medical responders for the purpose of handling or responding to emergency calls or for training;

(c) Maintenance of the database by a county;

(d) Dissemination of information by a county to local agency personnel for inclusion in an emergency notification system that makes outgoing calls to telephone numbers to provide notification of a community emergency event;

(e) Inspection or copying by the subject of the information or an authorized representative; or

(f) The public disclosure of information prepared, retained, disseminated, transmitted, or recorded, for the purpose of handling or responding to emergency calls, unless disclosure of any such information is otherwise exempted under chapter 42.56 RCW or other law.

**Sec. 19.** RCW 82.14B.010 and 2010 1st sp.s. c 19 s 1 are each amended to read as follows:

The legislature finds that the state and counties should be provided with an additional revenue source to fund (~~enhanced~~) 911 emergency communications systems throughout the state on a multicounty or countywide basis. The legislature further finds that the most efficient and appropriate method of deriving additional revenue for this purpose is to impose an excise tax on the use of switched access lines, radio access lines, and interconnected voice over internet protocol service lines.

**Sec. 20.** RCW 82.14B.020 and 2013 2nd sp.s. c 8 s 102 are each amended to read as follows:

As used in this chapter:

(1) "911 emergency communications system" means a public 911 communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 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 voice and data 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 voice and data at the appropriate public safety answering point.

(2) "Consumer" means a person who purchases a prepaid wireless telecommunications service in a retail transaction.

~~((2))~~ (3) "Emergency services communication system" means a multicounty or countywide communications network, including an enhanced or next generation 911 emergency communications system, which provides rapid public access for coordinated dispatching of services, personnel, equipment, and facilities for police, fire, medical, or other emergency services.

~~((3))~~ (4) "Enhanced 911 emergency communications system" means a public communications system consisting of a network, database, and on-premises equipment that is accessed by dialing or accessing 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 voice or data 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 voice or data at the appropriate public safety answering point. "Enhanced 911 emergency communications system" includes the modernization to next generation 911 systems.

~~((4))~~ (5) "Interconnected voice over internet protocol service" has the same meaning as provided by the federal communications commission in 47



C.F.R. Sec. 9.3 on January 1, 2009, or a subsequent date determined by the department.

~~((5))~~ (6) "Interconnected voice over internet protocol service line" means an interconnected voice over internet protocol service that offers an active telephone number or successor dialing protocol assigned by a voice over internet protocol provider to a voice over internet protocol service customer that has inbound and outbound calling capability, which can directly access a public safety answering point when such a voice over internet protocol service customer has a place of primary use in the state.

~~((6))~~ (7) "Local exchange company" has the meaning ascribed to it in RCW 80.04.010.

~~((7))~~ (8) "Next generation 911 emergency communications system" means a public communications system consisting of networks, databases, and public safety answering point 911 hardware, software, and technology that is accessed by the public in the state through 911. The system includes the capability to: Route incoming 911 voice and data to the appropriate public safety answering point that operates in a defined 911 service area; answer incoming 911 voice and data; and receive and display incoming 911 voice and data, including automatic location identification and automatic number identification, at a public safety answering point. "Next Generation 911 emergency communications system" includes future modernizations to the 911 system.

(9) "Place of primary use" means the street address representative of where the subscriber's use of the radio access line or interconnected voice over internet protocol service line occurs, which must be:

(a) The residential street address or primary business street address of the subscriber; and

(b) In the case of radio access lines, within the licensed service area of the home service provider.

~~((8))~~ (10) "Prepaid wireless telecommunications service" means a telecommunications service that provides the right to use mobile wireless service as well as other nontelecommunications services including the download of digital products delivered electronically, content, and ancillary services, which must be paid for in full in advance and sold in predetermined units or dollars of which the number declines with use in a known amount.

~~((9))~~ (11) "Private telecommunications system" has the meaning ascribed to it in RCW 80.04.010.

~~((10))~~ (12) "Radio access line" means the telephone number assigned to or used by 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.

~~((11))~~ (13) "Radio communications service company" ~~(has the meaning ascribed to it in RCW 80.04.010, except that it does not include radio paging providers. It does include those persons or entities that provide commercial~~

~~mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), and both facilities-based and nonfacilities-based resellers))~~ means every corporation, company, association, joint stock, partnership, and person, their lessees, trustees, or receivers appointed by any court, and every city or town making available facilities to provide commercial mobile radio services, as defined by 47 U.S.C. Sec. 332(d)(1), or cellular communications services for hire, sale, and both facilities-based and nonfacilities-based resellers, and does not include radio paging providers.

~~((12))~~ (14) "Retail transaction" means the purchase of prepaid wireless telecommunications service from a seller for any purpose other than resale.

~~((13))~~ (15) "Seller" means a person who sells prepaid wireless telecommunications service to another person.

~~((14))~~ (16) "Subscriber" means the retail purchaser of telecommunications service, a competitive telephone service, or interconnected voice over internet protocol service. "Subscriber" does not include a consumer, as defined in this section.

~~((15))~~ (17) "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.

**Sec. 21.** RCW 82.14B.030 and 2013 2nd sp.s. c 8 s 105 are each amended to read as follows:

Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(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 seventy cents per month for each switched access line. The amount of tax must be uniform for each switched access line. Each county must provide notice of the 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. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. The tax must be deposited in the county ~~((enhanced))~~ 911 excise tax account as provided in RCW 82.14B.063.

(2)(a) The legislative authority of a county may also impose a county ~~((enhanced))~~ 911 excise tax on the use of radio access lines:

(i) By subscribers whose place of primary use is located within the county in an amount not exceeding seventy cents per month for each radio access line. The amount of tax must be uniform for each radio access line under this subsection (2)(a)(i); and

(ii) By consumers whose retail transaction occurs within the county in an amount not exceeding seventy cents per retail transaction. The amount of tax must be uniform for each retail transaction under this subsection (2)(a)(ii).

(b) The county must provide notice of the 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. The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid

wireless telecommunications services, on a tax return provided by the department. The tax must be deposited in the county ((enhanced)) 911 excise tax account as provided in RCW 82.14B.063.

(3)(a) The legislative authority of a county may impose a county ((enhanced)) 911 excise tax on the use of interconnected voice over internet protocol service lines in an amount not exceeding seventy cents per month for each interconnected voice over internet protocol service line. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network.

(b) The interconnected voice over internet protocol service company must use the place of primary use of the subscriber to determine which county's ((enhanced)) 911 excise tax applies to the service provided to the subscriber.

(c) The tax imposed under this section must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department.

(d) The tax must be deposited in the county ((enhanced)) 911 excise tax account as provided in RCW 82.14B.063.

(e) To the extent that a local exchange carrier and an interconnected voice over internet protocol service company contractually jointly provide a single service line, only one service company is responsible for remitting the ((enhanced)) 911 excise taxes, and nothing in this section precludes service companies who jointly provide service from agreeing by contract which of them must remit the taxes collected.

(4) Counties imposing a county ((enhanced)) 911 excise tax must provide an annual update to the ((enhanced)) 911 coordinator detailing the proportion of their county ((enhanced)) 911 excise tax that is being spent on:

(a) Efforts to modernize their existing ((enhanced)) 911 communications system; and

(b) ((Enhanced)) 911 operational costs.

(5) A state ((enhanced)) 911 excise tax is imposed on all switched access lines in the state. The amount of tax may not exceed twenty-five cents per month for each switched access line. The tax must be uniform for each switched access line. The tax imposed under this subsection must be remitted to the department by local exchange companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the ((enhanced)) 911 account created in RCW 38.52.540.

(6)(a) A state ((enhanced)) 911 excise tax is imposed on the use of all radio access lines:

(i) By subscribers whose place of primary use is located within the state in an amount of twenty-five cents per month for each radio access line. The tax must be uniform for each radio access line under this subsection (6)(a)(i); and

(ii) By consumers whose retail transaction occurs within the state in an amount of twenty-five cents per retail transaction. The tax must be uniform for each retail transaction under this subsection (6)(a)(ii). Until July 1, 2018, a seller of prepaid wireless telecommunications service may charge an additional five cents per retail transaction as compensation for the cost of collecting and remitting the tax.

(b) The tax imposed under this section must be remitted to the department by radio communications service companies, including those companies that resell radio access lines, and sellers of prepaid wireless telecommunications service, on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the ((enhanced)) 911 account created in RCW 38.52.540. The tax imposed under this section is not subject to the state sales and use tax or any local tax.

(7) For purposes of the state and county ((enhanced)) 911 excise taxes imposed by subsections (2) and (6) of this section, the retail transaction is deemed to occur at the location where the transaction is sourced to under RCW 82.32.520(3)(c).

(8) A state ((enhanced)) 911 excise tax is imposed on all interconnected voice over internet protocol service lines in the state. The amount of tax may not exceed twenty-five cents per month for each interconnected voice over internet protocol service line whose place of primary use is located in the state. The amount of tax must be uniform for each line and must be levied on no more than the number of voice over internet protocol service lines on an account that are capable of simultaneous unrestricted outward calling to the public switched telephone network. The tax imposed under this subsection must be remitted to the department by interconnected voice over internet protocol service companies on a tax return provided by the department. Tax proceeds must be deposited by the treasurer in the ((enhanced)) 911 account created in RCW 38.52.540.

(9) For calendar year 2011, the taxes imposed by subsections (5) and (8) of this section must be set at their maximum rate. By August 31, 2011, and by August 31st of each year thereafter, the state ((enhanced)) 911 coordinator must recommend the level for the next year of the state ((enhanced)) 911 excise tax imposed by subsections (5) and (8) of this section, based on a systematic cost and revenue analysis, to the utilities and transportation commission. The commission must by the following October 31st determine the level of the state ((enhanced)) 911 excise taxes imposed by subsections (5) and (8) of this section for the following year.

**Sec. 22.** RCW 82.14B.040 and 2013 2nd sp.s. c 8 s 103 are each amended to read as follows:

Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Except as provided otherwise in subsection (2) of this section:

(a) The state ((enhanced)) 911 excise tax and the county ((enhanced)) 911 excise tax on switched access lines must be collected from the subscriber by the local exchange company providing the switched access line.

(b) The state ((enhanced)) 911 excise tax and the county ((enhanced)) 911 excise tax on radio access lines must be collected from the subscriber by the radio communications service company, including those companies that resell radio access lines, providing the radio access line to the subscriber, and the seller of prepaid wireless telecommunications service.

(c) The state and county ((enhanced)) 911 excise taxes on interconnected voice over internet protocol service lines must be collected from the subscriber

by the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line to the subscriber.

(d) The amount of the tax must be stated separately on the billing statement which is sent to the subscriber.

(2)(a) The state and county (~~enhanced~~) 911 excise taxes imposed by this chapter must be collected from the consumer by the seller of a prepaid wireless telecommunications service for each retail transaction occurring in this state.

(b) The department must transfer all tax proceeds remitted by a seller under this subsection (2) as provided in RCW 82.14B.030 (2) and (6).

(c) The taxes required by this subsection to be collected by the seller must be separately stated in any sales invoice or instrument of sale provided to the consumer.

**Sec. 23.** RCW 82.14B.042 and 2013 2nd sp.s. c 8 s 104 are each amended to read as follows:

Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1)(a) The state and county (~~enhanced~~) 911 excise taxes imposed by this chapter must be paid by:

(i) The subscriber to the local exchange company providing the switched access line, the radio communications service company providing the radio access line, or the interconnected voice over internet protocol service company providing the interconnected voice over internet protocol service line; or

(ii) The consumer to the seller of prepaid wireless telecommunications service.

(b) Each local exchange company, each radio communications service company, and each interconnected voice over internet protocol service company must collect from the subscriber, and each seller of prepaid wireless telecommunications service must collect from the consumer, the full amount of the taxes payable. The state and county (~~enhanced~~) 911 excise taxes required by this chapter to be collected by a company or seller, are deemed to be held in trust by the company or seller until paid to the department. Any local exchange company, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service 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, radio communications service company, seller of prepaid wireless telecommunications service, or interconnected voice over internet protocol service company fails to collect the state or county (~~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 company or seller is personally liable to the state for the amount of the tax, unless the company or seller has taken from the buyer in good faith documentation, in a form and manner prescribed by the department, stating that

the buyer is not a subscriber or consumer or is otherwise not liable for the state or county ((~~enhanced~~)) 911 excise tax.

(3) The amount of tax, until paid by the subscriber to the local exchange company, the radio communications service company, the interconnected voice over internet protocol service company, or to the department, or until paid by the consumer to the seller of prepaid wireless telecommunications service, or to the department, constitutes a debt from the subscriber to the company, or from the consumer to the seller. Any company or seller 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 or consumer who refuses to pay any tax due under this chapter is guilty of a misdemeanor. The state and county ((~~enhanced~~)) 911 excise taxes required by this chapter to be collected by the local exchange company, radio communications service company, or interconnected voice over internet protocol service 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, radio communications service company, or interconnected voice over internet protocol service company, or a consumer has failed to pay to the seller of prepaid wireless telecommunications service, the state or county ((~~enhanced~~)) 911 excise taxes imposed by this chapter and the company or seller has not paid the amount of the tax to the department, the department may, in its discretion, proceed directly against the subscriber or consumer 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 or consumer to pay the tax to the company or seller, regardless of when the tax is collected by the department. Tax under this chapter is due as provided under RCW 82.14B.061.

**Sec. 24.** RCW 82.14B.050 and 1981 c 160 s 5 are each amended to read as follows:

The proceeds of any tax collected under this chapter shall be used by the state or county only for the ((~~emergency services communication system~~)) 911 emergency communications system and its administrative and operational costs.

**Sec. 25.** RCW 82.14B.060 and 2010 1st sp.s. c 19 s 8 are each amended to read as follows:

A county legislative authority imposing a tax under this chapter must establish by ordinance all necessary and appropriate procedures for the administration of the county ((~~enhanced~~)) 911 excise taxes by the department. A county legislative authority imposing a tax under this chapter must provide the department notification of the imposition of the tax or a change in the tax no less than seventy-five days before the effective date of the imposition of the tax or the change in the tax.

**Sec. 26.** RCW 82.14B.061 and 2010 1st sp.s. c 19 s 9 are each amended to read as follows:

(1) The department must administer and adopt rules as may be necessary to enforce and administer the state and county ((~~enhanced~~)) 911 excise taxes imposed or authorized 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 and county (~~(enhanced)~~) 911 excise taxes.

(2) The state and county (~~(enhanced)~~) 911 excise taxes imposed or authorized by this chapter, along with reports and returns on forms prescribed by the department, are due at the same time the taxpayer reports other taxes under RCW 82.32.045. If no other taxes are reported under RCW 82.32.045, the taxpayer must remit tax on an annual basis in accordance with RCW 82.32.045.

(3) The department 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.

(4) The state and county (~~(enhanced)~~) 911 excise taxes imposed or authorized by this chapter are in addition to any taxes imposed upon the same persons under chapters 82.08, 82.12, and 82.14 RCW.

(5) Returns must be filed electronically using the department's online tax filing service or other method of electronic reporting as the department may authorize as provided in RCW 82.32.080.

**Sec. 27.** RCW 82.14B.063 and 2010 1st sp.s. c 19 s 4 are each amended to read as follows:

(1) Counties imposing the (~~(enhanced)~~) 911 excise tax under RCW 82.14B.030 must contract with the department for the administration and collection of the tax. The department may deduct a percentage amount, as provided by contract, of no more than two percent of the (~~(enhanced)~~) 911 excise taxes collected to cover administration and collection expenses incurred by the department. If a county imposes (~~(an enhanced)~~) a 911 excise tax with an effective date of January 1, 2011, the county must contract with the department for the administration and collection of the tax by October 15, 2010.

(2) The remainder of any portion of the county (~~(enhanced)~~) 911 excise tax under RCW 82.14B.030 that is collected by the department must be deposited in the county (~~(enhanced)~~) 911 excise tax account hereby created in the custody of the state treasurer. Expenditures from the account may be used only for distribution to counties imposing the (~~(enhanced)~~) 911 excise tax. Only the director of the department or his or her designee may authorize expenditures from the account. The account is not subject to allotment procedures under chapter 43.88 RCW, and an appropriation is not required for expenditures.

**Sec. 28.** RCW 82.14B.065 and 2010 1st sp.s. c 19 s 5 are each amended to read as follows:

(1) All moneys that accrue in the county (~~(enhanced)~~) 911 excise tax account created in RCW 82.14B.063 must be distributed monthly to the counties in the amount of the taxes collected on behalf of each county, minus the administration and collection fee retained by the department as provided in RCW 82.14B.063.

(2) If a county imposes by resolution or ordinance (~~(an enhanced)~~) a 911 excise tax that is in excess of the maximum allowable county (~~(enhanced)~~) 911 excise tax provided in RCW 82.14B.030, the ordinance or resolution may not be considered void in its entirety, but only with respect to that portion of the (~~(enhanced)~~) 911 excise tax that is in excess of the maximum allowable tax.

**Sec. 29.** RCW 82.14B.150 and 2010 1st sp.s. c 19 s 10 are each amended to read as follows:

(1) A local exchange company, radio communications service company, or interconnected voice over internet protocol service company must 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 company filing returns on a cash receipts basis is not required to pay tax on debt subject to credit or refund under subsection (2) of this section.

(2) A local exchange company, radio communications service company, or interconnected voice over internet protocol service company is entitled to a credit or refund for state and county ((enhanced)) 911 excise taxes previously paid on bad debts, as that term is used in 26 U.S.C. Sec. 166, as amended or renumbered as of January 1, 2003.

**Sec. 30.** RCW 82.14B.200 and 2013 2nd sp.s. c 8 s 106 are each amended to read as follows:

Subject to the enactment into law of the 2013 amendments to RCW 82.08.0289 in section 107, chapter 8, Laws of 2013 2nd sp. sess., the 2013 amendments to RCW 80.36.430 in section 108, chapter 8, Laws of 2013 2nd sp. sess., and the 2013 amendments to RCW 43.20A.725 in section 109, chapter 8, Laws of 2013 2nd sp. sess.:

(1) Unless a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company has taken from the buyer documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax, the burden of proving that a sale of the use of a switched access line, radio access line, or interconnected voice over internet protocol service line was not a sale to a subscriber, consumer, or was not otherwise subject to the tax is upon the person who made the sale.

(2) If a seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company does not receive documentation, in a form and manner prescribed by the department, stating that the buyer is not a subscriber, consumer, or is otherwise not liable for the tax at the time of the sale, have such documentation on file at the time of the sale, or obtain such documentation from the buyer within a reasonable time after the sale, the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company remains liable for the tax as provided in RCW 82.14B.042, unless the seller, local exchange company, radio communications service company, or interconnected voice over internet protocol service company can demonstrate facts and circumstances according to rules adopted by the department that show the sale was properly made without payment of the state or county ((enhanced)) 911 excise tax.

(3) The penalty imposed by RCW 82.32.291 may not be assessed on state or county ((enhanced)) 911 excise taxes due but not paid as a result of the improper use of documentation stating that the buyer is not a subscriber or consumer or is otherwise not liable for the state or county ((enhanced)) 911 excise tax. This subsection does not prohibit or restrict the application of other penalties authorized by law.



**Sec. 31.** RCW 82.14B.210 and 1998 c 304 s 11 are each amended 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 RCW 82.14B.042, 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 RCW 82.14B.042, 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.

NEW SECTION. **Sec. 32.** RCW 38.52.530 (Enhanced 911 advisory committee) and 2010 1st sp.s. c 19 § 16, 2010 1st sp.s. c 7 s 51, 2006 c 210 s 1, 2002 c 341 s 3, 2000 c 34 s 1, 1997 c 49 s 7, & 1991 c 54 s 5 are each repealed.

Passed by the House March 7, 2022.

Passed by the Senate February 25, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 204

[Substitute House Bill 1706]

### DRAYAGE TRUCK OPERATORS—ACCESS TO RESTROOM FACILITIES

AN ACT Relating to truck drivers ability to access restroom facilities; adding a new section to chapter 70.54 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 70.54 RCW to read as follows:

(1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Drayage truck operator" means the driver of any in-use on-road vehicle with a gross vehicle weight rating greater than 33,000 pounds operating on or transgressing through port or intermodal rail yard property for the purpose of loading, unloading, or transporting cargo, including containerized, bulk, or break-bulk goods.

(b)(i) "Terminal operator" means the business entity operating a marine terminal for loading and unloading cargo to and from marine vessels.

(ii) "Terminal operator" includes the port if the port is directly operating the marine terminal in loading and unloading cargo to and from marine vessels.

(2) A terminal operator must provide a sufficient number of restrooms for use by drayage truck operators in areas of the terminal that drayage truck operators typically have access to, such as inside the gate and truck queuing lots. Restrooms may include fixed bathrooms with flush toilets or portable chemical toilets. At least one restroom provided by the terminal operator must be a private space suitable for and dedicated to expressing breast milk.

(3) A terminal operator is deemed in compliance with this section if the terminal operator:

(a) Allows drayage truck operators access to existing restrooms while the drayage truck operators are on port property in areas of the terminal that drayage truck operators typically have access to and when access does not pose an obvious safety risk to the drayage truck operators and other workers in the area and does not violate federal terminal security requirements;

(b) When necessary, provides additional restrooms at locations where there is the most need. To determine need, the terminal operator must assess the use and accessibility of existing restrooms and conduct a survey of drayage truck operators; and

(c) Has a policy that allows drayage truck operators to leave their vehicles at reasonable times and locations for purposes of accessing restrooms.

(4) Restrooms for drayage truck operators must be located in areas where access would not pose an obvious health or safety risk to the drayage truck operators or other workers in the area.

(5)(a) The departments of health and labor and industries have jurisdiction to enforce this section.

(b) The department of health may issue a warning letter to the port terminal operator for a first violation of this section, informing the port terminal operator of the requirements of this section. A port terminal operator that violates this section after receiving a warning letter is guilty of a class 2 civil infraction under chapter 7.80 RCW.

(c) Failure of a terminal operator to comply with this section is a violation of chapter 49.17 RCW.

(d) The departments may not take duplicate enforcement actions against an individual or business for violations arising from the same conduct.

Passed by the House March 7, 2022.

Passed by the Senate March 2, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 205

[Substitute House Bill 1728]

### TOTAL COST OF INSULIN WORK GROUP—MODIFICATION

AN ACT Relating to reauthorizing and amending dates for the total cost of insulin work group; amending RCW 70.14.160; creating a new section; and providing an expiration date.

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

**Sec. 1.** RCW 70.14.160 and 2020 c 346 s 2 are each amended to read as follows:

(1) The total cost of insulin work group is established. The work group membership must consist of the insurance commissioner or designee and the following members appointed by the governor:

(a) A representative from the prescription drug purchasing consortium described in RCW 70.14.060;

(b) A representative from the pharmacy quality assurance commission;

(c) A representative from an association representing independent pharmacies;

~~(d) A representative from an association representing chain pharmacies;~~

~~(e) A representative from each health carrier offering at least one health plan in a commercial market in the state;~~

~~(f) A representative from each health carrier offering at least one health plan to state or public school employees in the state;~~

~~(g))~~ A representative from an association representing health carriers;

~~((h))~~ (e) A representative from the public employees' benefits board or the school employees' benefits board;

~~((i))~~ (f) A representative from the health care authority;

~~((j))~~ (g) A representative from ~~((a))~~ an association representing pharmacy benefit ~~((manager that contracts with state purchasers))~~ managers;

~~((k))~~ (h) A representative from a drug distributor or wholesaler that distributes or sells insulin in the state;

~~((l))~~ (i) A representative from a state agency that purchases health care services and drugs for a selected population;

~~((m))~~ (j) A representative from the attorney general's office with expertise in prescription drug purchasing; ~~((and))~~

~~((n))~~ (k) A representative from an organization representing diabetes patients who is living with diabetes; and

(l) Four members of the public living with diabetes.

(2) The work group must review and design strategies to ~~((reduce))~~;

(a) Reduce the cost of and total expenditures on insulin in this state. Strategies the work group must consider include, but are not limited to, a state agency becoming a licensed drug wholesaler, a state agency becoming a registered pharmacy benefit manager, and a state agency purchasing prescription drugs on behalf of the state directly from other states or in coordination with other states; and

(b) Provide a once yearly 30-day supply of insulin to individuals on an emergency basis. The strategies identified by the work group shall include recommendations on eligibility criteria, patient access, program monitoring, and pharmacy reimbursement, if applicable.

(3) Staff support for the work group shall be provided by the health care authority.

(4) By December 1, (~~(2020)~~) 2022, the work group must submit a preliminary report detailing strategies to reduce the cost of and total expenditures on insulin for patients, health carriers, payers, and the state. The work group must submit a final report by July 1, (~~(2021)~~) 2023, to the governor and the legislature. The final report must include any statutory changes necessary to implement the strategies.

(5) This section expires December 1, (~~(2022)~~) 2024.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 206

[Engrossed Second Substitute House Bill 1736]

### STATE STUDENT LOAN PROGRAM

AN ACT Relating to establishing a state student loan program; reenacting and amending RCW 43.79A.040; and adding a new chapter to Title 28B RCW.

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

NEW SECTION. Sec. 1. (1) The legislature finds that college students continue to borrow in order to fund their higher education, despite an increase in access to state financial aid. In Washington state, estimates for the number of borrowers carrying student loan debt are around 800,000 with an average balance around \$33,500, resulting in a total outstanding balance of \$29.4 billion. Student loan debt outpaces other sources of consumer debt, such as credit card and vehicle debt. While research shows that earning a postsecondary credential positively impacts a person's earning potential, high student loan debt erodes much of this benefit.

(2) The legislature recognizes that people with student loan debt are less likely to get married and start a family, establish small businesses, and buy homes. High student loan debt negatively impacts a person's credit score and their debt-to-income ratio, which impacts their ability to qualify for a mortgage. However, student loan debt does not impact all borrowers the same.

(3) Student loan borrowers who struggle the most are typically lower income, first generation, and students of color. Data from the national center for education statistics of a 12-year longitudinal study based on students who began their education in the 2003-04 academic year found the following for students who defaulted: Almost 90 percent had received a Pell grant at one point; 70

percent were first generation college students; 40 percent were in the bottom quarter of income distribution; and 30 percent were African American.

(4) The legislature recognizes though that student loans are beneficial for students who have no other way to pay for college or have expenses beyond tuition and fees. Student loans can open up postsecondary education opportunities for many and help boost the state's economy by increasing the number of qualified graduates to fulfill workforce shortages. However, the legislature finds that high interest rates that accumulate while the student is in college negatively impact the student's ability to prosper financially and contribute to the state's economy after graduation. The legislature also recognizes that there is very little financial aid available to assist students pursuing graduate studies, despite the state's high demand for qualified professionals in fields with workforce shortages such as behavioral health, nursing, software development, teaching, and more. Therefore, the legislature intends to support students pursuing higher education by establishing a state student loan program that is more affordable than direct federal student loans and private loans. The legislature intends to offer student loans to state residents with financial need who are pursuing undergraduate and high-demand graduate studies at a subsidized, one percent interest rate. The legislature intends for the Washington state student loan program to align with the Washington college grant program, recognizing that student loans are secondary forms of financial aid that often cover expenses beyond tuition. Based on the feasibility of the state student loan program recommendations developed by the Washington student achievement council, in consultation with the Washington state investment board, and the office of the state treasurer, the legislature intends to finance the Washington state student loan program with a one-time \$150,000,000 appropriation to cover annual student loan originations and expenses until repayments are substantial enough to support the program on an ongoing basis.

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

(1) "Borrower" means an eligible student who has received a student loan under the Washington student loan program.

(2) "Eligible expenses" means reasonable expenses associated with the costs of acquiring a postsecondary education such as tuition, fees, books, equipment, room and board, and other expenses as determined by the office.

(3) "Eligible graduate program" means an advanced academic degree in a specialized field of study that has a workforce shortage or is considered high demand, as determined by the office.

(4) "Eligible student" means a student who:

(a) Meets the definition of "resident student" under RCW 28B.15.012(2) (a) through (e);

(b) Has a median family income of 100 percent or less of the state median family income;

(c) Is enrolled in an institution of higher education in an eligible undergraduate or graduate program on at least a half-time basis; and

(d) Has completed an annual application for financial aid as approved by the office.

(5) "Eligible undergraduate program" means a postsecondary education program that leads to a certificate, associate's degree, or bachelor's degree.

(6) "Gift aid" means federal, state, institutional, or private financial aid provided for educational purposes with no obligation of repayment. "Gift aid" does not include student loans or work-study programs.

(7) "Institutions of higher education" includes institutions of higher education authorized to participate in state financial aid programs in accordance with chapter 28B.92 RCW.

(8) "Office" means the office of student financial assistance established under chapter 28B.76 RCW.

(9) "Program" means the Washington student loan program.

(10) "Student loan" means a loan that is approved by the office and awarded to an eligible student to pay for eligible expenses.

**NEW SECTION. Sec. 3.** (1) The Washington student achievement council, in consultation with the office of the state treasurer and the state investment board shall design a student loan program to assist students who need additional financial support to obtain postsecondary education.

(2) At a minimum, the program design must make recommendations about the following features of a state student loan program and implementation plan:

(a) A low interest rate that is below current federal subsidized student loan interest rates, with one option being a one percent interest rate;

(b) The distribution of loans between graduate students and undergraduate students;

(c) The terms of the loans, including:

(i) Loan limits;

(ii) Grace periods, including grace periods for active duty members of the national guard who may lose eligibility when being called up for active duty; and

(iii) Minimum postsecondary enrollment standards;

(d) The terms and administration of a repayment program, including:

(i) Repayment options such as standard loan repayment contracts and the length of the repayment contracts;

(ii) Income-based repayment plans; and

(iii) Terms of loan forgiveness;

(e) The types and characteristics of borrowers permitted to participate in the program including family income, degree and credential types, and other borrower characteristics. The program must prioritize low-income borrowers; and

(f) The design and administration of an appeals process.

(3) In the design of the program, the Washington student achievement council may recommend contracting with one or more state-based financial institutions regulated by either chapter 31.12 or 30A.04 RCW to provide loan origination and may contract with a third-party entity to provide loan servicing for the program. The Washington student achievement council must use an open and competitive bid process in the selection of one or more state-based financial institutions for loan origination and servicing for the program. A third-party entity providing loan servicing shall comply with all of the requirements for student education loan servicers under chapter 31.04 RCW.

(4) The Washington student achievement council shall contract with an independent actuary to conduct an analysis on the sustainability of the program

design, including the ability of the program to operate as self-sustaining if issuing one percent interest rate loans.

(5) The Washington student achievement council shall provide a report on the design, sustainability, and implementation plan for the program to the governor and the higher education committees of the legislature by December 1, 2022, in accordance with RCW 43.01.036.

**NEW SECTION. Sec. 4.** (1) The Washington student loan program is created to assist students who need additional financial support to obtain postsecondary education. Beginning in the 2024-25 academic year, the office may award student loans under the program to eligible students from the funds available in section 7 of this act.

(2) The program shall be administered by the office. To the extent practicable, the program design must include the recommendations for program design as provided in the report required under section 3 of this act. Student loans shall not be issued unless the program design recommended in section 3 of this act is forecasted by an independent actuary to be self-sustaining and the interest rates for the loans issued under the program do not exceed one percent.

(3) The office is responsible for providing administrative support to execute the duties and responsibilities provided in this chapter. The duties and responsibilities include:

(a) Ensure institutions of higher education have a policy for awarding student loans under the program that prioritizes funding for eligible students who have greater unmet financial need, are lowest income, are first generation college students, and who have received loans under the program in prior years;

(b) Issue low-interest student loans;

(c) Define the terms of repayment;

(d) Collect and manage repayments from borrowers;

(e) Establish an appeals process;

(f) Exercise discretion to revise repayment obligations in certain cases, such as economic hardship or disability;

(g) Publicize the program; and

(h) Adopt necessary rules.

(4) The office is responsible for establishing and administering an appeals process that resolves appeals from borrowers within ninety days of receipt.

**NEW SECTION. Sec. 5.** The office shall contract with one or more state-based financial institutions regulated by either chapter 31.12 RCW or chapter 30A.04 RCW to provide loan origination and may contract with a third-party entity to provide loan servicing for the program. A third-party entity providing loan servicing shall comply with all of the requirements for student education loan servicers under chapter 31.04 RCW.

**NEW SECTION. Sec. 6.** (1) The office shall collect data on the program in collaboration with the institutions of higher education. The data must include, but is not limited to:

(a) The number of eligible students who were awarded a student loan;

(b) The number of borrowers;

(c) The average borrowed annual and total balances;

(d) Borrower demographics;

(e) The institutions of higher education and educational fields of borrowers; and

(f) Repayment statistics, including:

(i) The number of borrowers in active repayment, deferment, delinquency, forbearance, and default;

(ii) The average time it took for borrowers to enter delinquency and default;

(iii) Demographic and educational data of borrowers enrolled in the income-based repayment plan option;

(iv) Demographic and educational data of borrowers in different repayment statuses, including delinquency and default; and

(v) Information about what happened to borrowers who defaulted.

(2) Beginning December 1, 2026, and in compliance with RCW 43.01.036, the office must submit an annual report on the data collected under subsection (1) of this section and any other relevant information regarding the program to the higher education committees of the legislature.

**NEW SECTION. Sec. 7.** The Washington student loan account is created in the custody of the state treasurer. All receipts from the Washington student loan program must be deposited in the account. Expenditures from the account may be used only for administration and the issuance of new student loans. Only the executive director of the Washington student achievement council or the executive director's designee may authorize expenditures from the account. The account is subject to the allotment procedures under chapter 43.88 RCW, moneys in the account may be spent only after appropriation.

**Sec. 8.** RCW 43.79A.040 and 2021 c 175 s 10 and 2021 c 108 s 5 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, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must 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 must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship (~~(faceount)~~) account, the



Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the Washington student loan account, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance 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.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 9.** Sections 1 through 7 of this act constitute a new chapter in Title 28B RCW.

Passed by the House March 10, 2022.

Passed by the Senate March 10, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 207

[House Bill 1739]

### PATHOGENS OF EPIDEMIOLOGICAL CONCERN—HOSPITALS

AN ACT Relating to modernizing hospital policies related to pathogens of epidemiological concern; amending RCW 70.41.430; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that a singular focus on methicillin-resistant staphylococcus aureus does not reflect the reality that there are many more pathogens of epidemiological concern. Modernization of state law is needed. Hospitals must prepare and respond effectively to pathogens of epidemiological concern within their facilities through a broad facility risk assessment that identifies pathogens of epidemiological concern that pose risks to patients, health care workers, and visitors. Department of health oversight and surveys will ensure risk assessments are appropriate and current. Lab identified pathogens must be reported to the national healthcare safety network of the United States centers for disease control and prevention pursuant to requirements from the centers for medicare and medicaid services.

**Sec. 2.** RCW 70.41.430 and 2009 c 244 s 1 are each amended to read as follows:

(1) Each hospital licensed under this chapter shall, by January 1, ~~((2010))~~ 2023, adopt a policy regarding ~~((methicillin-resistant staphylococcus aureus))~~ prevention and control of the transmission of pathogens of epidemiological concern. The policy shall, at a minimum, contain the following elements:

~~((a))~~ A requirement to test any patient for methicillin-resistant staphylococcus aureus who is a member of a patient population identified as appropriate to test based on the hospital's risk assessment for methicillin-resistant staphylococcus aureus;

~~(b) A requirement that a patient in the hospital's adult or pediatric, but not neonatal, intensive care unit be tested for methicillin-resistant staphylococcus aureus within twenty-four hours of admission unless the patient has been previously tested during that hospital stay or has a known history of methicillin-resistant staphylococcus aureus;~~

~~(c) Appropriate procedures to help prevent patients who test positive for methicillin-resistant staphylococcus aureus from transmitting to other patients. For purposes of this subsection, "appropriate procedures" include, but are not limited to, isolation or cohorting of patients colonized or infected with methicillin-resistant staphylococcus aureus. In a hospital where patients, whose methicillin-resistant staphylococcus aureus status is either unknown or uncolonized, may be roomed with colonized or infected patients, patients must be notified they may be roomed with patients who have tested positive for methicillin-resistant staphylococcus aureus; and~~

~~(d) A requirement that every patient who has a methicillin-resistant staphylococcus aureus infection receive oral and written instructions regarding aftercare and precautions to prevent the spread of the infection to others.)) (a) A facility risk assessment to identify pathogens of epidemiological concern that considers elements such as the probability of occurrence as determined via surveillance, potential impact, and measures the hospital has implemented to mitigate the risk to patients, health care workers, and visitors; and~~

(b) Appropriate evidence-based procedures and intervention strategies to identify and help prevent patients from transmitting pathogens of epidemiological concern to other patients and health care workers.

~~(2) A hospital that has identified ((a hospitalized patient who has a diagnosis of methicillin-resistant staphylococcus aureus shall report the infection to the department using the department's comprehensive hospital abstract reporting system. When making its report, the hospital shall use codes used by the)) through appropriate testing a patient who has a pathogen of epidemiological concern that is required to be reported to the national healthcare safety network of the United States centers for disease control and prevention shall report the event as required by the United States centers for medicare and medicaid services((-when available)).~~

(3) For the purposes of this section "pathogens of epidemiological concern" means infectious agents that have one or more of the following characteristics:

(a) A propensity for transmission within health care facilities based on published reports from the centers for disease control and prevention and the occurrence of temporal or geographic clusters of two or more patients;

(b) Antimicrobial resistance implications;

(c) Association with serious clinical disease or increased morbidity and mortality; or

(d) A newly discovered or reemerging pathogen.

Passed by the House February 9, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 208

[House Bill 1748]

## VICTIMS OF HUMAN TRAFFICKING—ELIGIBILITY FOR CERTAIN ASSISTANCE PROGRAMS

AN ACT Relating to aged, blind, or disabled program eligibility for victims of human trafficking; amending RCW 74.04.805 and 74.62.030; and providing an effective date.

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

**Sec. 1.** RCW 74.04.805 and 2020 c 322 s 1 are each amended to read as follows:

(1) The department is responsible for determining eligibility for referral for essential needs and housing support under RCW 43.185C.220. Persons eligible are persons who:

(a) Have been determined to be eligible for the pregnant women assistance program under RCW 74.62.030 or are incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days. The standard for incapacity in this subsection, as evidenced by the ninety-day duration standard, is not intended to be as stringent as federal supplemental security income disability standards;

(b) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law, or are victims of human trafficking as defined in RCW 74.04.005;

(c)(i) Have furnished the department with their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number must be made prior to authorization of benefits, and the social security number must be provided to the department upon receipt;

(ii) This requirement does not apply to victims of human trafficking as defined in RCW 74.04.005 if they have not been issued a social security number.

(d)(i) Have countable income as described in RCW 74.04.005 at or below four hundred twenty-eight dollars for a married couple or at or below three hundred thirty-nine dollars for a single individual; or

(ii) Have income that meets the standard established by the department, who are eligible for the pregnant women assistance program;

(e) Do not have countable resources in excess of those described in RCW 74.04.005; and

(f) Are not eligible for federal aid assistance, other than basic food benefits transferred electronically and medical assistance.

(2) Recipients of aged, blind, or disabled assistance program benefits who meet other eligibility requirements in this section are eligible for a referral for essential needs and housing support services within funds appropriated for the department of commerce.

(3) Recipients of pregnant women assistance program benefits who meet other eligibility requirements in this section are eligible for referral for essential needs and housing support services, within funds appropriated for the department of commerce, for twenty-four consecutive months from the date the department determines pregnant women assistance program eligibility.

(4) The following persons are not eligible for a referral for essential needs and housing support:

(a) Persons who refuse or fail to cooperate in obtaining federal aid assistance, without good cause;

(b) Persons who refuse or fail without good cause to participate in ~~((drug or alcohol))~~ substance use treatment if an assessment by a certified ~~((chemical dependency counselor))~~ substance use disorder professional indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in ~~((drug or alcohol dependency))~~ substance use treatment, when needed outpatient ~~((drug or alcohol))~~ treatment is not available to the person in the county of ~~((his or her))~~ their residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(c) Persons who are fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or who are violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(5) For purposes of determining whether a person is incapacitated from gainful employment under subsection (1) of this section:

(a) The department shall adopt by rule medical criteria for incapacity determinations to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information; and

(b) The process implementing the medical criteria must involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(6) For purposes of reviewing a person's continuing eligibility and in order to remain eligible for the program, persons who have been found to have an incapacity from gainful employment must demonstrate that there has been no material improvement in their medical or mental health condition. The department may discontinue benefits when there was specific error in the prior determination that found the person eligible by reason of incapacitation.

(7) The department must review the cases of all persons who have received benefits under the essential needs and housing support program for twelve consecutive months, and at least annually after the first review, to determine whether they are eligible for the aged, blind, or disabled assistance program.

**Sec. 2.** RCW 74.62.030 and 2018 c 48 s 2 are each amended to read as follows:

(1)(a) The aged, blind, or disabled assistance program shall provide financial grants to persons in need who:

(i) Are not eligible to receive federal aid assistance, other than basic food benefits transferred electronically and medical assistance;

(ii) Meet the eligibility requirements of subsection (3) of this section; and

(iii) Are aged, blind, or disabled. For purposes of determining eligibility for assistance for the aged, blind, or disabled assistance program, the following definitions apply:

(A) "Aged" means age sixty-five or older.

(B) "Blind" means statutorily blind as defined for the purpose of determining eligibility for the federal supplemental security income program.

(C) "Disabled" means likely to meet the federal supplemental security income disability standard. In making this determination, the department should give full consideration to the cumulative impact of an applicant's multiple impairments, an applicant's age, and vocational and educational history.

In determining whether a person is disabled, the department may rely on, but is not limited to, the following:

(I) A previous disability determination by the social security administration or the disability determination service entity within the department; or

(II) A determination that an individual is eligible to receive optional categorically needy medicaid as a disabled person under the federal regulations at 42 C.F.R. Parts 435, Secs. 201(a)(3) and 210.

(b) The following persons are not eligible for the aged, blind, or disabled assistance program:

(i) Persons who are not able to engage in gainful employment due primarily to ~~((alcohol or drug addiction))~~ a substance use disorder. These persons shall be referred to appropriate assessment, treatment, or shelter~~((or supplemental security income referral services as authorized under chapter 74.50 RCW))~~ services. Referrals shall be made at the time of application or at the time of eligibility review. This subsection may not be construed to prohibit the department from granting aged, blind, or disabled assistance benefits to ~~((alcoholics and drug addicts))~~ persons with a substance use disorder who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the aged, blind, or disabled assistance program; or

(ii) Persons for whom there has been a final determination of ineligibility based on age, blindness, or disability for federal supplemental security income benefits.

(c) Persons may receive aged, blind, or disabled assistance benefits and essential needs and housing program support under RCW 43.185C.220 concurrently while pending application for federal supplemental security income benefits. The monetary value of any aged, blind, or disabled assistance benefit that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(2) The pregnant women assistance program shall provide financial grants to persons who:

(a) Are not eligible to receive federal aid assistance other than basic food benefits or medical assistance; and

(b) Are pregnant and in need, based upon the current income and resource standards of the federal temporary assistance for needy families program, but are ineligible for federal temporary assistance for needy families benefits for a reason other than failure to cooperate in program requirements; and

(c) Meet the eligibility requirements of subsection (3) of this section.

(3) To be eligible for the aged, blind, or disabled assistance program under subsection (1) of this section or the pregnant women assistance program under subsection (2) of this section, a person must:

(a) Be a citizen or alien lawfully admitted for permanent residence or otherwise residing in the United States under color of law, or be a victim of human trafficking as defined in RCW 74.04.005;

(b) Meet the income and resource standards described in RCW 74.04.805(1) (d) and (e);

(c)(i) Have furnished the department (~~(his or her)~~) with their social security number. If the social security number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of benefits, and the social security number shall be provided to the department upon receipt;

(ii) This requirement does not apply to victims of human trafficking as defined in RCW 74.04.005 if they have not been issued a social security number;

(d) Not have refused or failed without good cause to participate in (~~(drug or alcohol)~~) substance use treatment if an assessment by a certified (~~(chemical dependency counselor)~~) substance use disorder professional indicates a need for such treatment. Good cause must be found to exist when a person's physical or mental condition, as determined by the department, prevents the person from participating in (~~(drug or alcohol dependency)~~) substance use treatment, when needed outpatient (~~(drug or alcohol)~~) treatment is not available to the person in the county of (~~(his or her)~~) their residence or when needed inpatient treatment is not available in a location that is reasonably accessible for the person; and

(e) Not have refused or failed to cooperate in obtaining federal aid assistance, without good cause.

(4) Referrals for essential needs and housing support under RCW 43.185C.220 shall be provided to persons found eligible under RCW 74.04.805.

(5) No person may be considered an eligible individual for benefits under this section with respect to any month if during that month the person:

(a) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(b) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(6) The department must share client data for individuals eligible for essential needs and housing support with the department of commerce and designated essential needs and housing support entities as required under RCW 43.185C.230.

**NEW SECTION, Sec. 3.** This act takes effect July 1, 2022.

Passed by the House March 8, 2022.

Passed by the Senate February 25, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 209

[Second Substitute House Bill 1751]

## HAZING—VARIOUS PROVISIONS

AN ACT Relating to hazing prevention and reduction at institutions of higher education; amending RCW 28B.10.900; adding new sections to chapter 28B.10 RCW; and creating new sections.

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

**Sec. 1.** RCW 28B.10.900 and 1993 c 514 s 1 are each amended to read as follows:

As used in RCW 28B.10.901 and 28B.10.902, "hazing" includes any ~~((method of))~~ act committed as part of a person's recruitment, initiation ((into)), pledging, admission into, or affiliation with a student organization, athletic team, or living group, or any pastime or amusement engaged in with respect to such an organization, athletic team, or living group that causes, or is likely to cause, bodily danger or physical harm, or serious ((mental)) psychological or emotional harm, to any student or other person attending a public or private institution of higher education or other postsecondary educational institution in this state, including causing, directing, coercing, or forcing a person to consume any food, liquid, alcohol, drug, or other substance which subjects the person to risk of such harm, regardless of the person's willingness to participate. "Hazing" does not include customary athletic events or other similar contests or competitions.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Each public and private institution of higher education shall prohibit in its code of conduct hazing off campus as well as on campus.

(2) Beginning with the 2022 fall term, each public and private institution of higher education shall provide students with an educational program on hazing and the dangers of and prohibition on hazing, which shall include information regarding hazing awareness, prevention, intervention, and the institution's policy on hazing. The educational program may be offered in person or electronically. The institution must incorporate the educational program as part of new student orientation sessions. The educational program must be posted on each institution's public website for parents, legal guardians, and volunteers to view.

(3) Institutional materials on student rights and responsibilities given to student organizations, athletic teams, or living groups, either electronically or in hard copy form, shall include a statement on the institution's antihazing policy and on the dangers of hazing.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28B.10 RCW to read as follows:

Each public institution of higher education shall establish a hazing prevention committee to promote and address hazing prevention. The committee shall have a minimum of six members including a designated chair appointed by the president of the institution. Fifty percent of the committee positions shall include students currently attending the higher education institution with at least one position filled by a student from a student organization, athletic team, or living group. The other fifty percent of the committee positions shall include at least one faculty or staff member and one parent or legal guardian of a student currently enrolled at the institution. Student input shall be considered for



committee membership. A student who is a member of a student organization, athletic team, or living group that was affiliated with a finding of a hazing violation within the last twelve months may not participate in or be a member of the hazing prevention committee.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Beginning with the 2022-23 academic year, each public and private institution of higher education shall maintain and publicly report actual findings of violations by any student organization, athletic team, or living group of the public or private institution of higher education's code of conduct, antihazing policies, or state or federal laws relating to hazing or offenses related to alcohol, drugs, sexual assault, or physical assault.

(2) The report shall include the following:

(a) The name of the student organization, athletic team, or living group;

(b) The date the investigation was initiated;

(c) The date on which the investigation ended with a finding that a violation occurred;

(d) A description of the incident or incidents, including the date of the initial violation, and the violations, findings, and sanctions placed on the student organization, athletic team, or living group;

(e) The details of the sanction or sanctions imposed, including the beginning and end dates of the sanction or sanctions; and

(f) The date the student organization, athletic team, or living group was charged with a violation.

(3) Investigations that do not result in a finding of formal violations of the student code of conduct or state or federal law shall not be included in the report. The report shall not include any personal or identifying information of individual student members and shall be subject to the requirements of the federal family education rights and privacy act of 1974, 20 U.S.C. Sec. 1232g.

(4) Public and private institutions of higher education shall make reports under this section available on their websites in a prominent location clearly labeled and easily accessible from the institution's website.

(5) Each public and private institution of higher education shall maintain reports as they are updated for five years and shall post them on their respective websites at least 45 calendar days before the start of each fall academic term and at least 10 days before the start of all other academic terms.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Beginning in the 2022 fall academic term, each public and private institution of higher education shall provide hazing prevention education on the signs and dangers of hazing as well as the institution's prohibition on hazing to employees, including student employees, either in person or electronically. The prevention education shall be provided to employees at the beginning of each academic year and for new employees at the beginning of each academic term.

(2) If, as a result of observations or information received in the course of employment or volunteer service, any employee, including a student employee, or volunteer at a public or private institution of higher education has reasonable cause to believe that hazing has occurred, the employee or volunteer shall report

the incident, or cause a report to be made, to a designated authority at the institution. The employee or volunteer shall make the report at the first opportunity to do so.

(3) "Reasonable cause" means a person who witnesses hazing or receives a credible written or oral report alleging hazing or potential or planned hazing activity.

(4) A person who witnesses hazing or has reasonable cause to believe hazing has occurred or will occur and makes a report in good faith may not be sanctioned or punished for the violation of hazing unless the person is directly engaged in the planning, directing, or act of hazing reported.

(5) Nothing in this section shall preclude a person from independently reporting hazing or suspected hazing activity to law enforcement.

(6) As used in this section, "employee" means a person who is receiving wages from the institution of higher education and is in a position with direct ongoing contact with students in a supervisory role or position of authority. "Employee" does not include a person employed as medical staff or with an affiliated organization, entity, or extension of a postsecondary educational institution, unless the employee has a supervisory role or position of authority over students. "Employee" does not include confidential employees.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28B.10 RCW to read as follows:

(1) Social fraternity and sorority organizations shall notify the public or private institution of higher education before chartering, rechartering, opening, or reopening a local chapter or operating at the public or private institution of higher education.

(2) Social fraternity and sorority organizations shall notify the public or private institution of higher education when the organization instigates an investigation of a local chapter at the public or private institution of higher education for hazing or other activity that includes an element of hazing, such as furnishing alcohol to minors. The organization shall provide the results of such investigation and a copy of the full findings report to the public or private institution of higher education's student conduct office.

(3) Beginning in the 2022 fall academic term, any local social fraternity or sorority chapter seeking to obtain or maintain registration with any public or private institution of higher education in the state must certify in writing and provide weblinks to that institution showing that the landing pages of all websites owned or maintained by the local chapter contain a full list for the previous five years of all findings of violations of antihazing policies, state or federal laws relating to hazing, alcohol, drugs, sexual assault, or physical assault, or the institution's code of conduct against the local chapter.

(4) Failure of a social fraternity or sorority organization to comply with subsections (1) through (3) of this section shall result in automatic loss of recognition until such time that the organization comes into compliance with those subsections.

**NEW SECTION. Sec. 7.** This act may be known and cited as the Sam's law act.

NEW SECTION. **Sec. 8.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 8, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 210

[Substitute House Bill 1773]

### BEHAVIORAL HEALTH DISORDERS—ASSISTED OUTPATIENT TREATMENT—VARIOUS PROVISIONS

AN ACT Relating to assisted outpatient treatment for persons with behavioral health disorders; amending RCW 71.05.148, 71.05.150, 71.05.150, 71.05.156, 71.05.212, 71.05.230, 71.05.240, 71.05.240, 71.05.245, 71.05.280, 71.05.290, 71.05.365, 71.05.585, 10.77.175, 71.05.590, 71.05.590, 71.05.595, 71.24.045, and 71.05.740; reenacting and amending RCW 71.05.020, 71.05.020, 71.05.201, 71.05.212, 71.05.320, 71.05.320, 71.34.755, and 71.24.045; reenacting and amending 2021 c 264 s 24 and 2021 c 263 s 21 (uncodified); adding a new section to chapter 71.34 RCW; creating new sections; providing effective dates; providing a contingent effective date; and providing expiration dates.

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

**Sec. 1.** RCW 71.05.020 and 2021 c 264 s 21 and 2021 c 263 s 12 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(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) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

(5) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder

services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to: Hospitals licensed under chapter 70.41 RCW; evaluation and treatment facilities as defined in this section; community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025; licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW; approved substance use disorder treatment programs as defined in this section; secure withdrawal management and stabilization facilities as defined in this section; and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025;

(12) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(13) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(14) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(15) "Department" means the department of health;

(16) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(17) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(18) "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, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(19) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(20) "Director" means the director of the authority;

(21) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(22) "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;

(23) "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 licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. 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 of social and health services 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;

(24) "Gravely disabled" means a condition in which a person, as a result of a behavioral health 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;

(25) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(26) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

(27) "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 behavioral health facility, or in confinement as a result of a criminal conviction;

(28) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(29) "In need of assisted outpatient ((behavioral health)) treatment" ((means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person

~~presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time))~~ refers to a person who meets the criteria for assisted outpatient treatment established under RCW 71.05.148;

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(31) "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;

(32) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(33) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(34) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient ((behavioral health)) treatment order under RCW 71.05.148;

(35) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(36) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(37) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

(38) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(39) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(40) "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;

(41) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(42) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(43) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(44) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(45) "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;

(46) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(47) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(48) "Release" means legal termination of the commitment under the provisions of this chapter;

(49) "Resource management services" has the meaning given in chapter 71.24 RCW;

(50) "Secretary" means the secretary of the department of health, or his or her designee;

(51) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(52) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(53) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(54) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(55) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(56) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not



include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(57) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(58) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(59) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

**Sec. 2.** RCW 71.05.020 and 2021 c 264 s 23 and 2021 c 263 s 14 are each reenacted and amended to read as follows:

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

(1) "Admission" or "admit" means a decision by a physician, physician assistant, or psychiatric advanced registered nurse practitioner that a person should be examined or treated as a patient in a hospital;

(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) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(4) "Approved substance use disorder treatment program" means a program for persons with a substance use disorder provided by a treatment program certified by the department as meeting standards adopted under chapter 71.24 RCW;

(5) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(6) "Authority" means the Washington state health care authority;

(7) "Behavioral health disorder" means either a mental disorder as defined in this section, a substance use disorder as defined in this section, or a co-occurring mental disorder and substance use disorder;

(8) "Behavioral health service provider" means a public or private agency that provides mental health, substance use disorder, or co-occurring disorder

services to persons with behavioral health disorders as defined under this section and receives funding from public sources. This includes, but is not limited to: Hospitals licensed under chapter 70.41 RCW; evaluation and treatment facilities as defined in this section; community mental health service delivery systems or community behavioral health programs as defined in RCW 71.24.025; licensed or certified behavioral health agencies under RCW 71.24.037; facilities conducting competency evaluations and restoration under chapter 10.77 RCW; approved substance use disorder treatment programs as defined in this section; secure withdrawal management and stabilization facilities as defined in this section; and correctional facilities operated by state and local governments;

(9) "Co-occurring disorder specialist" means an individual possessing an enhancement granted by the department of health under chapter 18.205 RCW that certifies the individual to provide substance use disorder counseling subject to the practice limitations under RCW 18.205.105;

(10) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(11) "Community behavioral health agency" has the same meaning as "licensed or certified behavioral health agency" defined in RCW 71.24.025;

(12) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(13) "Crisis stabilization unit" means a short-term facility or a portion of a facility licensed or certified by the department, such as an evaluation and treatment facility or a hospital, which has been designed to assess, diagnose, and treat individuals experiencing an acute crisis without the use of long-term hospitalization;

(14) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(15) "Department" means the department of health;

(16) "Designated crisis responder" means a mental health professional appointed by the county, by an entity appointed by the county, or by the authority in consultation with a federally recognized Indian tribe or after meeting and conferring with an Indian health care provider, to perform the duties specified in this chapter;

(17) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

(18) "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, physician assistant working with a supervising psychiatrist, psychologist, psychiatric advanced registered nurse practitioner, or social worker, and such other developmental disabilities professionals as may be defined by rules adopted by the secretary of the department of social and health services;

(19) "Developmental disability" means that condition defined in RCW 71A.10.020(5);

(20) "Director" means the director of the authority;

(21) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(22) "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;

(23) "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 licensed or certified as such by the department. The authority may certify single beds as temporary evaluation and treatment beds under RCW 71.05.745. 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 of social and health services 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;

(24) "Gravely disabled" means a condition in which a person, as a result of a behavioral health 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 from safe behavior 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;

(25) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and in raising their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy. The habilitative process shall be undertaken with recognition of the risk to the public safety presented by the person being assisted as manifested by prior charged criminal conduct;

(26) "Hearing" means any proceeding conducted in open court that conforms to the requirements of RCW 71.05.820;

(27) "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 behavioral health facility, or in confinement as a result of a criminal conviction;

(28) "Imminent" means the state or condition of being likely to occur at any moment or near at hand, rather than distant or remote;

(29) "In need of assisted outpatient ((behavioral health)) treatment" ((means that a person, as a result of a behavioral health disorder: (a) Has been committed by a court to detention for involuntary behavioral health treatment during the preceding thirty six months; (b) is unlikely to voluntarily participate in outpatient treatment without an order for less restrictive alternative treatment, based on a history of nonadherence with treatment or in view of the person's current behavior; (c) is likely to benefit from less restrictive alternative treatment; and (d) requires less restrictive alternative treatment to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled

~~within a reasonably short period of time))~~ refers to a person who meets the criteria for assisted outpatient treatment established under RCW 71.05.148;

(30) "Individualized service plan" means a plan prepared by a developmental disabilities professional with other professionals as a team, for a person with developmental disabilities, which shall state:

(a) The nature of the person's specific problems, prior charged criminal behavior, and habilitation needs;

(b) The conditions and strategies necessary to achieve the purposes of habilitation;

(c) The intermediate and long-range goals of the habilitation program, with a projected timetable for the attainment;

(d) The rationale for using this plan of habilitation to achieve those intermediate and long-range goals;

(e) The staff responsible for carrying out the plan;

(f) Where relevant in light of past criminal behavior and due consideration for public safety, the criteria for proposed movement to less-restrictive settings, criteria for proposed eventual discharge or release, and a projected possible date for discharge or release; and

(g) The type of residence immediately anticipated for the person and possible future types of residences;

(31) "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;

(32) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(33) "Legal counsel" means attorneys and staff employed by county prosecutor offices or the state attorney general acting in their capacity as legal representatives of public behavioral health service providers under RCW 71.05.130;

(34) "Less restrictive alternative treatment" means a program of individualized treatment in a less restrictive setting than inpatient treatment that includes the services described in RCW 71.05.585. This term includes: Treatment pursuant to a less restrictive alternative treatment order under RCW 71.05.240 or 71.05.320; treatment pursuant to a conditional release under RCW 71.05.340; and treatment pursuant to an assisted outpatient (~~behavioral health~~) treatment order under RCW 71.05.148;

(35) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington;

(36) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by a person upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by a person upon another, as evidenced by behavior which has caused harm, substantial pain, or which places another person or persons in reasonable fear of harm to themselves or others; or (iii) physical harm will be inflicted by a person upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The person has threatened the physical safety of another and has a history of one or more violent acts;

(37) "Medical clearance" means a physician or other health care provider has determined that a person is medically stable and ready for referral to the designated crisis responder;

(38) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on a person's cognitive or volitional functions;

(39) "Mental health professional" means a psychiatrist, psychologist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(40) "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;

(41) "Physician assistant" means a person licensed as a physician assistant under chapter 18.71A RCW;

(42) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, or hospital, or approved substance use disorder treatment program, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders;

(43) "Professional person" means a mental health professional, substance use disorder professional, or designated crisis responder and shall also mean a physician, physician assistant, psychiatric advanced registered nurse practitioner, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(44) "Psychiatric advanced registered nurse practitioner" means a person who is licensed as an advanced registered nurse practitioner pursuant to chapter 18.79 RCW; and who is board certified in advanced practice psychiatric and mental health nursing;

(45) "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;

(46) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(47) "Public agency" means any evaluation and treatment facility or institution, secure withdrawal management and stabilization facility, approved substance use disorder treatment program, or hospital which is conducted for, or includes a department or ward conducted for, the care and treatment of persons with behavioral health disorders, if the agency is operated directly by federal, state, county, or municipal government, or a combination of such governments;

(48) "Release" means legal termination of the commitment under the provisions of this chapter;

(49) "Resource management services" has the meaning given in chapter 71.24 RCW;

(50) "Secretary" means the secretary of the department of health, or his or her designee;

(51) "Secure withdrawal management and stabilization facility" means a facility operated by either a public or private agency or by the program of an agency which provides care to voluntary individuals and individuals involuntarily detained and committed under this chapter for whom there is a likelihood of serious harm or who are gravely disabled due to the presence of a substance use disorder. Secure withdrawal management and stabilization facilities must:

(a) Provide the following services:

(i) Assessment and treatment, provided by certified substance use disorder professionals or co-occurring disorder specialists;

(ii) Clinical stabilization services;

(iii) Acute or subacute detoxification services for intoxicated individuals; and

(iv) Discharge assistance provided by certified substance use disorder professionals or co-occurring disorder specialists, including facilitating transitions to appropriate voluntary or involuntary inpatient services or to less restrictive alternatives as appropriate for the individual;

(b) Include security measures sufficient to protect the patients, staff, and community; and

(c) Be licensed or certified as such by the department of health;

(52) "Severe deterioration from safe behavior" means that a person will, if not treated, suffer or continue to suffer severe and abnormal mental, emotional, or physical distress, and this distress is associated with significant impairment of judgment, reason, or behavior;

(53) "Social worker" means a person with a master's or further advanced degree from a social work educational program accredited and approved as provided in RCW 18.320.010;

(54) "Substance use disorder" means a cluster of cognitive, behavioral, and physiological symptoms indicating that an individual continues using the substance despite significant substance-related problems. The diagnosis of a substance use disorder is based on a pathological pattern of behaviors related to the use of the substances;

(55) "Substance use disorder professional" means a person certified as a substance use disorder professional by the department of health under chapter 18.205 RCW;

(56) "Therapeutic court personnel" means the staff of a mental health court or other therapeutic court which has jurisdiction over defendants who are dually diagnosed with mental disorders, including court personnel, probation officers, a court monitor, prosecuting attorney, or defense counsel acting within the scope of therapeutic court duties;

(57) "Treatment records" include registration and all other records concerning persons who are receiving or who at any time have received services for behavioral health disorders, which are maintained by the department of social and health services, the department, the authority, behavioral health administrative services organizations and their staffs, managed care organizations and their staffs, and by treatment facilities. Treatment records include mental health information contained in a medical bill including but not

limited to mental health drugs, a mental health diagnosis, provider name, and dates of service stemming from a medical service. Treatment records do not include notes or records maintained for personal use by a person providing treatment services for the department of social and health services, the department, the authority, behavioral health administrative services organizations, managed care organizations, or a treatment facility if the notes or records are not available to others;

(58) "Triage facility" means a short-term facility or a portion of a facility licensed or certified by the department, which is designed as a facility to assess and stabilize an individual or determine the need for involuntary commitment of an individual, and must meet department residential treatment facility standards. A triage facility may be structured as a voluntary or involuntary placement facility;

(59) "Video," unless the context clearly indicates otherwise, means the delivery of behavioral health services through the use of interactive audio and video technology, permitting real-time communication between a person and a designated crisis responder, for the purpose of evaluation. "Video" does not include the use of audio-only telephone, facsimile, email, or store and forward technology. "Store and forward technology" means use of an asynchronous transmission of a person's medical information from a mental health service provider to the designated crisis responder which results in medical diagnosis, consultation, or treatment;

(60) "Violent act" means behavior that resulted in homicide, attempted suicide, injury, or substantial loss or damage to property.

**Sec. 3.** RCW 71.05.148 and 2019 c 446 s 21 are each amended to read as follows:

~~((This section establishes a process for initial evaluation and filing of a petition for assisted outpatient behavioral health treatment, but however does not preclude the filing of a petition for assisted outpatient behavioral health treatment following a period of inpatient detention in appropriate circumstances:))~~

~~(1) ((The designated crisis responder)) A person is in need of assisted outpatient treatment if the court finds by clear, cogent, and convincing evidence pursuant to a petition filed under this section that:~~

~~(a) The person has a behavioral health disorder;~~

~~(b) Based on a clinical determination and in view of the person's treatment history and current behavior, at least one of the following is true:~~

~~(i) The person is unlikely to survive safely in the community without supervision and the person's condition is substantially deteriorating; or~~

~~(ii) The person is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or a likelihood of serious harm to the person or to others;~~

~~(c) The person has a history of lack of compliance with treatment for his or her behavioral health disorder that has:~~

~~(i) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating hospitalization of the person, or the person's receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, provided that the 36-month period shall be~~

extended by the length of any hospitalization or incarceration of the person that occurred within the 36-month period;

(ii) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating emergency medical care or hospitalization for behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies, or a significant factor in behavior which resulted in the person's incarceration in a state or local correctional facility; or

(iii) Resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the person or another within the 48 months prior to the filing of the petition, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred during the 48-month period;

(d) Participation in an assisted outpatient treatment program would be the least restrictive alternative necessary to ensure the person's recovery and stability; and

(e) The person will benefit from assisted outpatient treatment.

(2) The following individuals may directly file a petition for less restrictive alternative treatment on the basis that a person is in need of assisted outpatient treatment;

(a) The director of a hospital where the person is hospitalized or the director's designee;

(b) The director of a behavioral health service provider providing behavioral health care or residential services to the person or the director's designee;

(c) The person's treating mental health professional or substance use disorder professional or one who has evaluated the person;

(d) A designated crisis responder;

(e) A release planner from a corrections facility; or

(f) An emergency room physician.

(3) A court order for less restrictive alternative treatment on the basis that the person is in need of assisted outpatient treatment may be effective for up to 18 months. The petitioner must personally interview the person, unless the person refuses an interview, ~~((and))~~ to determine whether the person will voluntarily receive appropriate ~~((evaluation and))~~ treatment ~~((at a mental health facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program)).~~

~~((2))~~ (4) The ~~((designated crisis responder))~~ petitioner must ~~((investigate and evaluate the))~~ allege specific facts ~~((alleged and))~~ based on personal observation, evaluation, or investigation, and must consider the reliability or credibility of any person providing information~~((The designated crisis responder may spend up to forty-eight hours to complete the investigation, provided that the person may not be held for investigation for any period except as authorized by RCW 71.05.050 or 71.05.153))~~ material to the petition.

~~((3) If the designated crisis responder finds that the person is in need of assisted outpatient behavioral health treatment, they may file a petition requesting the court to enter an order for up to ninety days of less restrictive alternative treatment.))~~ (5) The petition must include:

(a) A statement of the circumstances under which the person's condition was made known and ~~((stating that there is evidence, as a result of the designated~~



~~erisis responder's))~~ the basis for the opinion, from personal observation or investigation, that the person is in need of assisted outpatient ((behavioral health)) treatment((, and stating the)). The petitioner must state which specific facts ~~((known as a result of))~~ come from personal observation ((or investigation, upon which the designated crisis responder bases)) and specify what other sources of information the petitioner has relied upon to form this belief;

(b) A declaration from a physician, physician assistant, advanced registered nurse practitioner, or the person's treating mental health professional or substance use disorder professional, who has examined the person no more than 10 days prior to the submission of the petition and who is willing to testify in support of the petition, or who alternatively has made appropriate attempts to examine the person within the same period but has not been successful in obtaining the person's cooperation, and who is willing to testify to the reasons they believe that the person meets the criteria for assisted outpatient treatment. If the declaration is provided by the person's treating mental health professional or substance use disorder professional, it must be cosigned by a supervising physician, physician assistant, or advanced registered nurse practitioner who certifies that they have reviewed the declaration;

(c) The declarations of additional witnesses, if any, supporting the petition for assisted outpatient ((behavioral health)) treatment;

~~((e) A designation of retained counsel for the person or, if counsel is appointed, the name, business address, and telephone number of the attorney appointed to represent the person;))~~

(d) The name of an agency, provider, or facility ((which agreed)) that agrees to ((assume the responsibility of providing)) provide less restrictive alternative treatment if the petition is granted by the court; and

(e) ((A summons to appear in court at a specific time and place within five judicial days for a probable cause hearing, except as provided in subsection (4) of this section)) If the person is detained in a state hospital, inpatient treatment facility, jail, or correctional facility at the time the petition is filed, the anticipated release date of the person and any other details needed to facilitate successful reentry and transition into the community.

~~((4) If the person is in the custody of jail or prison at the time of the investigation, a petition for assisted outpatient behavioral health treatment may be used to facilitate continuity of care after release from custody or the diversion of criminal charges as follows:~~

~~(a) If the petition is filed in anticipation of the person's release from custody, the summons may be for a date up to five judicial days following the person's anticipated release date, provided that a clear time and place for the hearing is provided; or~~

~~(b) The hearing may be held prior to the person's release from custody, provided that (i) the filing of the petition does not extend the time the person would otherwise spend in the custody of jail or prison; (ii) the charges or custody of the person is not a pretext to detain the person for the purpose of the involuntary commitment hearing; and (iii) the person's release from custody must be expected to swiftly follow the adjudication of the petition. In this circumstance, the time for hearing is shortened to three judicial days after the filing of the petition.~~

~~(5) The petition must be served upon the person and the person's counsel with a notice of applicable rights. Proof of service must be filed with the court.)~~

(6)(a) Upon receipt of a petition meeting all requirements of this section, the court shall fix a date for a hearing:

(i) No sooner than three days or later than seven days after the date of service or as stipulated by the parties or, upon a showing of good cause, no later than 30 days after the date of service; or

(ii) If the respondent is hospitalized at the time of filing of the petition, before discharge of the respondent and in sufficient time to arrange for a continuous transition from inpatient treatment to assisted outpatient treatment.

(b) A copy of the petition and notice of hearing shall be served, in the same manner as a summons, on the petitioner, the respondent, the qualified professional whose affidavit accompanied the petition, a current provider, if any, and a surrogate decision maker or agent under chapter 71.32 RCW, if any.

(c) If the respondent has a surrogate decision maker or agent under chapter 71.32 RCW who wishes to provide testimony at the hearing, the court shall afford the surrogate decision maker or agent an opportunity to testify.

(d) The respondent shall be represented by counsel at all stages of the proceedings.

(e) If the respondent fails to appear at the hearing after notice, the court may conduct the hearing in the respondent's absence; provided that the respondent's counsel is present.

(f) If the respondent has refused to be examined by the qualified professional whose affidavit accompanied the petition, the court may order a mental examination of the respondent. The examination of the respondent may be performed by the qualified professional whose affidavit accompanied the petition. If the examination is performed by another qualified professional, the examining qualified professional shall be authorized to consult with the qualified professional whose affidavit accompanied the petition.

(g) If the respondent has refused to be examined by a qualified professional and the court finds reasonable grounds to believe that the allegations of the petition are true, the court may issue a written order directing a peace officer who has completed crisis intervention training to detain and transport the respondent to a provider for examination by a qualified professional. A respondent detained pursuant to this subsection shall be detained no longer than necessary to complete the examination and in no event longer than 24 hours.

(7) If the petition involves a person whom the petitioner or behavioral health administrative services organization knows, or has reason to know, is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the behavioral health administrative services organization shall notify the tribe and Indian health care provider. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible.

~~((6))~~ (8) A petition for assisted outpatient ((behavioral health)) treatment filed under this section ((must)) shall be adjudicated under RCW 71.05.240.

(9) After January 1, 2023, a petition for assisted outpatient treatment must be filed on forms developed by the administrative office of the courts.

**NEW SECTION. Sec. 4.** A new section is added to chapter 71.34 RCW to read as follows:

(1) An adolescent is in need of assisted outpatient treatment if the court finds by clear, cogent, and convincing evidence in response to a petition filed under this section that:

(a) The adolescent has a behavioral health disorder;

(b) Based on a clinical determination and in view of the adolescent's treatment history and current behavior, at least one of the following is true:

(i) The adolescent is unlikely to survive safely in the community without supervision and the adolescent's condition is substantially deteriorating; or

(ii) The adolescent is in need of assisted outpatient treatment in order to prevent a relapse or deterioration that would be likely to result in grave disability or a likelihood of serious harm to the adolescent or to others;

(c) The adolescent has a history of lack of compliance with treatment for his or her behavioral health disorder that has:

(i) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating hospitalization of the adolescent, or the adolescent's receipt of services in a forensic or other mental health unit of a state correctional facility or local correctional facility, provided that the 36-month period shall be extended by the length of any hospitalization or incarceration of the adolescent that occurred within the 36-month period;

(ii) At least twice within the 36 months prior to the filing of the petition been a significant factor in necessitating emergency medical care or hospitalization for behavioral health-related medical conditions including overdose, infected abscesses, sepsis, endocarditis, or other maladies, or a significant factor in behavior which resulted in the adolescent's incarceration in a state or local correctional facility; or

(iii) Resulted in one or more violent acts, threats, or attempts to cause serious physical harm to the adolescent or another within the 48 months prior to the filing of the petition, provided that the 48-month period shall be extended by the length of any hospitalization or incarceration of the person that occurred during the 48-month period;

(d) Participation in an assisted outpatient treatment program would be the least restrictive alternative necessary to ensure the adolescent's recovery and stability; and

(e) The adolescent will benefit from assisted outpatient treatment.

(2) The following individuals may directly file a petition for less restrictive alternative treatment on the basis that an adolescent is in need of assisted outpatient treatment:

(a) The director of a hospital where the adolescent is hospitalized or the director's designee;

(b) The director of a behavioral health service provider providing behavioral health care or residential services to the adolescent or the director's designee;

(c) The adolescent's treating mental health professional or substance use disorder professional or one who has evaluated the person;

(d) A designated crisis responder;

(e) A release planner from a juvenile detention or rehabilitation facility; or

(f) An emergency room physician.

(3) A court order for less restrictive alternative treatment on the basis that the adolescent is in need of assisted outpatient treatment may be effective for up to 18 months. The petitioner must personally interview the adolescent, unless the adolescent refuses an interview, to determine whether the adolescent will voluntarily receive appropriate treatment.

(4) The petitioner must allege specific facts based on personal observation, evaluation, or investigation, and must consider the reliability or credibility of any person providing information material to the petition.

(5) The petition must include:

(a) A statement of the circumstances under which the adolescent's condition was made known and the basis for the opinion, from personal observation or investigation, that the adolescent is in need of assisted outpatient treatment. The petitioner must state which specific facts come from personal observation and specify what other sources of information the petitioner has relied upon to form this belief;

(b) A declaration from a physician, physician assistant, or advanced registered nurse practitioner, or the adolescent's treating mental health professional or substance use disorder professional, who has examined the adolescent no more than 10 days prior to the submission of the petition and who is willing to testify in support of the petition, or who alternatively has made appropriate attempts to examine the adolescent within the same period but has not been successful in obtaining the adolescent's cooperation, and who is willing to testify to the reasons they believe that the adolescent meets the criteria for assisted outpatient treatment. If the declaration is provided by the adolescent's treating mental health professional or substance use disorder professional, it must be cosigned by a supervising physician, physician assistant, or advanced registered nurse practitioner who certifies that they have reviewed the declaration;

(c) The declarations of additional witnesses, if any, supporting the petition for assisted outpatient treatment;

(d) The name of an agency, provider, or facility that agrees to provide less restrictive alternative treatment if the petition is granted by the court; and

(e) If the adolescent is detained in a state hospital, inpatient treatment facility, or juvenile detention or rehabilitation facility at the time the petition is filed, the anticipated release date of the adolescent and any other details needed to facilitate successful reentry and transition into the community.

(6)(a) Upon receipt of a petition meeting all requirements of this section, the court shall fix a date for a hearing:

(i) No sooner than three days or later than seven days after the date of service or as stipulated by the parties or, upon a showing of good cause, no later than 30 days after the date of service; or

(ii) If the adolescent is hospitalized at the time of filing of the petition, before discharge of the adolescent and in sufficient time to arrange for a continuous transition from inpatient treatment to assisted outpatient treatment.

(b) A copy of the petition and notice of hearing shall be served, in the same manner as a summons, on the petitioner, the adolescent, the qualified professional whose affidavit accompanied the petition, a current provider, if any, and a surrogate decision maker or agent under chapter 71.32 RCW, if any.

(c) If the adolescent has a surrogate decision maker or agent under chapter 71.32 RCW who wishes to provide testimony at the hearing, the court shall afford the surrogate decision maker or agent an opportunity to testify.

(d) The adolescent shall be represented by counsel at all stages of the proceedings.

(e) If the adolescent fails to appear at the hearing after notice, the court may conduct the hearing in the adolescent's absence; provided that the adolescent's counsel is present.

(f) If the adolescent has refused to be examined by the qualified professional whose affidavit accompanied the petition, the court may order a mental examination of the adolescent. The examination of the adolescent may be performed by the qualified professional whose affidavit accompanied the petition. If the examination is performed by another qualified professional, the examining qualified professional shall be authorized to consult with the qualified professional whose affidavit accompanied the petition.

(g) If the adolescent has refused to be examined by a qualified professional and the court finds reasonable grounds to believe that the allegations of the petition are true, the court may issue a written order directing a peace officer who has completed crisis intervention training to detain and transport the adolescent to a provider for examination by a qualified professional. An adolescent detained pursuant to this subsection shall be detained no longer than necessary to complete the examination and in no event longer than 24 hours. All papers in the court file must be provided to the adolescent's designated attorney.

(7) If the petition involves an adolescent whom the petitioner or behavioral health administrative services organization knows, or has reason to know, is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the behavioral health administrative services organization shall notify the tribe and Indian health care provider. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible.

(8) A petition for assisted outpatient treatment filed under this section shall be adjudicated under RCW 71.34.740.

(9) After January 1, 2023, a petition for assisted outpatient treatment must be filed on forms developed by the administrative office of the courts.

**Sec. 5.** RCW 71.05.150 and 2021 c 264 s 1 are each amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, ~~((or that a person is in need of assisted outpatient behavioral health treatment;))~~ the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention ~~((or involuntary outpatient treatment)),~~ if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section ~~((or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148)).~~ Before filing the petition, the designated crisis responder 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, crisis stabilization unit, triage facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2)(a) A superior court judge may issue a warrant to detain a person with a behavioral health disorder to a designated evaluation and treatment facility, a secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program, for a period of not more than one hundred twenty hours for evaluation and treatment upon request of a designated crisis responder, subject to (d) of this subsection, whenever it appears to the satisfaction of the judge that:

(i) There is probable cause to support the petition; and

(ii) The person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) A court may not issue an order to detain a person to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program unless there is an available secure withdrawal management and stabilization facility or approved substance use disorder treatment program that has adequate space for the person.

(e) If the court does not issue an order to detain a person pursuant to this subsection (2), the court shall issue an order to dismiss the initial petition.

(3) The designated crisis responder shall then serve or cause to be served on such person(;) and his or her guardian(, and conservator), if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within one hundred twenty hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the

admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder 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, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(6) In any investigation and evaluation of an individual under ~~((RCW 71.05.150))~~ this section or RCW 71.05.153 in which the designated crisis responder knows, or has reason to know, that the individual is an American Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the designated crisis responder shall notify the tribe and Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible but no later than three hours subject to the requirements in RCW 70.02.230(2)(ee) and (3). A designated crisis responder may restrict the release of information as necessary to comply with 42 C.F.R. Part 2.

**Sec. 6.** RCW 71.05.150 and 2021 c 264 s 2 are each amended to read as follows:

(1) When a designated crisis responder receives information alleging that a person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, ~~((or that a person is in need of assisted outpatient behavioral health treatment;))~~ the designated crisis responder may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention ~~((or involuntary outpatient treatment)),~~ if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention under this section ~~((or a petition for involuntary outpatient behavioral health treatment under RCW 71.05.148)).~~ Before filing the petition, the designated crisis responder 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, crisis stabilization unit, triage facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. As part of the assessment, the designated crisis responder must attempt to ascertain if the person has executed a mental health advance directive under chapter 71.32 RCW. The interview performed by the designated crisis responder may be conducted by video provided that a licensed health care professional or professional person who can adequately and accurately assist with obtaining any necessary information is present with the person at the time of the interview.

(2)(a) A superior court judge may issue a warrant to detain a person with a behavioral health disorder to a designated evaluation and treatment facility, a secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program, for a period of not more than one hundred twenty hours for evaluation and treatment upon request of a designated crisis responder whenever it appears to the satisfaction of the judge that:

(i) There is probable cause to support the petition; and

(ii) The person has refused or failed to accept appropriate evaluation and treatment voluntarily.

(b) The petition for initial detention, signed under penalty of perjury, or sworn telephonic testimony may be considered by the court in determining whether there are sufficient grounds for issuing the order.

(c) The order shall designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(d) If the court does not issue an order to detain a person pursuant to this subsection (2), the court shall issue an order to dismiss the initial petition.

(3) The designated crisis responder shall then serve or cause to be served on such person~~((s))~~ and his or her guardian~~((and conservator))~~, if any, a copy of the order together with a notice of rights, and a petition for initial detention. After service on such person the designated crisis responder shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program, and the designated attorney. The designated crisis responder shall notify the court and the prosecuting attorney that a probable cause hearing will be held within one hundred twenty hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. The person shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(4) The designated crisis responder 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, secure withdrawal management and stabilization facility, or approved substance use disorder treatment program. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of rights and a petition for initial detention.

(5) Tribal court orders for involuntary commitment shall be recognized and enforced in accordance with superior court civil rule 82.5.

(6) In any investigation and evaluation of an individual under ~~((RCW 71.05.150))~~ this section or RCW 71.05.153 in which the designated crisis responder knows, or has reason to know, that the individual is an American



Indian or Alaska Native who receives medical or behavioral health services from a tribe within this state, the designated crisis responder shall notify the tribe and Indian health care provider regarding whether or not a petition for initial detention or involuntary outpatient treatment will be filed. Notification shall be made in person or by telephonic or electronic communication to the tribal contact listed in the authority's tribal crisis coordination plan as soon as possible but no later than three hours subject to the requirements in RCW 70.02.230(2)(ee) and (3). A designated crisis responder may restrict the release of information as necessary to comply with 42 C.F.R. Part 2.

**Sec. 7.** RCW 71.05.156 and 2018 c 291 s 12 are each amended to read as follows:

A designated crisis responder who conducts an evaluation for imminent likelihood of serious harm or imminent danger because of being gravely disabled under RCW 71.05.153 must also evaluate the person under RCW 71.05.150 for likelihood of serious harm or grave disability that does not meet the imminent standard for emergency detention (~~(, and to determine whether the person is in need of assisted outpatient behavioral health treatment)~~).

**Sec. 8.** RCW 71.05.201 and 2020 c 302 s 24 and 2020 c 256 s 304 are each reenacted and amended to read as follows:

(1) If a designated crisis responder decides not to detain a person for evaluation and treatment under RCW 71.05.150 or 71.05.153 or forty-eight hours have elapsed since a designated crisis responder received a request for investigation and the designated crisis responder has not taken action to have the person detained, an immediate family member or guardian (~~(or conservator)~~) of the person, or a federally recognized Indian tribe if the person is a member of such tribe, may petition the superior court for the person's initial detention.

(2) A petition under this section must be filed within ten calendar days following the designated crisis responder investigation or the request for a designated crisis responder investigation. If more than ten days have elapsed, the immediate family member, guardian, or conservator may request a new designated crisis responder investigation.

(3)(a) The petition must be filed in the county in which the designated crisis responder investigation occurred or was requested to occur and must be submitted on forms developed by the administrative office of the courts for this purpose. The petition must be accompanied by a sworn declaration from the petitioner, and other witnesses if desired, describing why the person should be detained for evaluation and treatment. The description of why the person should be detained may contain, but is not limited to, the information identified in RCW 71.05.212.

(b) The petition must contain:

(i) A description of the relationship between the petitioner and the person; and

(ii) The date on which an investigation was requested from the designated crisis responder.

(4) The court shall, within one judicial day, review the petition to determine whether the petition raises sufficient evidence to support the allegation. If the court so finds, it shall provide a copy of the petition to the designated crisis responder agency with an order for the agency to provide the court, within one

judicial day, with a written sworn statement describing the basis for the decision not to seek initial detention and a copy of all information material to the designated crisis responder's current decision.

(5) Following the filing of the petition and before the court reaches a decision, any person, including a mental health professional, may submit a sworn declaration to the court in support of or in opposition to initial detention.

(6) The court shall dismiss the petition at any time if it finds that a designated crisis responder has filed a petition for the person's initial detention under RCW 71.05.150 or 71.05.153 or that the person has voluntarily accepted appropriate treatment.

(7) The court must issue a final ruling on the petition within five judicial days after it is filed. After reviewing all of the information provided to the court, the court may enter an order for initial detention (~~((or an order instructing the designated crisis responder to file a petition for assisted outpatient behavioral health treatment))~~) if the court finds that: (a) There is probable cause to support a petition for detention (~~((or assisted outpatient behavioral health treatment))~~); and (b) the person has refused or failed to accept appropriate evaluation and treatment voluntarily. The court shall transmit its final decision to the petitioner.

(8) If the court enters an order for initial detention, it shall provide the order to the designated crisis responder agency and issue a (~~((written order for apprehension))~~) warrant. The designated crisis responder agency serving the jurisdiction of the court must collaborate and coordinate with law enforcement regarding apprehensions and detentions under this subsection, including sharing of information relating to risk and which would assist in locating the person. A person may not be detained to jail pursuant to a (~~((written order))~~) warrant issued under this subsection. An order for detention under this section should contain the advisement of rights which the person would receive if the person were detained by a designated crisis responder. An order for initial detention under this section expires one hundred eighty days from issuance.

(9) Except as otherwise expressly stated in this chapter, all procedures must be followed as if the order had been entered under RCW 71.05.150. RCW 71.05.160 does not apply if detention was initiated under the process set forth in this section.

(10) For purposes of this section, "immediate family member" means a spouse, domestic partner, child, stepchild, parent, stepparent, grandparent, or sibling.

**Sec. 9.** RCW 71.05.212 and 2020 c 256 s 305 are each amended to read as follows:

(1) Whenever a designated crisis responder or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

(a) 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;

(b) Historical behavior, including history of one or more violent acts;

(c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and

(d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated crisis responder relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated crisis responder or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient ((behavioral health)) treatment, when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

(4) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated crisis responder or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement.

~~((5) The authority, in consultation with tribes and coordination with Indian health care providers and the American Indian health commission for Washington state, shall establish written guidelines by June 30, 2021, for conducting culturally appropriate evaluations of American Indians or Alaska Natives.))~~

**Sec. 10.** RCW 71.05.212 and 2020 c 302 s 28 and 2020 c 256 s 305 are each reenacted and amended to read as follows:

(1) Whenever a designated crisis responder or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information from credible witnesses and records regarding:

(a) 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;

(b) Historical behavior, including history of one or more violent acts;

(c) Prior determinations of incompetency or insanity under chapter 10.77 RCW; and

(d) Prior commitments under this chapter.

(2) Credible witnesses may include family members, landlords, neighbors, or others with significant contact and history of involvement with the person. If the designated crisis responder relies upon information from a credible witness in reaching his or her decision to detain the individual, then he or she must provide contact information for any such witness to the prosecutor. The designated crisis responder or prosecutor shall provide notice of the date, time, and location of the probable cause hearing to such a witness.

(3) Symptoms and behavior of the respondent which standing alone would not justify civil commitment may support a finding of grave disability or

likelihood of serious harm, or a finding that the person is in need of assisted outpatient (~~behavioral health~~) treatment, when:

(a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration from safe behavior, or one or more violent acts;

(b) These symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and

(c) Without treatment, the continued deterioration of the respondent is probable.

(4) When conducting an evaluation for offenders identified under RCW 72.09.370, the designated crisis responder or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement.

~~((5) The authority, in consultation with tribes and coordination with Indian health care providers and the American Indian health commission for Washington state, shall establish written guidelines by June 30, 2021, for conducting culturally appropriate evaluations of American Indians or Alaska Natives.))~~

**Sec. 11.** RCW 71.05.230 and 2020 c 302 s 34 are each amended to read as follows:

A person detained for one hundred twenty (~~hour~~) hours of evaluation and treatment may be committed for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative treatment. A petition may only be filed if the following conditions are met:

(1) The professional staff of the facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by a behavioral health disorder and results in: (a) A likelihood of serious harm; or (b) the person being gravely disabled; ~~((or (c) the person being in need of assisted outpatient behavioral health treatment.))~~ 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 or under RCW 71.05.745; and

(4)(a)(i) The professional staff of the facility or the designated crisis responder has filed a petition with the court for a fourteen day involuntary detention or a ninety day less restrictive alternative. The petition must be signed by:

(A) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and

(B) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.

(ii) If the petition is for substance use disorder treatment, the petition may be signed by a substance use disorder professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a

psychiatric advanced registered nurse practitioner. The persons signing the petition must have examined the person.

(b) If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of a behavioral health 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 a behavioral health disorder, presents a likelihood of serious harm ~~((;))~~ or is gravely disabled ~~((; or is in need of assisted outpatient behavioral health treatment;))~~ and shall set forth any recommendations for less restrictive alternative treatment services; 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 petition reflects that the person was informed of the loss of firearm rights if involuntarily committed for mental health treatment; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the designated crisis responder may petition for an additional period of either ~~((ninety))~~ 90 days of less restrictive alternative treatment or ~~((ninety))~~ 90 days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide less restrictive alternative treatment is other than the facility providing involuntary treatment, the outpatient facility so designated to provide less restrictive alternative treatment has agreed to assume such responsibility.

**Sec. 12.** RCW 71.05.240 and 2021 c 264 s 8 are each amended to read as follows:

(1) If a petition is filed for ~~((fourteen day))~~ up to 14 days of involuntary treatment ~~((or ninety))~~, 90 days of less restrictive alternative treatment, or 18 months of less restrictive alternative treatment under RCW 71.05.148, the court shall hold a probable cause hearing within ~~((one hundred twenty))~~ 120 hours of the initial detention ~~((of such person as determined in))~~ under RCW 71.05.180, or at a time ~~((determined))~~ scheduled under RCW 71.05.148.

(2) If the petition is for mental health treatment, the court or the prosecutor at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) If the person or his or her attorney alleges, prior to the commencement of the hearing, that the person has in good faith volunteered for treatment, the petitioner must show, by preponderance of the evidence, that the person has not in good faith volunteered for appropriate treatment. In order to qualify as a good

faith volunteer, the person must abide by procedures and a treatment plan as prescribed by a treatment facility and professional staff.

(4)(a) Subject to (b) of this subsection, at the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that ~~((such))~~ a person detained for behavioral health treatment, as the result of a behavioral health disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed ~~((fourteen))~~ 14 days in a facility licensed or certified to provide treatment by the department or under RCW 71.05.745.

(b) A court may only order commitment to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program if there is an available facility with adequate space for the person.

(c) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that ~~((such))~~ a person detained for behavioral health treatment, as the result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(d) If the court finds by a preponderance of the evidence that ~~((such))~~ a person subject to a petition under RCW 71.05.148, as the result of a behavioral health disorder, is in need of assisted outpatient ~~((behavioral health))~~ treatment~~((; and that the person does not present a likelihood of serious harm and is not gravely disabled))~~, the court shall order an appropriate less restrictive alternative course of treatment for up to ~~((ninety days))~~ 18 months.

(5) An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the treatment recommendations of the behavioral health service provider.

(6) The court shall notify the person orally and in writing that if involuntary treatment is sought beyond the ~~((fourteen day))~~ 14-day inpatient or ~~((ninety day))~~ 90-day less restrictive treatment period, the person has the right to a full hearing or jury trial under RCW 71.05.310. If the commitment is for mental health treatment, the court shall ~~((also))~~ notify the person orally and in writing that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

(7) If the court does not issue an order to detain or commit a person under this section, the court shall issue an order to dismiss the petition.

(8) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

**Sec. 13.** RCW 71.05.240 and 2021 c 264 s 9 are each amended to read as follows:

(1) If a petition is filed for (~~fourteen-day~~) up to 14 days of involuntary treatment (~~or ninety~~), 90 days of less restrictive alternative treatment, or 18 months of less restrictive alternative treatment under RCW 71.05.148, the court shall hold a probable cause hearing within (~~one hundred twenty~~) 120 hours of the initial detention (~~of such person as determined in~~) under RCW 71.05.180, or at a time (~~determined~~) scheduled under RCW 71.05.148.

(2) If the petition is for mental health treatment, the court or the prosecutor at the time of the probable cause hearing and before an order of commitment is entered shall inform the person both orally and in writing that the failure to make a good faith effort to seek voluntary treatment as provided in RCW 71.05.230 will result in the loss of his or her firearm rights if the person is subsequently detained for involuntary treatment under this section.

(3) If the person or his or her attorney alleges, prior to the commencement of the hearing, that the person has in good faith volunteered for treatment, the petitioner must show, by preponderance of the evidence, that the person has not in good faith volunteered for appropriate treatment. In order to qualify as a good faith volunteer, the person must abide by procedures and a treatment plan as prescribed by a treatment facility and professional staff.

(4)(a) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that (~~such~~) a person detained for behavioral health treatment, as the result of a behavioral health disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility licensed or certified to provide treatment by the department or under RCW 71.05.745.

(b) At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that (~~such~~) a person detained for behavioral health treatment, as the result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive alternative course of treatment for up to ninety days.

(c) If the court finds by a preponderance of the evidence that (~~such~~) a person subject to a petition under RCW 71.05.148, as the result of a behavioral health disorder, is in need of assisted outpatient (~~behavioral health~~) treatment (~~and that the person does not present a likelihood of serious harm and is not gravely disabled~~), the court shall order an appropriate less restrictive alternative course of treatment for up to (~~ninety days~~) 18 months.

(5) An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the treatment recommendations of the behavioral health service provider.

(6) The court shall notify the person orally and in writing that if involuntary treatment is sought beyond the (~~fourteen-day~~) 14-day inpatient or (~~ninety-day~~) 90-day less restrictive treatment period, such person has the right to a full hearing or jury trial under RCW 71.05.310. If the commitment is for mental

health treatment, the court shall also notify the person orally and in writing that the person is barred from the possession of firearms and that the prohibition remains in effect until a court restores his or her right to possess a firearm under RCW 9.41.047.

(7) If the court does not issue an order to detain or commit a person under this section, the court shall issue an order to dismiss the petition.

(8) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

**Sec. 14.** RCW 71.05.245 and 2018 c 291 s 14 are each amended to read as follows:

(1) In making a determination of whether a person is gravely disabled, presents a likelihood of serious harm, or is in need of assisted outpatient (~~behavioral health~~) treatment in a hearing conducted under RCW 71.05.240 or 71.05.320, the court must consider the symptoms and behavior of the respondent in light of all available evidence concerning the respondent's historical behavior.

(2) Symptoms or behavior which standing alone would not justify civil commitment may support a finding of grave disability or likelihood of serious harm, or a finding that the person is in need of assisted outpatient (~~behavioral health~~) treatment, when: (a) Such symptoms or behavior are closely associated with symptoms or behavior which preceded and led to a past incident of involuntary hospitalization, severe deterioration, or one or more violent acts; (b) these symptoms or behavior represent a marked and concerning change in the baseline behavior of the respondent; and (c) without treatment, the continued deterioration of the respondent is probable.

(3) 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 any evidence before the court regarding whether the person has: (a) A recent history of one or more violent acts; or (b) 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 subsection "recent" refers to the period of time not exceeding three years prior to the current hearing.

**Sec. 15.** RCW 71.05.280 and 2020 c 302 s 41 are each amended to read as follows:

At the expiration of the fourteen-day period of intensive treatment, a person may be committed 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 a behavioral health 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 a behavioral health 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 10.77.086(4), and has committed acts constituting a felony, and as a result of a behavioral health disorder, presents a substantial likelihood of repeating similar acts.

(a) 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 crime;

(b) For any person subject to commitment under this subsection where the charge underlying the finding of incompetence is for a felony classified as violent under RCW 9.94A.030, the court shall determine whether the acts the person committed constitute a violent offense under RCW 9.94A.030; or

(4) Such person is gravely disabled(~~(or~~

(5) ~~Such person is in need of assisted outpatient behavioral health treatment~~)).

**Sec. 16.** RCW 71.05.290 and 2020 c 302 s 42 are each amended to read as follows:

(1) At any time during a person's (~~fourteen~~) 14-day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the designated crisis responder 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)(a)(i) The petition shall summarize the facts which support the need for further commitment and shall be supported by affidavits based on an examination of the patient and signed by:

(A) One physician, physician assistant, or psychiatric advanced registered nurse practitioner; and

(B) One physician, physician assistant, psychiatric advanced registered nurse practitioner, or mental health professional.

(ii) If the petition is for substance use disorder treatment, the petition may be signed by a substance use disorder professional instead of a mental health professional and by an advanced registered nurse practitioner instead of a psychiatric advanced registered nurse practitioner.

(b) 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. If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.086(4), then the professional person in charge of the treatment facility or his or her professional designee or the designated crisis responder may directly file a petition for (~~one hundred eighty day~~) 180-day treatment under RCW 71.05.280(3), or for (~~ninety day~~) 90-day treatment under RCW 71.05.280 (1), (2), or (4)(~~(or (5))~~). No petition for initial detention or (~~fourteen~~) 14-day detention is required before such a petition may be filed.

**Sec. 17.** RCW 71.05.320 and 2021 c 264 s 10 and 2021 c 263 s 2 are each reenacted and amended to read as follows:

(1)(a) Subject to (b) of this subsection, if the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment.

(b) If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. The court may only enter an order for commitment based on a substance use disorder if there is an available approved substance use disorder treatment program with adequate space for the person.

(c) If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for ~~((one hundred eighty day))~~ 180-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ~~((ninety))~~ 90 days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed ~~((one hundred eighty))~~ 180 days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section. ~~((If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.))~~

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a behavioral health disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of a behavioral health disorder or developmental disability, a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled(~~(5- or~~

~~(e) Is in need of assisted outpatient behavioral health treatment~~)).

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, subject to subsection (1)(b) of this section, the court may order the committed person returned for an additional period of treatment not to exceed ~~((one hundred eighty))~~ 180 days from the date of judgment, except as provided in subsection (7) of this section. ~~((If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment.))~~ An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the (~~one hundred eighty day~~) 180-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional (~~one hundred eighty day~~) 180-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive (~~one hundred eighty day~~) 180-day commitments are permissible on the same grounds and pursuant to the same procedures as the original (~~one hundred eighty day~~) 180-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed (~~as provided in~~) under this section may be detained unless a valid order of commitment is in effect. No order of commitment (~~can~~) under this section may exceed (~~one hundred eighty~~) 180 days in length except as provided in subsection (7) of this section.

(9) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

**Sec. 18.** RCW 71.05.320 and 2021 c 264 s 11 and 2021 c 263 s 3 are each reenacted and amended to read as follows:

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department for a further

period of intensive treatment not to exceed ninety days from the date of judgment.

If the order for inpatient treatment is based on a substance use disorder, treatment must take place at an approved substance use disorder treatment program. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment to the custody of the department of social and health services or to a facility certified for ~~((one hundred eighty-day))~~ 180-day treatment by the department or under RCW 71.05.745.

(2) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department of social and health services or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ~~((ninety))~~ 90 days from the date of judgment. If the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed ~~((one hundred eighty))~~ 180 days from the date of judgment. If the court has made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team as provided in subsection (6)(a)(i) of this section.~~((If the court or jury finds that the grounds set forth in RCW 71.05.280(5) have been proven, and provide the only basis for commitment, the court must enter an order for less restrictive alternative treatment for up to ninety days from the date of judgment and may not order inpatient treatment.))~~

(3) An order for less restrictive alternative treatment entered under subsection (2) of this section must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(4) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) or (2) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated crisis responder, files a new petition for involuntary treatment on the grounds that the committed person:

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of a behavioral health disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of a behavioral health disorder or developmental disability, a likelihood of serious harm; or

(c)(i) Is in custody pursuant to RCW 71.05.280(3) and as a result of a behavioral health disorder or developmental disability continues to present a substantial likelihood of repeating acts similar to the charged criminal behavior, when considering the person's life history, progress in treatment, and the public safety.

(ii) In cases under this subsection where the court has made an affirmative special finding under RCW 71.05.280(3)(b), the commitment shall continue for up to an additional one hundred eighty-day period whenever the petition presents prima facie evidence that the person continues to suffer from a behavioral health disorder or developmental disability that results in a substantial likelihood of committing acts similar to the charged criminal behavior, unless the person presents proof through an admissible expert opinion that the person's condition has so changed such that the behavioral health disorder or developmental disability no longer presents a substantial likelihood of the person committing acts similar to the charged criminal behavior. The initial or additional commitment period may include transfer to a specialized program of intensive support and treatment, which may be initiated prior to or after discharge from the state hospital; or

(d) Continues to be gravely disabled(~~or~~

~~(e) Is in need of assisted outpatient behavioral health treatment~~)).

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to prove such conduct again.

If less restrictive alternative treatment is sought, the petition shall set forth any recommendations for less restrictive alternative treatment services.

(5) A new petition for involuntary treatment filed under subsection (4) of this section shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

(6)(a) The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this section are present, the court may order the committed person returned for an additional period of treatment not to exceed ~~((one hundred eighty))~~ 180 days from the date of judgment, except as provided in subsection (7) of this section. ~~((If the court's order is based solely on the grounds identified in subsection (4)(e) of this section, the court may enter an order for less restrictive alternative treatment not to exceed one hundred eighty days from the date of judgment, and may not enter an order for inpatient treatment.))~~ An order for less restrictive alternative treatment must name the behavioral health service provider responsible for identifying the services the person will receive in accordance with RCW 71.05.585, and must include a requirement that the person cooperate with the services planned by the behavioral health service provider.

(i) In cases where the court has ordered less restrictive alternative treatment and has previously made an affirmative special finding under RCW 71.05.280(3)(b), the court shall appoint a multidisciplinary transition team to supervise and assist the person on the order for less restrictive treatment, which shall include a representative of the community behavioral health agency providing treatment under RCW 71.05.585, and a specially trained supervising community corrections officer. The court may omit the appointment of a community corrections officer if it makes a special finding that the appointment of a community corrections officer would not facilitate the success of the person, or the safety of the person and the community under (a)(ii) of this subsection.

(ii) The role of the transition team shall be to facilitate the success of the person on the less restrictive alternative order by monitoring the person's progress in treatment, compliance with court-ordered conditions, and to problem solve around extra support the person may need or circumstances which may arise that threaten the safety of the person or the community. The transition team may develop a monitoring plan which may be carried out by any member of the team. The transition team shall meet according to a schedule developed by the team, and shall communicate as needed if issues arise that require the immediate attention of the team.

(iii) The department of corrections shall collaborate with the department to develop specialized training for community corrections officers under this section. The lack of a trained community corrections officer must not be the cause of delay to entry of a less restrictive alternative order.

(b) At the end of the ~~((one hundred eighty day))~~ 180-day period of commitment, or one-year period of commitment if subsection (7) of this section applies, the committed person shall be released unless a petition for an additional ~~((one hundred eighty day))~~ 180-day period of continued treatment is filed and heard in the same manner as provided in this section. Successive ~~((one hundred eighty day))~~ 180-day commitments are permissible on the same grounds and pursuant to the same procedures as the original ~~((one hundred eighty day))~~ 180-day commitment.

(7) An order for less restrictive treatment entered under subsection (6) of this section may be for up to one year when the person's previous commitment term was for intensive inpatient treatment in a state hospital.

(8) No person committed ~~((as provided in))~~ under this section may be detained unless a valid order of commitment is in effect. No order of commitment ~~((can))~~ under this section may exceed ~~((one hundred eighty))~~ 180 days in length except as provided in subsection (7) of this section.

(9) Nothing in this section precludes the court from subsequently modifying the terms of an order for less restrictive alternative treatment under RCW 71.05.590(3).

**Sec. 19.** RCW 71.05.365 and 2019 c 325 s 3008 are each amended to read as follows:

When a person has been involuntarily committed for treatment to a hospital for a period of ~~((ninety))~~ 90 or ~~((one hundred eighty))~~ 180 days, and the superintendent or professional person in charge of the hospital determines that the person no longer requires active psychiatric treatment at an inpatient level of care, the behavioral health administrative services organization, managed care organization, or agency providing oversight of long-term care or developmental disability services that is responsible for resource management services for the person must work with the hospital to develop an individualized discharge plan, including whether a petition should be filed for less restrictive alternative treatment on the basis that the person is in need of assisted outpatient treatment, and arrange for a transition to the community in accordance with the person's individualized discharge plan within ~~((fourteen))~~ 14 days of the determination.

**Sec. 20.** RCW 71.05.585 and 2021 c 264 s 13 are each amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the less restrictive alternative treatment;
- (c) A psychiatric evaluation, a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan;
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; and
- (h) Notification to the care coordinator assigned in (a) of this subsection if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(2) Less restrictive alternative treatment may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance use disorder counseling;
- (e) Residential treatment;
- (f) Partial hospitalization;
- (g) Intensive outpatient treatment;
- (h) Support for housing, benefits, education, and employment; and
- ~~((g))~~ (i) Periodic court review.

(3) If the person was provided with involuntary medication under RCW 71.05.215 or pursuant to a judicial order during the involuntary commitment period, the less restrictive alternative treatment order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(4) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(5) The care coordinator assigned to a person ordered to less restrictive alternative treatment must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.



(6) A care coordinator may disclose information and records related to mental health services pursuant to RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment.

(7) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated crisis responders that are necessary for enforcement and continuation of less restrictive alternative orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

**Sec. 21.** RCW 71.34.755 and 2021 c 287 s 21 and 2021 c 264 s 16 are each reenacted and amended to read as follows:

(1) Less restrictive alternative treatment, at a minimum, must include the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the less restrictive alternative treatment;
- (c) A psychiatric evaluation, a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan;
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; and
- (h) Notification to the care coordinator assigned in (a) of this subsection if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(2) Less restrictive alternative treatment may include the following additional services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance use disorder counseling;
- (e) Residential treatment;
- (f) Partial hospitalization;
- (g) Intensive outpatient treatment;
- (h) Support for housing, benefits, education, and employment; and
- ~~((g))~~ (i) Periodic court review.

(3) If the minor was provided with involuntary medication during the involuntary commitment period, the less restrictive alternative treatment order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(4) Less restrictive alternative treatment must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(5) The care coordinator assigned to a minor ordered to less restrictive alternative treatment must submit an individualized plan for the minor's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(6) A care coordinator may disclose information and records related to mental health services pursuant to RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment.

(7) For the purpose of this section, "care coordinator" means a clinical practitioner who coordinates the activities of less restrictive alternative treatment. The care coordinator coordinates activities with the designated crisis responders that are necessary for enforcement and continuation of less restrictive alternative treatment orders and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

**Sec. 22.** RCW 10.77.175 and 2021 c 263 s 4 are each amended to read as follows:

(1) Conditional release planning should start at admission and proceed in coordination between the department and the person's managed care organization, or behavioral health administrative services organization if the person is not eligible for medical assistance under chapter 74.09 RCW. If needed, the department shall assist the person to enroll in medical assistance in suspense status under RCW 74.09.670. The state hospital liaison for the managed care organization or behavioral health administrative services organization shall facilitate conditional release planning in collaboration with the department.

(2) Less restrictive alternative treatment pursuant to a conditional release order, at a minimum, includes the following services:

- (a) Assignment of a care coordinator;
- (b) An intake evaluation with the provider of the conditional treatment;
- (c) A psychiatric evaluation or a substance use disorder evaluation, or both;
- (d) A schedule of regular contacts with the provider of the less restrictive alternative treatment services for the duration of the order;
- (e) A transition plan addressing access to continued services at the expiration of the order;
- (f) An individual crisis plan;
- (g) Consultation about the formation of a mental health advance directive under chapter 71.32 RCW; ~~((and))~~
- (h) Appointment of a transition team under RCW 10.77.150; ~~((and))~~ and
- (i) Notification to the care coordinator assigned in (a) of this subsection and to the transition team as provided in RCW 10.77.150 if reasonable efforts to engage the client fail to produce substantial compliance with court-ordered treatment conditions.

(3) Less restrictive alternative treatment pursuant to a conditional release order may additionally include requirements to participate in the following services:

- (a) Medication management;
- (b) Psychotherapy;
- (c) Nursing;
- (d) Substance use disorder counseling;
- (e) Residential treatment;
- (f) Partial hospitalization;
- (g) Intensive outpatient treatment;
- (h) Support for housing, benefits, education, and employment; and
- ~~((g))~~ (i) Periodic court review.

(4) Nothing in this section prohibits items in subsection (2) of this section from beginning before the conditional release of the individual.

(5) If the person was provided with involuntary medication under RCW 10.77.094 or pursuant to a judicial order during the involuntary commitment period, the less restrictive alternative treatment pursuant to the conditional release order may authorize the less restrictive alternative treatment provider or its designee to administer involuntary antipsychotic medication to the person if the provider has attempted and failed to obtain the informed consent of the person and there is a concurring medical opinion approving the medication by a psychiatrist, physician assistant working with a supervising psychiatrist, psychiatric advanced registered nurse practitioner, or physician or physician assistant in consultation with an independent mental health professional with prescribing authority.

(6) Less restrictive alternative treatment pursuant to a conditional release order must be administered by a provider that is certified or licensed to provide or coordinate the full scope of services required under the less restrictive alternative order and that has agreed to assume this responsibility.

(7) The care coordinator assigned to a person ordered to less restrictive alternative treatment pursuant to a conditional release order must submit an individualized plan for the person's treatment services to the court that entered the order. An initial plan must be submitted as soon as possible following the intake evaluation and a revised plan must be submitted upon any subsequent modification in which a type of service is removed from or added to the treatment plan.

(8) A care coordinator may disclose information and records related to mental health treatment under RCW 70.02.230(2)(k) for purposes of implementing less restrictive alternative treatment pursuant to a conditional release order.

(9) For the purpose of this section, "care coordinator" means a representative from the department of social and health services who coordinates the activities of less restrictive alternative treatment pursuant to a conditional release order. The care coordinator coordinates activities with the person's transition team that are necessary for enforcement and continuation of the conditional release order and is responsible for coordinating service activities with other agencies and establishing and maintaining a therapeutic relationship with the individual on a continuing basis.

**Sec. 23.** RCW 71.05.590 and 2021 c 264 s 14 are each amended to read as follows:

(1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release, or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative treatment order or conditional release order. The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the ~~((court))~~ order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer ~~((appropriate))~~ incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be ~~((made to or by))~~ directed to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist the ~~((agency or facility in))~~ entity requesting ~~((this))~~ the hearing and ~~((issuing))~~ issue an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To ~~((cause))~~ detain the person ~~((to be transported by a peace officer, designated crisis responder, or other means to the))~~ for up to 12 hours for evaluation at an agency ((or), facility ((monitoring or)) providing services under the court order, ~~((or to a))~~ triage facility, crisis stabilization unit, emergency department, evaluation and treatment facility, secure withdrawal management and stabilization facility with available space, or an approved substance use disorder treatment program with available space. The ~~((person may be detained at the facility for up to twelve hours for the))~~ purpose of ~~((an))~~ the evaluation is to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when ~~((in the)), based on~~ clinical judgment ~~((of a designated crisis responder or~~

~~the professional person in charge of an agency or facility designated to monitor less restrictive alternative services)), temporary detention is appropriate. The agency, facility, or designated crisis responder may request assistance from a peace officer for the purposes of temporary detention under this subsection (2)(d). This subsection does not limit the ability or obligation of the agency, facility, or designated crisis responder to pursue revocation procedures under subsection (5) of this section in appropriate circumstances; and~~

(e) ~~To initiate revocation procedures under subsection (5) of this section ((or, if the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, initiate initial inpatient detention procedures under subsection (7) of this section)).~~

(3) A court may supervise a person on an order for less restrictive alternative treatment or a conditional release. While the person is under the order, the court may:

(a) Require appearance in court for periodic reviews; and

(b) Modify the order after considering input from the agency or facility designated to provide or facilitate services. The court may not remand the person into inpatient treatment except as provided under subsection (5) of this section, but may take actions under subsection (2)(a) through (d) of this section.

(4) The facility or agency designated to provide outpatient treatment shall notify the secretary of the department of social and health services or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(5)(a) ~~((Except as provided in subsection (7) of this section, a))~~ A designated crisis responder or the secretary of the department of social and health services may, upon their own motion or ((notification by)) upon request of the facility or agency designated to provide outpatient care ((order)), cause a person ((subject to a court order under this chapter)) to be ((apprehended and taken into custody and temporary detention)) detained in an evaluation and treatment facility, ((an)) available secure withdrawal management and stabilization facility with adequate space, or ((an)) available approved substance use disorder treatment program with adequate space(;) in or near the county in which he or she is receiving outpatient treatment~~((Proceedings under this subsection (5) may be initiated without ordering the apprehension and))~~ for the purpose of a hearing for revocation of a less restrictive alternative treatment order or conditional release order under this chapter. The designated crisis responder or secretary of the department of social and health services shall file a petition for revocation within 24 hours and serve the person, their guardian, if any, and their attorney. A hearing for revocation of a less restrictive alternative treatment order or conditional release order may be scheduled without detention of the person.

(b) ~~((Except as provided in subsection (7) of this section, a))~~ A person detained under this subsection (5) must 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 released)) order for less restrictive alternative treatment or conditional release should be revoked, modified, or retained. If the person is not detained, the

hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary of the department of social and health services may ~~((modify or rescind the order at any time prior to commencement of))~~ withdraw its petition for revocation at any time before the court hearing.

(c) ~~((The designated crisis responder or secretary of the department of social and health services shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and conservator, if any. The))~~ A person detained under this subsection (5) has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) ~~((Except as provided in subsection (7) of this section, the))~~ The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the ~~((court))~~ order; (ii) substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a 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 above conditions apply, whether it is appropriate for the court ~~((should))~~ to reinstate or modify the person's less restrictive alternative treatment order or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period must be for ~~((fourteen))~~ 14 days from the revocation hearing if the ~~((outpatient))~~ less restrictive alternative treatment order or conditional release order was based on a petition under RCW 71.05.148, 71.05.160, or 71.05.230. If the court orders detention for inpatient treatment and the ~~((outpatient))~~ less restrictive alternative treatment order or conditional release order was based on a petition under RCW 71.05.290 or 71.05.320, the number of days remaining on the ~~((outpatient))~~ order must be converted to days of inpatient treatment ~~((authorized in the original court order))~~. A court may not ~~((issue an order to))~~ detain a person for inpatient treatment ~~((in))~~ to a secure withdrawal management and stabilization facility or approved substance use disorder treatment program under this subsection unless there is a ~~((secure withdrawal management and stabilization))~~ facility or ~~((approved substance use disorder treatment))~~ program available ~~((and))~~ with adequate space for the person.

(6) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

~~((7)(a) If the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, a designated crisis responder may initiate inpatient detention~~

~~procedures under RCW 71.05.150 or 71.05.153 when appropriate. A designated crisis responder or the secretary may, upon their own motion or notification by the facility or agency designated to provide outpatient care to a person subject to a less restrictive alternative treatment order under RCW 71.05.320 subsequent to an order for assisted outpatient behavioral health treatment entered under RCW 71.05.148, order the person to be apprehended and taken into custody and temporary detention for inpatient evaluation in an evaluation and treatment facility, secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection may be initiated without ordering the apprehension and detention of the person.~~

~~(b) A person detained under this subsection may be held for evaluation for up to one hundred twenty hours, excluding weekends and holidays, pending a court hearing. If the person is not detained, the hearing must be scheduled within one hundred twenty hours of service on the person. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.~~

~~(c) The issues for the court to determine are whether to continue the detention of the person for inpatient treatment or whether the court should reinstate or modify the person's less restrictive alternative order or order the person's detention for inpatient treatment. To continue detention after the one hundred twenty hour period, the court must find that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and, after considering less restrictive alternatives to involuntary detention and treatment, that no such alternatives are in the best interest of the person or others.~~

~~(d) A court may not issue an order to detain a person for inpatient treatment in a secure withdrawal management and stabilization facility or approved substance use disorder program under this subsection unless there is a secure withdrawal management and stabilization facility or approved substance use disorder treatment program available and with adequate space for the person.)~~

**Sec. 24.** RCW 71.05.590 and 2021 c 264 s 15 are each amended to read as follows:

(1) Either an agency or facility designated to monitor or provide services under a less restrictive alternative order or conditional release, or a designated crisis responder, may take action to enforce, modify, or revoke a less restrictive alternative treatment order or conditional release order. The agency, facility, or designated crisis responder must determine that:

(a) The person is failing to adhere to the terms and conditions of the ~~((court))~~ order;

(b) Substantial deterioration in the person's functioning has occurred;

(c) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further evaluation, intervention, or treatment; or

(d) The person poses a likelihood of serious harm.

(2) Actions taken under this section must include a flexible range of responses of varying levels of intensity appropriate to the circumstances and consistent with the interests of the individual and the public in personal

autonomy, safety, recovery, and compliance. Available actions may include, but are not limited to, any of the following:

(a) To counsel or advise the person as to their rights and responsibilities under the court order, and to offer (~~(appropriate)~~) incentives to motivate compliance;

(b) To increase the intensity of outpatient services provided to the person by increasing the frequency of contacts with the provider, referring the person for an assessment for assertive community services, or by other means;

(c) To request a court hearing for review and modification of the court order. The request must be (~~(made to or by)~~) directed to the court with jurisdiction over the order and specify the circumstances that give rise to the request and what modification is being sought. The county prosecutor shall assist (~~(the agency or facility in)~~) entity requesting (~~(this)~~) the hearing and (~~(issuing)~~) issue an appropriate summons to the person. This subsection does not limit the inherent authority of a treatment provider to alter conditions of treatment for clinical reasons, and is intended to be used only when court intervention is necessary or advisable to secure the person's compliance and prevent decompensation or deterioration;

(d) To (~~(cause)~~) detain the person (~~(to be transported by a peace officer, designated crisis responder, or other means to the)~~) for up to 12 hours for evaluation at an agency (~~(or)~~) facility (~~(monitoring or)~~) providing services under the court order, (~~(or to a)~~) triage facility, crisis stabilization unit, emergency department, evaluation and treatment facility, secure withdrawal management and stabilization facility, or an approved substance use disorder treatment program. The (~~(person may be detained at the facility for up to twelve hours for the)~~) purpose of (~~(an)~~) the evaluation is to determine whether modification, revocation, or commitment proceedings are necessary and appropriate to stabilize the person and prevent decompensation, deterioration, or physical harm. Temporary detention for evaluation under this subsection is intended to occur only following a pattern of noncompliance or the failure of reasonable attempts at outreach and engagement, and may occur only when (~~(in the)~~) based on clinical judgment (~~(of a designated crisis responder or the professional person in charge of an agency or facility designated to monitor less restrictive alternative services)~~) temporary detention is appropriate. The agency, facility, or designated crisis responder may request assistance from a peace officer for the purposes of temporary detention under this subsection (2)(d). This subsection does not limit the ability or obligation of the agency, facility, or designated crisis responder to pursue revocation procedures under subsection (5) of this section in appropriate circumstances; and

(e) To initiate revocation procedures under subsection (5) of this section (~~(or, if the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, initial inpatient detention procedures under subsection (7) of this section)~~).

(3) A court may supervise a person on an order for less restrictive alternative treatment or a conditional release. While the person is under the order, the court may:

(a) Require appearance in court for periodic reviews; and

(b) Modify the order after considering input from the agency or facility designated to provide or facilitate services. The court may not remand the person



into inpatient treatment except as provided under subsection (5) of this section, but may take actions under subsection (2)(a) through (d) of this section.

(4) The facility or agency designated to provide outpatient treatment shall notify the secretary of the department of social and health services or designated crisis responder when a person fails to adhere to terms and conditions of court ordered treatment or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm.

(5)(a) ~~((Except as provided in subsection (7) of this section, a))~~ A designated crisis responder or the secretary of the department of social and health services may, upon their own motion or ((notification by)) upon request of the facility or agency designated to provide outpatient care ((order)), cause a person ((subject to a court order under this chapter)) to be ((apprehended and taken into custody and temporary detention)) detained in an evaluation and treatment facility, ((in a) secure withdrawal management and stabilization facility, or ((in an) approved substance use disorder treatment program((;)) in or near the county in which he or she is receiving outpatient treatment((= Proceedings under this subsection (5) may be initiated without ordering the apprehension and)) for the purpose of a hearing for revocation of a less restrictive alternative treatment order or conditional release order under this chapter. The designated crisis responder or secretary of the department of social and health services shall file a petition for revocation within 24 hours and serve the person, their guardian, if any, and their attorney. A hearing for revocation of a less restrictive alternative treatment order or conditional release order may be scheduled without detention of the person.

(b) ~~((Except as provided in subsection (7) of this section, a))~~ A person detained under this subsection (5) must 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 released)) order for less restrictive alternative treatment or conditional release should be revoked, modified, or retained. If the person is not detained, the hearing must be scheduled within five days of service on the person. The designated crisis responder or the secretary of the department of social and health services may ((modify or rescind the order at any time prior to commencement of)) withdraw its petition for revocation at any time before the court hearing.

(c) ~~((The designated crisis responder or secretary of the department of social and health services shall file a revocation petition and order of apprehension and detention with the court of the county where the person is currently located or being detained. The designated crisis responder shall serve the person and their attorney, guardian, and conservator, if any. The))~~ A person detained under this subsection (5) has the same rights with respect to notice, hearing, and counsel as in any involuntary treatment proceeding, except as specifically set forth in this section. There is no right to jury trial. The venue for proceedings is the county where the petition is filed. Notice of the filing must be provided to the court that originally ordered commitment, if different from the court where the petition for revocation is filed, within two judicial days of the person's detention.

(d) ~~((Except as provided in subsection (7) of this section, the))~~ The issues for the court to determine are whether: (i) The person adhered to the terms and conditions of the ((court)) order; (ii) substantial deterioration in the person's

functioning has occurred; (iii) there is evidence of substantial decompensation with a 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 above conditions apply, whether it is appropriate for the court (~~(should)~~) to reinstate or modify the person's less restrictive alternative treatment order or conditional release order or order the person's detention for inpatient treatment. The person may waive the court hearing and allow the court to enter a stipulated order upon the agreement of all parties. If the court orders detention for inpatient treatment, the treatment period must be for (~~(fourteen)~~) 14 days from the revocation hearing if the (~~(outpatient)~~) less restrictive alternative treatment order or conditional release order was based on a petition under RCW 71.05.148, 71.05.160, or 71.05.230. If the court orders detention for inpatient treatment and the (~~(outpatient)~~) less restrictive alternative treatment order or conditional release order was based on a petition under RCW 71.05.290 or 71.05.320, the number of days remaining on the (~~(outpatient)~~) order must be converted to days of inpatient treatment (~~(authorized in the original court order)~~).

(6) In determining whether or not to take action under this section the designated crisis responder, agency, or facility must consider the factors specified under RCW 71.05.212 and the court must consider the factors specified under RCW 71.05.245 as they apply to the question of whether to enforce, modify, or revoke a court order for involuntary treatment.

~~((7)(a) If the current commitment is solely based on the person being in need of assisted outpatient behavioral health treatment as defined in RCW 71.05.020, a designated crisis responder may initiate inpatient detention procedures under RCW 71.05.150 or 71.05.153 when appropriate. A designated crisis responder or the secretary may, upon their own motion or notification by the facility or agency designated to provide outpatient care to a person subject to a less restrictive alternative treatment order under RCW 71.05.320 subsequent to an order for assisted outpatient behavioral health treatment entered under RCW 71.05.148, order the person to be apprehended and taken into custody and temporary detention for inpatient evaluation in an evaluation and treatment facility, in a secure withdrawal management and stabilization facility, or in an approved substance use disorder treatment program, in or near the county in which he or she is receiving outpatient treatment. Proceedings under this subsection may be initiated without ordering the apprehension and detention of the person.~~

~~(b) A person detained under this subsection may be held for evaluation for up to one hundred twenty hours, excluding weekends and holidays, pending a court hearing. The designated crisis responder or the secretary may modify or rescind the order at any time prior to commencement of the court hearing.~~

~~(c) The issues for the court to determine are whether to continue the detention of the person for inpatient treatment or whether the court should reinstate or modify the person's less restrictive alternative order or order the person's detention for inpatient treatment. To continue detention after the one hundred twenty hour period, the court must find that the person, as a result of a behavioral health disorder, presents a likelihood of serious harm or is gravely disabled and, after considering less restrictive alternatives to involuntary detention and treatment, that no such alternatives are in the best interest of the person or others.)~~

**Sec. 25.** RCW 71.05.595 and 2018 c 291 s 16 are each amended to read as follows:

A court order for less restrictive alternative treatment for a person found to be in need of assisted outpatient (~~behavioral health~~) treatment must be terminated prior to the expiration of the order when, in the opinion of the professional person in charge of the less restrictive alternative treatment provider, (1) the person is prepared to accept voluntary treatment, or (2) the outpatient treatment ordered is no longer necessary to prevent a relapse, decompensation, or deterioration that is likely to result in the person presenting a likelihood of serious harm or the person becoming gravely disabled within a reasonably short period of time.

**Sec. 26.** RCW 71.24.045 and 2021 c 263 s 17 are each amended to read as follows:

(1) The behavioral health administrative services organization contracted with the authority pursuant to RCW 71.24.381 shall:

(a) Administer crisis services for the assigned regional service area. Such services must include:

(i) A behavioral health crisis hotline for its assigned regional service area;

(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;

(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;

(iv) Tracking of less restrictive alternative orders issued within the region by superior courts, and providing notification to a managed care organization in the region when one of its enrollees receives a less restrictive alternative order so that the managed care organization may ensure that the person is connected to services and that the requirements of RCW 71.05.585 are complied with. If the person receives a less restrictive alternative order and is returning to another region, the behavioral health administrative services organization shall notify the behavioral health administrative services organization in the home region of the less restrictive alternative order so that the home behavioral health administrative services organization may notify the person's managed care organization or provide services if the person is not enrolled in medicaid and does not have other insurance which can pay for those services;

(v) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;

(vi) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce rehospitalization and utilization of crisis services, as required by the authority in contract; and

(vii) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board, the behavioral health ombuds, and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

(4) The behavioral health administrative services organization shall employ an assisted outpatient treatment program coordinator to oversee system coordination and legal compliance for assisted outpatient treatment under RCW 71.05.148 and section 4 of this act.

**Sec. 27.** RCW 71.24.045 and 2021 c 263 s 17 and 2021 c 202 s 15 are each reenacted and amended to read as follows:

(1) The behavioral health administrative services organization contracted with the authority pursuant to RCW 71.24.381 shall:

(a) Administer crisis services for the assigned regional service area. Such services must include:

(i) A behavioral health crisis hotline for its assigned regional service area;

(ii) Crisis response services twenty-four hours a day, seven days a week, three hundred sixty-five days a year;

(iii) Services related to involuntary commitments under chapters 71.05 and 71.34 RCW;

(iv) Tracking of less restrictive alternative orders issued within the region by superior courts, and providing notification to a managed care organization in the region when one of its enrollees receives a less restrictive alternative order so

that the managed care organization may ensure that the person is connected to services and that the requirements of RCW 71.05.585 are complied with. If the person receives a less restrictive alternative order and is returning to another region, the behavioral health administrative services organization shall notify the behavioral health administrative services organization in the home region of the less restrictive alternative order so that the home behavioral health administrative services organization may notify the person's managed care organization or provide services if the person is not enrolled in medicaid and does not have other insurance which can pay for those services;

(v) Additional noncrisis behavioral health services, within available resources, to individuals who meet certain criteria set by the authority in its contracts with the behavioral health administrative services organization. These services may include services provided through federal grant funds, provisos, and general fund state appropriations;

(vi) Care coordination, diversion services, and discharge planning for nonmedicaid individuals transitioning from state hospitals or inpatient settings to reduce rehospitalization and utilization of crisis services, as required by the authority in contract; and

(vii) Regional coordination, cross-system and cross-jurisdiction coordination with tribal governments, and capacity building efforts, such as supporting the behavioral health advisory board and efforts to support access to services or to improve the behavioral health system;

(b) Administer and provide for the availability of an adequate network of evaluation and treatment services to ensure access to treatment, investigation, transportation, court-related, and other services provided as required under chapter 71.05 RCW;

(c) Coordinate services for individuals under RCW 71.05.365;

(d) Administer and provide for the availability of resource management services, residential services, and community support services as required under its contract with the authority;

(e) Contract with a sufficient number, as determined by the authority, of licensed or certified providers for crisis services and other behavioral health services required by the authority;

(f) Maintain adequate reserves or secure a bond as required by its contract with the authority;

(g) Establish and maintain quality assurance processes;

(h) Meet established limitations on administrative costs for agencies that contract with the behavioral health administrative services organization; and

(i) Maintain patient tracking information as required by the authority.

(2) The behavioral health administrative services organization must collaborate with the authority and its contracted managed care organizations to develop and implement strategies to coordinate care with tribes and community behavioral health providers for individuals with a history of frequent crisis system utilization.

(3) The behavioral health administrative services organization shall:

(a) Assure that the special needs of minorities, older adults, individuals with disabilities, children, and low-income persons are met;

(b) Collaborate with local government entities to ensure that policies do not result in an adverse shift of persons with mental illness into state and local correctional facilities; and

(c) Work with the authority to expedite the enrollment or reenrollment of eligible persons leaving state or local correctional facilities and institutions for mental diseases.

(4) The behavioral health administrative services organization shall employ an assisted outpatient treatment program coordinator to oversee system coordination and legal compliance for assisted outpatient treatment under RCW 71.05.148 and section 4 of this act.

NEW SECTION. Sec. 28. By December 31, 2022, the administrative office of the courts, in collaboration with stakeholders, shall: (1) Develop a court form or forms for the filing of a petition under RCW 71.05.148 and section 4 of this act; and (2) develop and publish on its website a user's guide to assist litigants in the preparation and filing of a petition under RCW 71.05.148 or section 4 of this act.

**Sec. 29.** RCW 71.05.740 and 2021 c 263 s 15 are each amended to read as follows:

(1) All behavioral health administrative services organizations in the state of Washington must forward historical behavioral health involuntary commitment information retained by the organization, including identifying information and dates of commitment to the authority. As soon as feasible, the behavioral health administrative services organizations must arrange to report new commitment data to the authority within twenty-four hours. Commitment information under this section does not need to be resent if it is already in the possession of the authority. Behavioral health administrative services organizations and the authority shall be immune from liability related to the sharing of commitment information under this section.

(2) The clerk of the court must share commitment hearing outcomes in all hearings under this chapter with the local behavioral health administrative services organization that serves the region where the superior court is located, including in cases in which the designated crisis responder investigation occurred outside the region. The hearing outcome data must include the name of the facility to which a person has been committed.

NEW SECTION. Sec. 30. Sections 1, 2, and 31 of this act take effect July 1, 2022.

**Sec. 31.** 2021 c 264 s 24 (uncodified) and 2021 c 263 s 21 (uncodified) are each reenacted and amended to read as follows:

(1) Sections 4 and 28, chapter 302, Laws of 2020, sections 13 and 14, chapter 263, Laws of 2021, (~~and, until July 1, 2022, section 22, chapter 264, Laws of 2021 and, beginning July 1, 2022,~~) section 23, chapter 264, Laws of 2021, and sections 2 and 10, chapter ... (this act), Laws of 2022 take effect when monthly single-bed certifications authorized under RCW 71.05.745 fall below 200 reports for 3 consecutive months.

(2) The health care authority must provide written notice of the effective date of sections 4 and 28, chapter 302, Laws of 2020, sections 13 and 14, chapter 263, Laws of 2021, (~~and sections 22 and~~) section 23, chapter 264, Laws of 2021, and sections 2 and 10, chapter ... (this act), Laws of 2022 to affected

parties, the chief clerk of the house of representatives, the secretary of the senate, the office of the code reviser, and others as deemed appropriate by the authority.

NEW SECTION. Sec. 32. Sections 5, 12, 17, and 23 of this act expire July 1, 2026.

NEW SECTION. Sec. 33. Sections 6, 13, 18, and 24 of this act take effect July 1, 2026.

NEW SECTION. Sec. 34. Section 26 of this act expires October 1, 2022.

NEW SECTION. Sec. 35. Section 27 of this act takes effect October 1, 2022.

NEW SECTION. Sec. 36. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 211

[House Bill 1805]

### OPPORTUNITY SCHOLARSHIP PROGRAM—MODIFICATION

AN ACT Relating to the opportunity scholarship program; and amending RCW 28B.145.010, 28B.145.030, and 28B.145.100.

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

**Sec. 1.** RCW 28B.145.010 and 2021 c 133 s 2 are each amended to read as follows:

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

(1) "Board" means the opportunity scholarship board.

(2) "Council" means the student achievement council.

(3) "Eligible advanced degree program" means a health professional degree program beyond the baccalaureate level and includes graduate and professional degree programs.

(4) "Eligible county" has the same meaning as "rural county" as defined in RCW 82.14.370 and also includes any county that shares a common border with Canada and has a population of over ~~((one hundred twenty-five thousand))~~ 125,000.

(5) "Eligible education programs" means high employer demand and other programs of study as determined by the board.

(6) "Eligible expenses" means reasonable expenses associated with the costs of acquiring an education such as tuition, books, equipment, fees, room and board, and other expenses as determined by the program administrator in consultation with the council and the state board for community and technical colleges.

(7) "Eligible school district" means a school district of the second class as identified in RCW 28A.300.065(2).

(8)(a) "Eligible student" means a resident student who:

~~((+))~~(i)(A) Received his or her high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington and has been accepted at a four-year institution of higher education into an eligible education program leading to a baccalaureate degree;

~~((++))~~ (B) Received his or her high school diploma or high school equivalency certificate as provided in RCW 28B.50.536 in Washington and will attend a two-year institution of higher education and intends to transfer to an eligible education program at a four-year institution of higher education;

~~((+++))~~ (C) Received his or her high school diploma or equivalent and has been accepted at an institution of higher education into a professional-technical certificate or degree program in an eligible education program; or

~~((++v))~~ (D) Has been accepted at an institution of higher education into an eligible advanced degree program that leads to credentials in health professions;

~~((+b))~~ (ii) Declares an intention to obtain a professional-technical certificate, professional-technical degree, baccalaureate degree, or an advanced degree; and

~~((+e))~~ (iii) Has a family income at or below ~~((one hundred twenty-five))~~ 125 percent of the state median family income at the time the student applies for an opportunity scholarship. For the advanced degree program, family income may be greater than 125 percent if the eligible student can demonstrate financial need through other factors such as a history of prior household income, income loss caused by entering the advanced degree program, level of student debt at application and annually thereafter, or other factors determined by the program.

(b) To remain eligible for scholarship funds under the opportunity scholarship program the student must meet satisfactory academic progress toward completion of an eligible program as determined by the office of student financial assistance in the Washington college grant program under chapter 28B.92 RCW.

(9) "Gift aid" means financial aid received from the federal Pell grant, the Washington college grant program in chapter 28B.92 RCW, the college bound scholarship program in chapter 28B.118 RCW, the opportunity grant program in chapter 28B.50 RCW, or any other state grant, scholarship, or worker retraining program that provides funds for educational purposes with no obligation of repayment. "Gift aid" does not include student loans, work-study programs, the basic food employment and training program administered by the department of social and health services, or other employment assistance programs that provide job readiness opportunities and support beyond the costs of tuition, books, and fees.

(10) "High employer demand program of study" has the same meaning as provided in RCW 28B.50.030.

(11) "Participant" means an eligible student who has received a scholarship under the opportunity scholarship program.

(12) "Private sources," "private funds," "private contributions," or "private sector contributions" means donations from private organizations, corporations, federally recognized Indian tribes, municipalities, counties, and other sources, but excludes state dollars.

(13) "Professional-technical certificate" means a program as approved by the state board for community and technical colleges under RCW



28B.50.090(7)(c), that is offered by an institution of higher education or an eligible registered apprenticeship program under chapter 28B.92 RCW.

(14) "Professional-technical degree" means a program as approved by the state board for community and technical colleges under RCW 28B.50.090(7)(c), that is offered by an institution of higher education or an eligible registered apprenticeship program under chapter 28B.92 RCW.

(15) "Program administrator" means a private nonprofit corporation registered under Title 24 RCW and qualified as a tax-exempt entity under section 501(c)(3) of the federal internal revenue code.

(16) "Resident student" (~~has the same meaning as provided in RCW 28B.15.012~~) means a student meeting the requirements under RCW 28B.92.200(5)(c) as defined in the Washington college grant program.

(17) "Rural jobs program" means the rural county high employer demand jobs program created in this chapter.

**Sec. 2.** RCW 28B.145.030 and 2021 c 170 s 5 are each amended to read as follows:

(1) The program administrator shall provide administrative support to execute the duties and responsibilities provided in this chapter, including but not limited to publicizing the program, selecting participants for the opportunity scholarship award, distributing opportunity scholarship awards, and achieving the maximum possible rate of return on investment of the accounts in subsection (2) of this section, while ensuring transparency in the investment decisions and processes. Duties, exercised jointly with the board, include soliciting funds and setting annual fund-raising goals. The program administrator shall be paid an administrative fee as determined by the board.

(2) With respect to the opportunity scholarship program, the program administrator shall:

(a) Establish and manage the specified accounts created in (b) of this subsection, into which to receive grants and contributions from private sources as well as state matching funds, and from which to disburse scholarship funds to participants;

(b) Solicit and accept grants and contributions from private sources, via direct payment, pledge agreement, or escrow account, of private sources for deposit into any of the specified accounts created in this subsection (2)(b) upon the direction of the donor and in accordance with this subsection (2)(b):

(i) The "scholarship account," whose principal may be invaded, and from which scholarships must be disbursed for baccalaureate programs beginning no later than December 1, 2011, if, by that date, state matching funds in the amount of five million dollars or more have been received. Thereafter, scholarships shall be disbursed on an annual basis beginning no later than May 1, 2012, and every October 1st thereafter;

(ii) The "student support pathways account," whose principal may be invaded, and from which scholarships may be disbursed for professional-technical certificate or degree programs in the fiscal year following appropriations of state matching funds. Thereafter, scholarships shall be disbursed on an annual basis;

(iii) The "advanced degrees pathways account," whose principal may be invaded, and from which scholarships may be disbursed for eligible advanced

degree programs in the fiscal year following appropriations of state matching funds. Thereafter, scholarships shall be disbursed on an annual basis;

(iv) The "endowment account," from which scholarship moneys may be disbursed for baccalaureate programs from earnings only in years when:

(A) The state match has been made into both the scholarship and the endowment account; and

(B) The state appropriations for the Washington college grant program under chapter 28B.92 RCW meet or exceed state appropriations for the state need grant made in the 2011-2013 biennium, adjusted for inflation, and eligibility for Washington college grant recipients is at least seventy percent of state median family income;

(v) An amount equal to at least fifty percent of all grants and contributions must be deposited into the scholarship account until such time as twenty million dollars have been deposited into the scholarship account, after which time the private donors may designate whether their contributions must be deposited to the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account. The board and the program administrator must work to maximize private sector contributions to these accounts to maintain a robust scholarship program while simultaneously building the endowment, and to determine the division between the accounts in the case of undesignated grants and contributions, taking into account the need for a long-term funding mechanism and the short-term needs of families and students in Washington. The first five million dollars in state match, as provided in RCW 28B.145.040, shall be deposited into the scholarship account and thereafter the state match shall be deposited into the specified accounts created in this subsection (2)(b) in equal proportion to the private funds deposited in each account, except that no more than \$5,000,000 in state match shall be deposited into the advanced degrees pathways account in a single fiscal biennium; and

(vi) Once moneys in the opportunity scholarship match transfer account are subject to an agreement under RCW 28B.145.050(5) and are deposited in the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account under this section, the state acts in a fiduciary rather than ownership capacity with regard to those assets. Assets in the scholarship account, the student support pathways account, the advanced degrees pathways account, and the endowment account are not considered state money, common cash, or revenue to the state;

(c) Provide proof of receipt of grants and contributions from private sources to the council, identifying the amounts received by name of private source and date, and whether the amounts received were deposited into the scholarship account, the student support pathways account, the advanced degrees pathways account, or the endowment account;

(d) In consultation with the council and the state board for community and technical colleges, make an assessment of the reasonable annual eligible expenses associated with eligible education programs and eligible advanced degree programs identified by the board;

(e) Determine the dollar difference between tuition fees charged by institutions of higher education in the 2008-09 academic year and the academic year for which an opportunity scholarship is being distributed;

(f) Develop and implement an application, selection, and notification process for awarding opportunity scholarships;

(g) Ensure that if the private source is from a federally recognized Indian tribe, municipality, or county, an amount at least equal to the value of the private source plus the state match is awarded to participants within that federally recognized Indian tribe, municipality, or county according to the federally recognized Indian tribe's, municipality's, or county's program rules;

(h) Determine the annual amount of the opportunity scholarship for each selected participant. The annual amount shall be at least one thousand dollars or the amount determined under (e) of this subsection, but may be increased on an income-based, sliding scale basis up to the amount necessary to cover all reasonable annual eligible expenses as assessed pursuant to (d) of this subsection, or to encourage participation in professional-technical certificate programs, professional-technical degree programs, baccalaureate degree programs, or eligible advanced degree programs identified by the board;

(i) Distribute scholarship funds to selected participants. Once awarded, and to the extent funds are available for distribution, an opportunity scholarship shall be automatically renewed as long as the participant annually submits documentation of filing both a free application for federal student aid (FAFSA) and for available federal education tax credits including, but not limited to, the American opportunity tax credit, or if ineligible to apply for federal student aid, the participant annually submits documentation of filing a state financial aid application as approved by the office of student financial assistance; and until the participant withdraws from or is no longer attending the program, completes the program, or has ~~((taken the credit or clock hour equivalent of one hundred twenty five percent of the published length of time of the participant's program, whichever occurs first))~~ extended beyond five years or 125 percent of the published program length of the program in which the student is enrolled or the credit or clock-hour equivalent as defined in the Washington college grant program;

(j) Notify institutions of scholarship recipients who will attend their institutions and inform them of the terms of the students' eligibility; and

(k) For participants enrolled in an eligible advanced degree program, document each participant's employment following graduation.

(3) With respect to the opportunity expansion program, the program administrator shall:

(a) Assist the board in developing and implementing an application, selection, and notification process for making opportunity expansion awards; and

(b) Solicit and accept grants and contributions from private sources for opportunity expansion awards.

**Sec. 3.** RCW 28B.145.100 and 2021 c 133 s 3 are each amended to read as follows:

(1)(a) The rural county high employer demand jobs program is created to meet the workforce needs of business and industry in rural counties by assisting students in earning certificates, associate degrees, or other industry-recognized credentials necessary for employment in high employer demand fields.

(b) Subject to the requirements of this section, the rural jobs program provides selected students scholarship funds and support services, as determined

by the board, to help students meet their eligible expenses when they enroll in a community or technical college program that prepares them for high employer demand fields.

(c) The source of funds for the rural jobs program shall be a combination of private donations, grants, and contributions and state matching funds.

(d) The state match must be based on donations and pledges received as of the date each official state caseload forecast is submitted by the caseload forecast council to the legislative fiscal committees as provided under RCW 43.88C.020. The purpose of this subsection (1)(d) is to ensure the predictable treatment of the program in the budget process by clarifying the calculation process of the state match required by this section and to ensure the program is budgeted at maintenance level.

(2) The program administrator has the duties and responsibilities provided under this section, including but not limited to:

(a) Publicize the rural jobs program and conducting outreach to eligible counties;

(b) In consultation with the state board for community and technical colleges, any interested community or technical college located in an eligible county, and the county's workforce development council, identify high employer demand fields within the eligible counties. When identifying high employer demand fields, the board must consider:

(i) County-specific employer demand reports issued by the employment security department or the list of statewide high-demand programs for secondary career and technical education established under RCW 28A.700.020; and

(ii) The ability and capacity of the community and technical college to meet the needs of qualifying students and industry in the eligible county;

(c) Develop and implement an application, selection, and notification process for awarding rural jobs program scholarship funds. In making determinations on scholarship recipients, the board shall use county-specific employer high-demand data;

(d) Determine the annual scholarship fund amounts to be awarded to selected students;

(e) Distribute funds to selected students;

(f) Notify institutions of higher education of the rural jobs program recipients who will attend their institutions of higher education and inform them of the scholarship fund amounts and terms of the awards; and

(g) Establish and manage an account as provided under RCW 28B.145.110 to receive donations, grants, contributions from private sources, and state matching funds, and from which to disburse scholarship funds to selected students.

(3) To be eligible for scholarship funds under the rural jobs program, a student must:

(a) Either:

(i) Be a resident of an eligible county ~~((and be enrolled in a community or technical college established under chapter 28B.50 RCW; or))~~;

(ii) Have attended and graduated from a school in an eligible school district ~~((and be))~~; or

(iii) Be enrolled in either a community or technical college established under chapter 28B.50 RCW ~~((that is))~~ located in an eligible county or

participating in an eligible registered apprenticeship program under chapter 28B.92 RCW in an eligible county;

(b) Be a resident student as defined (~~in RCW 28B.15.012;~~

~~(e))~~ in the Washington college grant program in RCW 28B.92.200(5)(c);

(c) Be in a certificate, degree, or other industry-recognized credential or training program that has been identified by the board as a program that prepares students for a high employer demand field;

(d) Have a family income that does not exceed seventy percent of the state median family income adjusted for family size; and

(e) Demonstrate financial need according to the free application for federal student aid or the Washington application for state financial aid.

(4) To remain eligible for scholarship funds under the rural jobs program, the student must (~~maintain a cumulative grade point average of 2.0~~) meet satisfactory academic progress toward completion of an eligible program as established by the program. Rural jobs program eligibility may not extend beyond five years or 125 percent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent.

(5) A scholarship award under the rural jobs program may not result in a reduction of any gift aid. Nothing in this section creates any right or entitlement.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 212

[Second Substitute House Bill 1814]

### COMMUNITY SOLAR PROJECTS—EXPANSION PROGRAM—VARIOUS PROVISIONS

AN ACT Relating to expanding equitable access to the benefits of renewable energy through community solar projects; amending RCW 82.16.130 and 82.16.170; adding new sections to chapter 82.16 RCW; creating new sections; providing expiration dates; and declaring an emergency.

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

**NEW SECTION. Sec. 1.** The legislature finds and declares that stimulating local investment in community solar projects continues to be an important part of a state energy strategy by helping to increase energy independence from fossil fuels, promote economic development, hedge against the effects of climate change, and attain environmental benefits. The legislature finds that although previous community solar programs were successful in stimulating these benefits, the programs failed to provide an adequate framework for low-income participation and long-term market certainty. The legislature finds that the vast majority of Washingtonians still do not have access to the benefits of solar energy. The legislature intends to stimulate the deployment of community solar projects for the benefit of all Washingtonians by funding the renewable energy production incentive program for community solar projects and by creating opportunities for broader participation, especially by low-income households and low-income service providers. As of December 2021, the state is 10.3 megawatts short of the 115 megawatts of solar photovoltaic capacity established as a goal under RCW 82.16.155. The legislature therefore intends to provide an

incentive sufficient to promote installation of community solar projects through June 30, 2033, at which point the legislature expects to review the effectiveness of enhancing access to community solar projects.

**Sec. 2.** RCW 82.16.130 and 2017 3rd sp.s. c 36 s 4 are each amended to read as follows:

(1) A light and power business is allowed a credit against taxes due under this chapter in an amount equal to:

(a) Incentive payments made in any fiscal year under RCW 82.16.120 and 82.16.165; and

(b) Any fees a utility is allowed to recover pursuant to RCW 82.16.165(5).

(2) The credits must be taken in a form and manner as required by the department. The credit taken under this section for the fiscal year may not exceed one and one-half percent of the (~~businesses'~~) business's taxable Washington power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or two hundred fifty thousand dollars, whichever is greater, for incentive payments made for the following:

(a) Renewable energy systems, other than community solar projects, that are certified for an incentive payment as of June 30, 2020; and

(b) Community solar and shared commercial projects that are under precertification status under RCW 82.16.165(7)(b) as of June 30, 2020, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2022.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of credits. Expenditures not used to earn a credit in one fiscal year may not be used to earn a credit in subsequent years.

(4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under RCW 82.16.120, the amount of tax against which credit was claimed for the excess payments is immediately due and payable. The department may deduct amounts due from future credits claimed by the business.

(a) Except as provided in (b) of this subsection, the department must assess interest but not penalties on the taxes against which the credit was claimed. Interest must be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under RCW 82.16.165(20), if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits for incentive payments made under RCW 82.16.120 expires June 30, 2020. Credits may not be claimed after June 30, 2021.

(7)(a) The right to earn tax credits for incentive payments made under RCW 82.16.165 for the following expires June 30, 2029:

(i) Renewable energy systems, other than community solar projects, that are certified for an incentive payment as of June 30, 2020; and

(ii) Community solar and shared commercial projects that are under precertification status under RCW 82.16.165(7)(b) as of June 30, 2020, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2022.

(b) Credits may not be claimed after June 30, 2030.

(8) This section expires June 30, 2033.

**NEW SECTION. Sec. 3.** A new section is added to chapter 82.16 RCW to read as follows:

(1) Beginning July 1, 2022, a light and power business is allowed a credit against taxes due under this chapter in an amount equal to incentive payments made in any fiscal year under section 5 of this act.

(2) The credits must be taken in a form and manner as required by the department. The credit taken under this section for the fiscal year may not exceed 1.5 percent of the business's taxable Washington power sales generated in calendar year 2014 and due under RCW 82.16.020(1)(b) or \$250,000, whichever is greater, for incentive payments made for community solar projects that submit an application for precertification under section 5 of this act on or after July 1, 2022, and that are certified for an incentive payment in accordance with the terms of that precertification by June 30, 2033.

(3) The credit may not exceed the tax that would otherwise be due under this chapter. Refunds may not be granted in the place of credits.

(4) For any business that has claimed credit for amounts that exceed the correct amount of the incentive payable under section 5 of this act, the amount of tax against which credit was claimed for the excess payments is immediately due and payable. The department may deduct amounts from future credits claimed by the business.

(a) Except as provided in (b) of this subsection, the department must assess interest but not penalties on the taxes against which the credit was claimed. Interest may be assessed at the rate provided for delinquent excise taxes under chapter 82.32 RCW, retroactively to the date the credit was claimed, and accrues until the taxes against which the credit was claimed are repaid.

(b) A business is not liable for excess payments made in reliance on amounts reported by the Washington State University extension energy program as due and payable as provided under section 5 of this act, if such amounts are later found to be abnormal or inaccurate due to no fault of the business.

(5) The amount of credit taken under this section is not confidential taxpayer information under RCW 82.32.330 and is subject to disclosure.

(6) The right to earn tax credits for incentive payments made under section 5 of this act expires June 30, 2036. Credits may not be claimed under this section after June 30, 2037.

(7) This section expires June 30, 2038.

**NEW SECTION. Sec. 4.** A new section is added to chapter 82.16 RCW to read as follows:

(1) The definitions in this section apply throughout this section and section 5 of this act unless the context clearly requires otherwise.

(a)(i) "Administrator" means the utility, nonprofit, tribal housing authority as provided in (a)(ii) of this subsection, or other local housing authority that

organizes and administers a community solar project as provided in section 5 of this act and RCW 82.16.170.

(ii) A tribal housing authority may only administer a community solar project on tribal lands or lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members.

(b) "Certification" means the authorization issued by the Washington State University extension energy program establishing a community solar project administrator's eligibility to receive a low-income community solar incentive payment from the electric utility serving the site of the community solar project, on behalf of, and for the purpose of providing direct benefits to, its low-income subscribers, low-income service provider subscribers, and tribal and public agency subscribers.

(c)(i) "Community solar project" means a solar energy system that:

(A) Has a direct current nameplate capacity that is greater than 12 kilowatts but no greater than 199 kilowatts;

(B) Has, at minimum, either two subscribers or one low-income service provider subscriber; and

(C) Meets the applicable eligibility requirements in section 5 of this act.

(ii) A community solar project may include a storage system with a solar energy system.

(d) "Consumer-owned utility" has the same meaning as in RCW 19.280.020.

(e) "Electric utility" or "utility" means a consumer-owned utility or investor-owned utility as those terms are defined in RCW 19.280.020.

(f) "Energy assistance" has the same meaning as provided in RCW 19.405.020.

(g) "Energy burden" has the same meaning as provided in RCW 19.405.020.

(h) "Governing body" has the same meaning as provided in RCW 19.280.020.

(i)(i) "Installed cost" includes only the renewable energy system components and fees that are integral and necessary for the generation and storage of electricity. Components and fees include:

(A) Solar modules and inverters;

(B) Battery systems;

(C) Balance of system, such as racking, wiring, switch gears, and meter bases;

(D) Nonhardware costs incurred up to the date of the final electrical inspection, such as fees associated with engineering, permitting, interconnection, and application;

(E) Labor; and

(F) Sales tax.

(ii) "Installed cost" does not include structures and fixtures that are not integral and necessary to the generation or storage of electricity, such as carports and roofing.

(j) "Interconnection customer" means the person, corporation, partnership, government agency, or other entity that proposes to interconnect, or has executed an interconnection agreement, with the electric utility.

(k) "Low-income" has the same meaning as provided in RCW 19.405.020.



(l) "Low-income service provider" includes, but is not limited to, a local community action agency or local community service agency designated by the department of commerce under chapter 43.63A RCW, local housing authority, tribal housing authority, low-income tribal housing program, affordable housing provider, food bank, or other nonprofit organization that provides services to low-income households as part of their core mission.

(m) "Multifamily residential building" means a building containing more than two sleeping units or dwelling units where occupants are primarily permanent in nature.

(n) "Person" means an individual, firm, partnership, corporation, company, association, agency, or any other legal entity.

(o) "Preferred sites" means rooftops, structures, existing impervious surfaces, landfills, brownfields, previously developed sites, irrigation canals and ponds, stormwater collection ponds, industrial areas, dual-use solar projects that ensure ongoing agricultural operations, and other sites that do not displace critical habitat or productive farmland as defined by state and county planning processes.

(p) "Public agency" means any political subdivision of the state including, but not limited to, municipal and county governments, special purpose districts, and local housing authorities, but does not include state agencies.

(q)(i) Except as otherwise provided in (q)(ii) of this subsection, "qualifying subscriber" means a low-income subscriber, low-income service provider subscriber, tribal agency subscriber, or public agency subscriber.

(ii) For tribal agency subscribers and public agency subscribers, only the portion of their subscription to a community solar project that is demonstrated to benefit low-income beneficiaries, including low-income service providers and services provided to low-income citizens or households, is to be considered a qualifying subscriber.

(r) "Retail electric customer" has the same meaning as in RCW 80.60.010.

(s) "Subscriber" means a retail electric customer of an electric utility who owns or is the beneficiary of one or more units of a community solar project directly interconnected with that same utility.

(t) "Subscription" means an agreement between a subscriber and the administrator of a community solar project.

(2) This section expires June 30, 2038.

**NEW SECTION, Sec. 5.** A new section is added to chapter 82.16 RCW to read as follows:

(1) Beginning July 1, 2022, through June 30, 2033, an administrator of a community solar project meeting the eligibility requirements described in this section and RCW 82.16.170(3) may submit an application to the Washington State University extension energy program to receive a precertification for a community solar project. Projects with precertification applications approved by the Washington State University extension energy program have two years to complete their projects and apply for certification. Projects that have not completed certification within two years may apply to the Washington State University extension energy program for an extension of their precertification status for an additional 180 days if they can demonstrate significant progress during the time they were in precertification status. By certifying qualified projects pursuant to the requirements of this section and RCW 82.16.170(3), the

Washington State University extension energy program authorizes the utility serving the site of a community solar project in the state of Washington to remit a one-time low-income community solar incentive payment to the community solar project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

(2) A one-time low-income community solar incentive payment remitted to a community solar project administrator for a project certified under this section equals the sum of the following:

(a) An amount, not to exceed \$20,000 per community solar project, equal to the community solar project's administrative costs related to the administrative start-up of the project for qualifying subscribers; and

(b) An amount that does not exceed 100 percent of the proportional cost of the installed cost of the share of the community solar project that provides direct benefits to qualifying subscribers, taking into account any federal tax credits or other federal or nonfederal grants or incentives that the program is benefiting from.

(3) No new certification may be issued under this section for a community solar project that was certified under RCW 82.16.120 or 82.16.165, or for a community solar project served by a utility that has elected not to participate in the incentive program provided in this section.

(4) Community solar projects that are under precertification status under RCW 82.16.165 as of June 30, 2020, may not apply for precertification of that same project for the one-time low-income community solar incentive payment provided in this section.

(5)(a) In addition to the one-time low-income community solar incentive payment under subsection (2) of this section, a participating utility must also provide the following compensation for the generation of electricity from the certified project:

(i) For a community solar project that has an alternating current nameplate capacity no greater than 100 kilowatts, and that is connected behind the electric service meter, compensation must be determined in accordance with RCW 80.60.020 and provided to the retail electric customer receiving service at the situs of the meter.

(ii) For all other community solar projects for which the administrator is not a utility, compensation paid to the interconnection customer must be determined in a written agreement between the interconnection customer and the utility.

(iii) For all other community solar projects for which the administrator is a utility, compensation must be provided directly to subscribers in accordance with subsection (8)(a)(i) of this section.

(iv)(A) When the administrator of a community solar project receives compensation for the generation of electricity from a participating utility, interconnection customer, or from the retail electric customer that is the host for the community solar project, the administrator must provide all of that compensation as a direct benefit to the project subscribers, except as described in (iv)(B) of this subsection.

(B) An administrator may deduct ongoing administrative and maintenance costs from compensation they provide to subscribers from power generation, provided those costs are identified in the subscription agreement or justified to the Washington State University extension energy program. The Washington

State University extension energy program shall review any such administrative and maintenance costs justifications for reasonableness and approve, reject, or negotiate changes to the proposal. An administrator may request a change in the deduction for administrative and maintenance costs to the Washington State University extension energy program only if the subscription agreement includes language notifying the subscriber that administrative and maintenance fees are subject to change.

(b) For 10 years after certification, and by March 1st of each year following certification, the administrator must provide the Washington State University extension energy program with signed statements of the following for the preceding year:

(i) The energy production for the period for which compensation is to be provided;

(ii) Each subscriber's units of the project;

(iii) The amount disbursed to each subscriber for the period; and

(iv) The date and amount disbursed to each subscriber.

(6) A utility's participation in the incentive program provided in this section is voluntary.

(a) The utility may terminate its voluntary participation in the program by providing notice in writing to the Washington State University extension energy program to cease accepting new applications for precertification for community solar projects that would be served by that utility. Such notice of termination of participation is effective after 15 days, at which point the Washington State University extension energy program may not accept new applications for precertification for community solar projects that would be served by that utility.

(b) Upon receiving a utility's notice of termination of participation in the incentive program, the Washington State University extension energy program must report on its website that community solar project customers of that utility are no longer eligible to receive new certifications under the program.

(c) A utility that has terminated participation in the program may resume participation upon filing a notice with the Washington State University extension energy program.

(7)(a) The Washington State University extension energy program may issue certifications authorizing incentive payments under this section in a total statewide amount not to exceed \$100,000,000, and subject to the following biennial dollar limits:

(i) For fiscal year 2023, \$300,000; and

(ii) For each biennium beginning on or after July 1, 2023, \$25,000,000.

(b) The Washington State University extension energy program must attempt to equitably distribute incentive funds throughout the state. Considerations for equitable fund distribution, based on precertification applications received from administrators served by utilities voluntarily participating in the program, may include measures to reserve or allocate available funds based on the proportion of public utility taxes collected, the proportion of the state's low-income customers served by each utility based on low-income home energy assistance program data at the department of commerce, measures to achieve an equitable geographic distribution of community solar installations and a diversity of administrative models for community solar projects, and the amount of energy burden reduction for

qualifying subscribers relative to the project's cost. If an equitable distribution of funds is not feasible due to a lack of precertification applications, the Washington State University extension energy program may allocate funds based on (a) of this subsection on a first-come, first-served basis.

(c) The Washington State University extension energy program must ensure that at least \$2,000,000 of the statewide total for the entire program is used to support nonprofit organizations' innovative approaches to allocating benefits to subscribers, defining and valuing benefits to be provided to subscribers or other aspects of the subscriber, administrator, system host, and utility relationship.

(d) The Washington State University extension energy program must also ensure that at least \$2,000,000 of the statewide total for the entire program is available to tribal governments and their designated subdivisions and agencies.

(e) The Washington State University extension energy program shall regularly publish and update guidelines for how it manages the allocation of available funding, based on the evaluation of applications and the factors specified in (b) of this subsection.

(f) Beginning in fiscal year 2026, the Washington State University extension energy program may waive the requirements in (c) or (d) of this subsection if it fails to receive applications that meet the criteria of (c) or (d) of this subsection sufficient to result in the full allocation of incentives.

(8)(a) Prior to obtaining certification under this section, the administrator of a community solar project must apply for precertification against the funds available for incentive payments under subsection (7) of this section in order to be guaranteed an incentive payment under this section. The application for precertification must include, at a minimum:

(i) A demonstration of how the project will deliver continuing direct benefits to low-income subscribers. A direct benefit can include credit for the power generation for the community solar project or other mechanisms that lower the energy burden of a low-income subscriber; and

(ii) Any other information the Washington State University extension energy program deems necessary in determining eligibility for precertification.

(b) The administrator of a community solar project must complete an application for certification in accordance with the requirements of subsection (9) of this section within less than two years of being approved for precertification status. The administrator must submit a project update to the Washington State University extension energy program after one year in precertification status.

(9) To obtain certification for the one-time community solar incentive payment provided under this section, a project administrator must submit to the Washington State University extension energy program an application, including, at a minimum:

(a) A signed statement that the applicant has not previously received a notice of eligibility from the department under RCW 82.16.120 or the Washington State University extension energy program under RCW 82.16.165 entitling the applicant to receive annual incentive payments for electricity generated by the community solar project at the same meter location;

(b) A signed statement of the costs paid by the administrator related to administering the project for qualifying subscribers;

(c) A signed statement of the total project costs, including the proportional cost of the share of the community solar project that provides direct benefits to qualifying subscribers;

(d) A signed statement describing the amount of the upfront incentive and the timing, method, and distribution of estimated benefits to qualifying subscribers. The statement must describe any estimated energy burden reduction associated with the direct benefits;

(e) Available system operation data, such as global positioning system coordinates, tilt, estimated shading, and azimuth;

(f) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels or administering the program;

(g)(i) Except as provided in (g)(ii) of this subsection (9), the date that the community solar project received its final electrical inspection from the applicable local jurisdiction, as well as a copy of the permit or, if the permit is available online, the permit number or other documentation deemed acceptable by the Washington State University extension energy program;

(ii) The Washington State University extension energy program may waive the requirement in (g)(i) of this subsection (9), accepting an application and granting provisional certification prior to proof of final electrical inspection. Provisional certification expires 180 days after issuance, unless the applicant submits proof of the final electrical inspection from the applicable local jurisdiction or the Washington State University extension energy program extends certification, for a term or terms of 30 days, due to extenuating circumstances;

(h) Confirmation of the number of qualifying subscribers;

(i) A copy of the executed agreement describing how benefits will be determined and distributed from the retail electric customer or interconnection customer to the administrator if the administrator and the retail electric customer or interconnection customer are not the same. The Washington State University extension energy program must review the executed agreement to determine that benefits are being fairly determined and that there is an adequate plan for distributing the benefits; and

(j) Any other information the Washington State University extension energy program deems necessary in determining eligibility and incentive levels or administering the program.

(10) No incentive payments may be authorized or accrued until the final electrical inspection and executed interconnection agreement are submitted to the Washington State University extension energy program.

(11)(a) The Washington State University extension energy program must review each project for which an application for certification is submitted in accordance with subsection (8) of this section for reasonable cost and financial structure, with a targeted installed cost for the solar energy system of \$2 per watt direct current for systems over 200 kilowatts and \$2.25 per watt direct current for systems equal to or under 200 kilowatts. For solar energy systems that include storage systems, the targeted installed cost of the storage system is \$600 per kilowatt-hour of storage capacity.

(b) The Washington State University extension energy program may approve an application for a project that costs more or less than the targeted

installed costs under (a) of this subsection based on a review of the project, documents submitted by the project applicant, and available data. Project cost evaluations may include costs associated with energy storage systems and electrical system improvements to permit grid-independent operation. Applicants may petition the Washington State University extension energy program to approve a higher cost per watt or per kilowatt-hour for unusual circumstances.

(c) The Washington State University extension energy program may review the cost per watt target under (a) of this subsection prior to each fiscal biennium and is authorized to determine a new cost per watt target.

(12)(a) Within 30 days of receipt of an application for certification, the Washington State University extension energy program must notify the applicant and, except when a utility is the applicant, the utility serving the site of the community solar project, by mail or electronically, whether certification has been granted. The certification notice must state the total dollar amount of the low-income community solar incentive payment for which the applicant is eligible under this section.

(b) Within 60 days of receipt of a notification under (a) of this subsection, the utility serving the site of the community solar project must remit the applicable one-time low-income community solar incentive payment to the project administrator, who accepts the payment on behalf of, and for the purpose of providing direct benefits to, the project's qualifying subscribers.

(13)(a) Certification follows the community solar project if the following conditions are met using procedures established by the Washington State University extension energy program:

(i) The community solar project is transferred to a new owner who notifies the Washington State University extension energy program of the transfer;

(ii) The new owner provides an executed interconnection agreement with the utility serving the site of the community solar project; and

(iii) The new owner agrees to provide equivalent ongoing benefits to qualifying subscribers as the current owner.

(b) In the event that a qualifying subscriber terminates their participation in a community solar project during the first 120 months after project certification, the system certification follows the project and participation must be transferred to a new qualifying subscriber.

(14) Beginning January 1, 2023, the Washington State University extension energy program must post on its website and update at least monthly a report, by utility, of:

(a) The number of certifications issued for community solar projects; and

(b) An estimate of the amount of credit that has not yet been allocated for low-income community solar incentive payments and that remains available for new community solar project certifications in the state.

(15) Persons receiving incentive payments under this section must keep and preserve, for a period of five years for the duration of the consumer contract, suitable records as may be necessary to determine the amount of incentive payments applied for and received.

(16) The nonpower attributes of the community solar project must be retired on behalf of the subscribers unless, in the case of a utility-owned community

solar project, a contract between the subscriber that benefits the subscriber clearly states that the attributes will be retained and retired by the utility.

(17) All lists, technical specifications, determinations, and guidelines developed under this section must be made publicly available online by the Washington State University extension energy program.

(18) The Washington State University extension energy program may, through a public process, develop program requirements, policies, and processes necessary for the administration or implementation of this section.

(19) Applications, certifications, requests for incentive payments under this section, and the information contained therein are not deemed tax information under RCW 82.32.330 and are subject to disclosure.

(20) No certification may be issued under this section by the Washington State University extension energy program for a community solar project after June 30, 2035.

(21) Community solar projects certified under this section must be sited on preferred sites to protect natural and working lands as determined by the Washington State University extension energy program.

(22) This section expires June 30, 2038.

**Sec. 6.** RCW 82.16.170 and 2017 3rd sp.s. c 36 s 7 are each amended to read as follows:

(1) The purpose of community solar programs is to facilitate broad, equitable community investment in and access to solar power. Beginning July 1, 2017, a community solar administrator may organize and administer a community solar project as provided in this section.

(2) ~~((A))~~ In order to receive certification for the incentive payment provided under RCW 82.16.165(1) by June 30, 2021, a community solar project must have a direct current nameplate capacity that is no more than one thousand kilowatts and must have at least ten participants or at least one participant for every ten kilowatts of direct current nameplate capacity, whichever is greater. A community solar project that has a direct current nameplate capacity greater than five hundred kilowatts must be subject to a standard interconnection agreement with the utility serving the situs of the community solar project. Except for community solar projects authorized under subsection ~~((9))~~ (10) of this section, each participant must be a customer of the utility providing service at the situs of the community solar project.

(3) In order to receive certification for the incentive payment provided under section 5 of this act beginning July 1, 2022, a community solar project must meet the following requirements:

(a) The administrator of the community solar project must be a utility, nonprofit, or tribal housing authority that administers a community solar project on tribal lands or lands held in trust for a federally recognized tribe by the United States for subscribers who are tribal members, or other local housing authority. The administrator of the community solar project must apply for precertification under section 5 of this act on or after July 1, 2022;

(b) The community solar project must have a direct current nameplate capacity that is greater than 12 kilowatts but no greater than 199 kilowatts, and must have at least two subscribers or one low-income service provider subscriber;

(c) The administrator of the community solar project must provide a verified list of qualifying subscribers;

(d) Verification that an individual household subscriber meets the definition of low-income must be provided to the administrator by an entity with authority to maintain the confidentiality of the income status of the low-income subscriber. If the providing entity incurs costs to verify a subscriber's income status, the administrator must provide reimbursement of those costs;

(e) Except for community solar projects authorized under subsection (10) of this section, each subscriber must be a customer of the utility providing service at the site of the community solar project;

(f) In the event that a low-income subscriber in a community solar project certified under section 5 of this act moves within 120 months of system certification from the household premises of the subscriber's current subscription to another, the subscriber may continue the subscription, provided that the new household premises is served by the utility providing service at the site of the community solar project. In the event that a subscriber is no longer served by that utility or the subscriber terminates participation in a community solar project certified under section 5 of this act, the certification follows the system and participation must be transferred by the administrator to a new qualifying subscriber as specified in section 5 of this act;

(g) The administrator must include in the application for precertification a project prospectus that demonstrates how the administrator intends to provide direct benefits to qualifying subscribers for the duration of their subscription to the community solar project; and

(h) The length of the subscription term for low-income subscribers must be the same length as for other subscribers, if applicable.

(4) The administrator of a community solar project must administer the project in a transparent manner that allows for fair and nondiscriminatory opportunity for participation by utility customers.

~~((4))~~ (5) The administrator of a community solar project may establish a reasonable fee to cover costs incurred in organizing and administering the community solar project. Project participants, prior to making the commitment to participate in the project, must be given clear and conspicuous notice of the portion of the incentive payment that will be used for this purpose.

~~((5))~~ (6) The administrator of a community solar project must maintain and update annually through June 30, 2030, the following information for each project it operates or administers:

(a) Ownership information;

(b) Contact information for technical management questions;

(c) Business address;

(d) Project design details, including project location, output capacity, equipment list, and interconnection information; and

(e) Subscription information, including rates, fees, terms, and conditions.

~~((6))~~ (7) The administrator of a community solar project must provide the information required in subsection ~~((5))~~ (6) of this section to the Washington State University extension energy program at the time it submits the applications allowed under RCW 82.16.165(1) and section 5 of this act.

~~((7))~~ (8) The administrator of a community solar project must provide each project participant with a disclosure form containing all material terms and



conditions of participation in the project, including but not limited to the following:

(a) Plain language disclosure of the terms under which the project participant's share of any incentive payment will be calculated by the Washington State University extension energy program (~~(over the life of the contract)~~);

(b) Contract provisions regulating the disposition or transfer of the project participant's interest in the project, including any potential costs associated with such a transfer;

(c) All recurring and nonrecurring charges;

(d) A description of the billing and payment procedures;

(e) A description of any compensation to be paid in the event of project underperformance;

(f) Current production projections and a description of the methodology used to develop the projections;

(g) Contact information for questions and complaints; and

(h) Any other terms and conditions of the services provided by the administrator.

~~((8))~~ (9) A utility may not adopt rates, terms, conditions, or standards that unduly or unreasonably discriminate between utility-administered community solar projects and those administered by another entity.

~~((9))~~ (10) A public utility district that is engaged in distributing electricity to more than one retail electric customer in the state and a joint operating agency organized under chapter 43.52 RCW on or before January 1, 2017, may enter into an agreement with each other to construct and own a community solar project that is located on property owned by a joint operating agency or on property that receives electric service from a participating public utility district. Each participant of a community solar project under this subsection must be a customer of at least one of the public utility districts that is a party to the agreement with a joint operating agency to construct and own a community solar project.

~~((10))~~ (11) The Washington utilities and transportation commission must publish, without disclosing proprietary information, a list of the following:

(a) Entities other than utilities, including affiliates or subsidiaries of utilities, that organize and administer community solar projects; and

(b) Community solar projects and related programs and services offered by investor-owned utilities.

~~((11))~~ (12) If a consumer-owned utility opts to provide a community solar program or contracts with a nonutility administrator to offer a community solar program, the governing body of the consumer-owned utility must publish, without disclosing proprietary information, a list of the nonutility administrators contracted by the utility as part of its community solar program.

~~((12))~~ (13) Except for parties engaged in actions and transactions regulated under laws administered by other authorities and exempted under RCW 19.86.170, a violation of this section constitutes an unfair or deceptive act in trade or commerce in violation of chapter 19.86 RCW, the consumer protection act. Acts in violation of chapter 36, Laws of 2017 3rd sp. sess. are not reasonable in relation to the development and preservation of business, and

constitute matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW.

~~((13))~~ (14) Nothing in this section may be construed as intending to preclude persons from investing in or possessing an ownership interest in a community solar project, or from applying for and receiving federal investment tax credits.

(15) This section expires June 30, 2038.

NEW SECTION. Sec. 7. RCW 82.32.808 does not apply to this act.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 10, 2022.

Passed by the Senate March 10, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

### CHAPTER 213

[Engrossed Substitute House Bill 1821]

#### AUDIO-ONLY TELEMEDICINE REIMBURSEMENT—DEFINITION OF ESTABLISHED RELATIONSHIP

AN ACT Relating to the definition of established relationship for purposes of audio-only telemedicine; amending RCW 41.05.700, 48.43.735, and 74.09.325; reenacting and amending RCW 71.24.335; and creating a new section.

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

**Sec. 1.** RCW 41.05.700 and 2021 c 157 s 1 are each amended to read as follows:

(1)(a) A health plan offered to employees, school employees, and their covered dependents under this chapter issued or renewed on or after January 1, 2017, shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(i) The plan provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, a health plan offered to employees, school employees, and their covered dependents under this chapter issued or renewed on or after January 1, 2021, shall reimburse a provider for a

health care service provided to a covered person through telemedicine the same amount of compensation the carrier would pay the provider if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(2) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health plan and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

- (a) Hospital;
- (b) Rural health clinic;
- (c) Federally qualified health center;
- (d) Physician's or other health care provider's office;
- (e) Licensed or certified behavioral health agency;
- (f) Skilled nursing facility;
- (g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health plan. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) The plan may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) The plan may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require the plan to reimburse:

- (a) An originating site for professional fees;
- (b) A provider for a health care service that is not a covered benefit under the plan; or

(c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8)(a) If a provider intends to bill a patient or the patient's health plan for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered.

(b) If the health care authority has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the health

care authority may submit information to the appropriate disciplining authority, as defined in RCW 18.130.020, for action. Prior to submitting information to the appropriate disciplining authority, the health care authority may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).

(c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the health care authority or initiated directly by an enrollee, the disciplining authority shall notify the health care authority of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results;

(b) "Disciplining authority" has the same meaning as in RCW 18.130.020;

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(i) For health care services included in the essential health benefits category of mental health and substance use disorder services, including behavioral health treatment:

(A) The covered person has had, within the past three years, at least one in-person appointment ((within the past year)), or at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or ((the))

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person ((within the past year)) and has provided relevant medical information to the provider providing audio-only telemedicine;

(ii) For any other health care service:

(A) The covered person has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person and has provided relevant medical information to the provider providing audio-only telemedicine;

(e) "Health care service" has the same meaning as in RCW 48.43.005;

(f) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(g) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(h) "Provider" has the same meaning as in RCW 48.43.005;

(i) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(j) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

**Sec. 2.** RCW 48.43.735 and 2021 c 157 s 2 are each amended to read as follows:

(1)(a) For health plans issued or renewed on or after January 1, 2017, a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(i) The plan provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, for health plans issued or renewed on or after January 1, 2021, a health carrier shall reimburse a provider for a health care service provided to a covered person through telemedicine the same amount of compensation the carrier would pay the provider if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(2) For purposes of this section, reimbursement of store and forward technology is available only for those covered services specified in the negotiated agreement between the health carrier and the health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

- (a) Hospital;
- (b) Rural health clinic;
- (c) Federally qualified health center;
- (d) Physician's or other health care provider's office;
- (e) Licensed or certified behavioral health agency;
- (f) Skilled nursing facility;
- (g) Home or any location determined by the individual receiving the service; or

(h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the health carrier. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A health carrier may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A health carrier may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require a health carrier to reimburse:

- (a) An originating site for professional fees;
- (b) A provider for a health care service that is not a covered benefit under the plan; or
- (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8)(a) If a provider intends to bill a patient or the patient's health plan for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered.

(b) If the commissioner has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the commissioner may submit information to the appropriate disciplining authority, as defined in RCW 18.130.020, for action. Prior to submitting information to the appropriate disciplining authority, the commissioner may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).

(c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the commissioner or initiated directly by an enrollee, the disciplining authority shall notify the commissioner of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results;

(b) "Disciplining authority" has the same meaning as in RCW 18.130.020;

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(i) For health care services included in the essential health benefits category of mental health and substance use disorder services, including behavioral health treatment:

(A) The covered person has had, within the past three years, at least one in-person appointment ((within the past year)), or at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or ((the))

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past three years, at

least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person ((within the past year)) and has provided relevant medical information to the provider providing audio-only telemedicine;

(ii) For any other health care service:

(A) The covered person has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person and has provided relevant medical information to the provider providing audio-only telemedicine;

(e) "Health care service" has the same meaning as in RCW 48.43.005;

(f) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(g) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(h) "Provider" has the same meaning as in RCW 48.43.005;

(i) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(j) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

~~((9)-(10))~~ (10) The commissioner may adopt any rules necessary to implement this section.

**Sec. 3.** RCW 71.24.335 and 2021 c 157 s 4 and 2021 c 100 s 1 are each reenacted and amended to read as follows:

(1) Upon initiation or renewal of a contract with the authority, behavioral health administrative services organizations and managed care organizations shall reimburse a provider for a behavioral health service provided to a covered person through telemedicine or store and forward technology if:

(a) The behavioral health administrative services organization or managed care organization in which the covered person is enrolled provides coverage of the behavioral health service when provided in person by the provider;

(b) The behavioral health service is medically necessary; and

(c) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.



(2)(a) If the service is provided through store and forward technology there must be an associated visit between the covered person and the referring provider. Nothing in this section prohibits the use of telemedicine for the associated office visit.

(b) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the behavioral health administrative services organization, or managed care organization, and the provider.

(3) An originating site for a telemedicine behavioral health service subject to subsection (1) of this section means an originating site as defined in rule by the department or the health care authority.

(4) Any originating site, other than a home, under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement must be subject to a negotiated agreement between the originating site and the behavioral health administrative services organization, or managed care organization, as applicable. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) Behavioral health administrative services organizations and managed care organizations may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) Behavioral health administrative services organizations and managed care organizations may subject coverage of a telemedicine or store and forward technology behavioral health service under subsection (1) of this section to all terms and conditions of the behavioral health administrative services organization or managed care organization in which the covered person is enrolled, including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable behavioral health care service provided in person.

(7) This section does not require a behavioral health administrative services organization or a managed care organization to reimburse:

(a) An originating site for professional fees;

(b) A provider for a behavioral health service that is not a covered benefit;  
or

(c) An originating site or provider when the site or provider is not a contracted provider.

(8)(a) If a provider intends to bill a patient, a behavioral health administrative services organization, or a managed care organization for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered.

(b) If the health care authority has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the health care authority may submit information to the appropriate disciplining authority, as defined in RCW 18.130.020, for action. Prior to submitting information to the appropriate disciplining authority, the health care authority may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).

(c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost

recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the health care authority or initiated directly by an enrollee, the disciplining authority shall notify the health care authority of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results;

(b) "Disciplining authority" has the same meaning as in RCW 18.130.020;

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(i) The covered person has had, within the past three years, at least one in-person appointment ((within the past year)), or at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or ((the))

(ii) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person ((within the past year)) and has provided relevant medical information to the provider providing audio-only telemedicine;

(e) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(f) "Originating site" means the physical location of a patient receiving behavioral health services through telemedicine;

(g) "Provider" has the same meaning as in RCW 48.43.005;

(h) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical or behavioral health information from an originating site to the provider at a distant site which results in medical or behavioral health diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(i) "Telemedicine" means the delivery of health care or behavioral health services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

~~((9)-(10))~~ (10) The authority must adopt rules as necessary to implement the provisions of this section.

**Sec. 4.** RCW 74.09.325 and 2021 c 157 s 5 are each amended to read as follows:

(1)(a) Upon initiation or renewal of a contract with the Washington state health care authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine or store and forward technology if:

(i) The medicaid managed care plan in which the covered person is enrolled provides coverage of the health care service when provided in person by the provider;

(ii) The health care service is medically necessary;

(iii) The health care service is a service recognized as an essential health benefit under section 1302(b) of the federal patient protection and affordable care act in effect on January 1, 2015;

(iv) The health care service is determined to be safely and effectively provided through telemedicine or store and forward technology according to generally accepted health care practices and standards, and the technology used to provide the health care service meets the standards required by state and federal laws governing the privacy and security of protected health information; and

(v) Beginning January 1, 2023, for audio-only telemedicine, the covered person has an established relationship with the provider.

(b)(i) Except as provided in (b)(ii) of this subsection, upon initiation or renewal of a contract with the Washington state health care authority to administer a medicaid managed care plan, a managed health care system shall reimburse a provider for a health care service provided to a covered person through telemedicine the same amount of compensation the managed health care system would pay the provider if the health care service was provided in person by the provider.

(ii) Hospitals, hospital systems, telemedicine companies, and provider groups consisting of eleven or more providers may elect to negotiate an amount of compensation for telemedicine services that differs from the amount of compensation for in-person services.

(iii) For purposes of this subsection (1)(b), the number of providers in a provider group refers to all providers within the group, regardless of a provider's location.

(iv) A rural health clinic shall be reimbursed for audio-only telemedicine at the rural health clinic encounter rate.

(2) For purposes of this section, reimbursement of store and forward technology is available only for those services specified in the negotiated agreement between the managed health care system and health care provider.

(3) An originating site for a telemedicine health care service subject to subsection (1) of this section includes a:

- (a) Hospital;
- (b) Rural health clinic;
- (c) Federally qualified health center;
- (d) Physician's or other health care provider's office;
- (e) Licensed or certified behavioral health agency;
- (f) Skilled nursing facility;
- (g) Home or any location determined by the individual receiving the service; or
- (h) Renal dialysis center, except an independent renal dialysis center.

(4) Except for subsection (3)(g) of this section, any originating site under subsection (3) of this section may charge a facility fee for infrastructure and preparation of the patient. Reimbursement for a facility fee must be subject to a negotiated agreement between the originating site and the managed health care system. A distant site, a hospital that is an originating site for audio-only telemedicine, or any other site not identified in subsection (3) of this section may not charge a facility fee.

(5) A managed health care system may not distinguish between originating sites that are rural and urban in providing the coverage required in subsection (1) of this section.

(6) A managed health care system may subject coverage of a telemedicine or store and forward technology health service under subsection (1) of this section to all terms and conditions of the plan in which the covered person is enrolled including, but not limited to, utilization review, prior authorization, deductible, copayment, or coinsurance requirements that are applicable to coverage of a comparable health care service provided in person.

(7) This section does not require a managed health care system to reimburse:

- (a) An originating site for professional fees;
- (b) A provider for a health care service that is not a covered benefit under the plan; or
- (c) An originating site or health care provider when the site or provider is not a contracted provider under the plan.

(8)(a) If a provider intends to bill a patient or a managed health care system for an audio-only telemedicine service, the provider must obtain patient consent for the billing in advance of the service being delivered and comply with all rules created by the authority related to restrictions on billing medicaid recipients. The authority may submit information on any potential violations of this subsection to the appropriate disciplining authority, as defined in RCW 18.130.020((f, j)), or take contractual actions against the provider's agreement for participation in the medicaid program, or both.

(b) If the health care authority has cause to believe that a provider has engaged in a pattern of unresolved violations of this subsection (8), the health care authority may submit information to the appropriate disciplining authority for action. Prior to submitting information to the appropriate disciplining authority, the health care authority may provide the provider with an opportunity to cure the alleged violations or explain why the actions in question did not violate this subsection (8).

(c) If the provider has engaged in a pattern of unresolved violations of this subsection (8), the appropriate disciplining authority may levy a fine or cost recovery upon the provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the disciplining authority. Upon completion of its review of any potential violation submitted by the health care authority or initiated directly by an enrollee, the disciplining authority shall notify the health care authority of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(9) For purposes of this section:

(a)(i) "Audio-only telemedicine" means the delivery of health care services through the use of audio-only technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment.

(ii) For purposes of this section only, "audio-only telemedicine" does not include:

(A) The use of facsimile or email; or

(B) The delivery of health care services that are customarily delivered by audio-only technology and customarily not billed as separate services by the provider, such as the sharing of laboratory results;

(b) "Disciplining authority" has the same meaning as in RCW18.130.020;

(c) "Distant site" means the site at which a physician or other licensed provider, delivering a professional service, is physically located at the time the service is provided through telemedicine;

(d) "Established relationship" means the provider providing audio-only telemedicine has access to sufficient health records to ensure safe, effective, and appropriate care services and:

(i) For health care services included in the essential health benefits category of mental health and substance use disorder services, including behavioral health treatment:

(A) The covered person has had, within the past three years, at least one in-person appointment ((within the past year)), or at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or ((the))

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past three years, at least one in-person appointment, or at least one real-time interactive appointment using both audio and video technology, with the covered person ((within the past year)) and has provided relevant medical information to the provider providing audio-only telemedicine;

(ii) For any other health care service:

(A) The covered person has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the provider providing audio-only telemedicine or with a provider employed at the same medical group, at the same clinic, or by the same integrated delivery system operated by a

carrier licensed under chapter 48.44 or 48.46 RCW as the provider providing audio-only telemedicine; or

(B) The covered person was referred to the provider providing audio-only telemedicine by another provider who has had, within the past two years, at least one in-person appointment, or, until January 1, 2024, at least one real-time interactive appointment using both audio and video technology, with the covered person and has provided relevant medical information to the provider providing audio-only telemedicine;

(e) "Health care service" has the same meaning as in RCW 48.43.005;

(f) "Hospital" means a facility licensed under chapter 70.41, 71.12, or 72.23 RCW;

(g) "Managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under this chapter and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(h) "Originating site" means the physical location of a patient receiving health care services through telemedicine;

(i) "Provider" has the same meaning as in RCW 48.43.005;

(j) "Store and forward technology" means use of an asynchronous transmission of a covered person's medical information from an originating site to the health care provider at a distant site which results in medical diagnosis and management of the covered person, and does not include the use of audio-only telephone, facsimile, or email; and

(k) "Telemedicine" means the delivery of health care services through the use of interactive audio and video technology, permitting real-time communication between the patient at the originating site and the provider, for the purpose of diagnosis, consultation, or treatment. For purposes of this section only, "telemedicine" includes audio-only telemedicine, but does not include facsimile or email.

**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.** If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed by the House March 9, 2022.

Passed by the Senate March 8, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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**CHAPTER 214**

[Second Substitute House Bill 1835]

**POSTSECONDARY ENROLLMENT—OUTREACH AND COMPLETION INITIATIVES**

AN ACT Relating to outreach and completion initiatives to increase postsecondary enrollment; amending RCW 28B.92.200 and 74.04.060; adding a new section to chapter 28B.77 RCW; adding a new section to chapter 28B.50 RCW; adding new sections to chapter 28B.92 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that, in 2020, Washington ranked 49th nationally for completion of the free application for federal student aid among high school seniors. The free application for federal student aid is the form that prospective and current postsecondary education students use to receive federal and state financial aid, such as the federal Pell grant, the Washington college grant, the college bound scholarship, the opportunity scholarship, federal student loans, and many other financial resources for college. For students who cannot file a free application for federal student aid, the state has an alternative financial aid application called the Washington application for state financial aid. The free application for federal student aid is a strong indicator for college enrollment. Ninety-two percent of high school seniors who completed the free application for federal student aid enrolled in a postsecondary institution by the November following graduation versus 51 percent of students who did not complete a free application for federal student aid. In addition, the legislature recognizes that the pandemic has exacerbated equity gaps in college access as colleges and universities are experiencing decreases in enrollments among low-income students, despite having one of the largest and most generous need-based financial aid programs in the country. The legislature recognizes that the Washington college grant program established in chapter 28B.92 RCW, which education trust called "the most equity-focused free college program in the country" is a critical tool to address these equity gaps and help students enter college and apprenticeships. Therefore, it is the legislature's intent to establish an outreach initiative for the Washington college grant and an outreach and completion initiative for the free application for federal student aid and Washington application for state financial aid to help students succeed.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.77 RCW to read as follows:

Subject to availability of amounts appropriated for this specific purpose, the student achievement council shall conduct a statewide marketing campaign to increase awareness of the Washington college grant program established in chapter 28B.92 RCW. The student achievement council shall issue a request for proposal for hiring a marketing firm that will produce high quality advertisements to promote the state's largest financial aid program. Advertisements should be marketed towards potential postsecondary students and their parents with the goal of increasing awareness of the Washington college grant program to further the state's educational attainment goals. The advertisements may include television commercials, billboards, advertisements

on public transit, paid internet search advertisements, and social media marketing.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28B.50 RCW to read as follows:

Subject to availability of amounts appropriated for this specific purpose, the college board shall administer a free application for federal student aid and Washington application for state financial aid outreach and completion initiative pilot program.

(1) The college board shall select community or technical colleges to participate in the pilot program. The colleges selected to participate must each be located within educational service districts that are in the bottom two for free application for federal student aid completion rates when combining their respective school districts' free application for federal student aid completion rates over the past three completed academic years prior to the effective date of this section. Colleges selected to participate shall employ outreach specialists to work directly with the high schools located in the corresponding educational service district. It is the legislature's intent that the outreach specialists be employed at a ratio of one to 600 high school seniors within the corresponding educational service district. The outreach specialists shall make significant contact with high school students and their families for the purpose of increasing free application for federal student aid and Washington application for state financial aid completion rates. The outreach specialists shall use the free application for federal student aid and Washington application for state financial aid data maintained by the student achievement council to conduct targeted outreach and free application for federal student aid and Washington application for state financial aid completion assistance to high school seniors. The outreach specialists shall also provide information on how to access private scholarships. The outreach specialists shall conduct other outreach as appropriate, including virtual or in-person presentations with students and families, announcements on school intercoms and social media channels, outreach to recent high school graduates as peer messengers, and events at school college or career fairs.

(2) The college board shall report annually to the appropriate committees of the legislature in accordance with RCW 43.01.036 beginning December 1, 2023, on the free application for federal student aid and Washington application for state financial aid outreach and completion initiative pilot program. The report must include details on how the colleges selected used the funding and how the initiatives worked to increase free application for federal student aid and Washington application for state financial aid completion rates. The report must also include before and after free application for federal student aid and Washington application for state financial aid completion data and specific details about the number of high school students assisted in completing the free application for federal student aid and Washington application for state financial aid.

**NEW SECTION. Sec. 4.** (1) Subject to availability of amounts appropriated for this specific purpose, the state library shall administer a grant pilot program with the purpose of increasing free application for federal student aid and Washington application for state financial aid completion rates.



(2) The state library shall administer grants to local public libraries located within educational service districts that are in the bottom two for free application for federal student aid completion rates when combining their respective school districts' free application for federal student aid completion rates over the past three completed academic years prior to the effective date of this section. The state library shall, as a condition of the grant pilot program, require local public libraries to partner with community-based organizations including, where appropriate, organizations with proven track records of working with historically underrepresented populations, to increase free application for federal student aid and Washington application for state financial aid completion. The organization or organizations selected shall:

(a) Be embedded in their respective community and have a strong foundation of trust among members of the community; and

(b) Be committed to working directly with individual members of their community to assist with one-on-one free application for federal student aid and Washington application for state financial aid completion and to provide information on how to access private scholarships.

(3) The state library shall report annually to the appropriate committees of the legislature in accordance with RCW 43.01.036 beginning December 1, 2023, on the progress of the library outreach pilot project to boost free application for federal student aid and Washington application for state financial aid completion rates. The report must include the specific number of students that were assisted through the grant pilot program.

**Sec. 5.** RCW 28B.92.200 and 2019 c 406 s 19 are each amended to read as follows:

(1) The Washington college grant program is created to provide a statewide free college program for eligible participants and greater access to postsecondary education for Washington residents. The Washington college grant program is intended to increase the number of high school graduates and adults that can attain a postsecondary credential and provide them with the qualifications needed to compete for job opportunities in Washington.

(2) The office shall implement and administer the Washington college grant program and is authorized to establish rules necessary for implementation of the program.

(3) The legislature shall appropriate funding for the Washington college grant program. Allocations must be made on the basis of estimated eligible participants enrolled in eligible institutions of higher education or apprenticeship programs. All eligible students are entitled to a Washington college grant beginning in academic year 2020-21.

(4) The office shall award Washington college grants to all eligible students beginning in academic year 2020-21.

(5) To be eligible for the Washington college grant, students must meet the following requirements:

(a) (i) Demonstrate financial need under RCW 28B.92.205;

(ii) Receive one of the following types of public assistance:

(A) Aged, blind, or disabled assistance benefits under chapter 74.62 RCW;

(B) Essential needs and housing support program benefits under RCW 43.185C.220; or

(C) Pregnant women assistance program financial grants under RCW 74.62.030; or

(iii) Be a Washington high school student in the 10th, 11th, or 12th grade whose parent or legal guardian is receiving one of the types of public assistance listed in (a)(ii) of this subsection and have received a certificate confirming eligibility from the office in accordance with section 6 of this act;

(b)(i) Be enrolled or accepted for enrollment for at least three quarter credits or the equivalent semester credits at an institution of higher education in Washington as defined in RCW 28B.92.030; or

(ii) Be enrolled in a registered apprenticeship program approved under chapter 49.04 RCW;

(c) Be a resident student as defined in RCW 28B.15.012(2) (a) through (e);

(d) File an annual application for financial aid as approved by the office; and

(e) Must not have earned a baccalaureate degree or higher from a postsecondary institution.

(6) Washington college grant eligibility may not extend beyond five years or one hundred twenty-five percent of the published length of the program in which the student is enrolled or the credit or clock-hour equivalent.

(7) Institutional aid administrators shall determine whether a student eligible for the Washington college grant in a given academic year may remain eligible for the ensuing year if the student's family income increases by no more than three percent.

(8) Qualifications for receipt and renewal include maintaining satisfactory academic progress toward completion of an eligible program as determined by the office and established in rule.

(9) Should a recipient terminate his or her enrollment for any reason during the academic year, the unused portion of the grant shall be returned to the state educational grant fund by the institution of higher education according to the institution of higher education's policy for issuing refunds, except as provided in RCW 28B.92.070.

(10) An eligible student enrolled on a part-time basis shall receive a prorated portion of the Washington college grant for any academic period in which he or she is enrolled on a part-time basis.

(11) The Washington college grant is intended to be used to meet the costs of postsecondary education for students with financial need. The student shall be awarded all need-based financial aid for which the student qualifies as determined by the institution.

(12) Students and participating institutions of higher education shall comply with all the rules adopted by the council for the administration of this chapter.

**NEW SECTION. Sec. 6.** A new section is added to chapter 28B.92 RCW to read as follows:

(1) The office shall enter into a data-sharing agreement with the department of social and health services to facilitate the sharing of individual-level data. The department of social and health services shall send the office a list of all individuals receiving benefits under the public assistance programs listed under RCW 28B.92.200(5) on at least an annual basis. The office shall use the list to confirm students' eligibility for the Washington college grant program, without requiring the student to fill out a separate financial aid form. The office may also

use the information to conduct outreach promoting the Washington college grant.

(2) For high school students in 10th, 11th, and 12th grades whose families are receiving benefits under one of the public assistance programs listed under RCW 28B.92.200(5), the office shall issue a certificate to the student that validates the student's financial need eligibility for the Washington college grant program. The certificate is good for one year after high school graduation and may be used upon enrollment in an eligible institution of higher education, provided the student meets the other Washington college grant eligibility requirements. The office shall track and maintain records of students who were issued certificates under this section in order to confirm a student's financial need eligibility with an institution of higher education. A student does not need to produce the certificate to receive the Washington college grant.

**NEW SECTION. Sec. 7.** A new section is added to chapter 28B.92 RCW to read as follows:

The office shall collaborate with the department of social and health services to facilitate individual-level outreach to individuals receiving benefits under the public assistance programs listed under RCW 28B.92.200(5), temporary assistance for needy families under chapter 74.08 RCW, the state family assistance program provided for in rule, and the basic food program to inform these individuals of their eligibility for the Washington college grant program.

**Sec. 8.** RCW 74.04.060 and 2017 3rd sp.s. c 6 s 817 are each amended to read as follows:

(1)(a) For the protection of applicants and recipients, the department, the authority, and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer.

(b) Unless prohibited by federal law, for the purpose of investigating and preventing child abuse and neglect and providing for the health care coordination and well-being of children in foster care, the department and the authority shall disclose to the department of children, youth, and families the following information: Developmental disabilities administration client records; home and community services client records; long-term care facility or certified community residential supports records; health care information; child support information; food assistance information; and public assistance information. Disclosure under this subsection (1)(b) is mandatory for the purposes of the federal health insurance portability and accountability act.

(c) Upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and

location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

(d) Unless prohibited by federal law, the department is permitted to release individual-level data of state-funded public assistance programs listed under RCW 28B.92.200 to the student achievement council under chapter 28B.77 RCW for the purposes of section 6 of this act.

(e) The department shall review methods to improve the protection and confidentiality of information for recipients of welfare assistance who have disclosed to the department that they are past or current victims of domestic violence or stalking.

(2) The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

(3) The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: PROVIDED, HOWEVER, That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

(4) It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor.

**NEW SECTION. Sec. 9.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 215

[Second Substitute House Bill 1860]

## INPATIENT BEHAVIORAL HEALTH DISCHARGE—HOMELESSNESS

AN ACT Relating to preventing homelessness among persons discharging from inpatient behavioral health settings; amending RCW 70.320.020; adding a new section to chapter 71.24 RCW; adding a new section to chapter 71.12 RCW; adding a new section to chapter 74.09 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that social determinants of health, particularly housing, are highly correlated with long-term recovery from behavioral health conditions. Seeking inpatient treatment for a mental health or substance use challenge is an act of valor. Upon discharge from care, these individuals deserve a safe, stable place from which to launch their recovery. It is far easier and more cost-effective to help maintain a person's recovery after treatment than to discharge them into homelessness and begin the process anew amid another crisis. Sometimes, there may not be another chance.

(2) Therefore, it is the intent of the legislature to seize the incredible opportunity presented by a person seeking inpatient behavioral health care by ensuring that these courageous individuals are discharged to appropriate housing.

**Sec. 2.** RCW 70.320.020 and 2021 c 267 s 2 are each amended to read as follows:

(1) The authority and the department shall base contract performance measures developed under RCW 70.320.030 on the following outcomes when contracting with service contracting entities: Improvements in client health status and wellness; increases in client participation in meaningful activities; reductions in client involvement with criminal justice systems; reductions in avoidable costs in hospitals, emergency rooms, crisis services, and jails and prisons; increases in stable housing in the community; improvements in client satisfaction with quality of life; and reductions in population-level health disparities.

(2) The performance measures must demonstrate the manner in which the following principles are achieved within each of the outcomes under subsection (1) of this section:

(a) Maximization of the use of evidence-based practices will be given priority over the use of research-based and promising practices, and research-based practices will be given priority over the use of promising practices. The agencies will develop strategies to identify programs that are effective with ethnically diverse clients and to consult with tribal governments, experts within ethnically diverse communities and community organizations that serve diverse communities;

(b) The maximization of the client's independence, recovery, and employment;

(c) The maximization of the client's participation in treatment decisions; and

(d) The collaboration between consumer-based support programs in providing services to the client.

(3) In developing performance measures under RCW 70.320.030, the authority and the department shall consider expected outcomes relevant to the

general populations that each agency serves. The authority and the department may adapt the outcomes to account for the unique needs and characteristics of discrete subcategories of populations receiving services, including ethnically diverse communities.

(4) The authority and the department shall coordinate the establishment of the expected outcomes and the performance measures between each agency as well as each program to identify expected outcomes and performance measures that are common to the clients enrolled in multiple programs and to eliminate conflicting standards among the agencies and programs.

(5)(a) The authority and the department shall establish timelines and mechanisms for service contracting entities to report data related to performance measures and outcomes, including phased implementation of public reporting of outcome and performance measures in a form that allows for comparison of performance measures and levels of improvement between geographic regions of Washington.

(b) The authority and the department may not release any public reports of client outcomes unless the data has been deidentified and aggregated in such a way that the identity of individual clients cannot be determined through directly identifiable data or the combination of multiple data elements.

(6)(a) The performance measures coordinating committee must establish: (i) A performance measure to be integrated into the statewide common measure set which tracks effective integration practices of behavioral health services in primary care settings; ~~(and)~~ (ii) performance measures which track rates of criminal justice system involvement among ~~((public health system))~~ medical assistance clients with an identified behavioral health need including, but not limited to, rates of arrest and incarceration; and (iii) performance measures which track rates of homelessness and housing instability among medical assistance clients. The authority must set improvement targets related to these measures.

(b) The performance measures coordinating committee must report to the governor and appropriate committees of the legislature regarding the implementation of this subsection by July 1, 2022.

(c) For purposes of establishing performance measures as specified in (a)(ii) of this subsection, the performance measures coordinating committee shall convene a work group of stakeholders including the authority, medicaid managed care organizations, the department of corrections, and others with expertise in criminal justice and behavioral health. The work group shall review current performance measures that have been adopted in other states or nationally to inform this effort.

(d) For purposes of establishing performance measures as specified in (a)(iii) of this subsection, the performance measures coordinating committee shall convene a work group of stakeholders including the authority, medicaid managed care organizations, and others with expertise in housing for low-income populations and with experience understanding the impacts of homelessness and housing instability on health. The work group shall review current performance measures that have been adopted in other states or nationally from organizations with experience in similar measures to inform this effort.

(7) The authority must report to the governor and appropriate committees of the legislature ~~((by))~~:

(a) By October 1, 2022, regarding options and recommendations for integrating value-based purchasing terms and a performance improvement project into managed health care contracts relating to the criminal justice outcomes specified under subsection (1) of this section.

(b) By July 1, 2024, regarding options and recommendations for integrating value-based purchasing terms and to integrate a collective performance improvement project into managed health care contracts related to increasing stable housing in the community outcomes specified under subsection (1) of this section. The authority shall review the performance measures and information from the work group established in subsection (6)(d) of this section.

**NEW SECTION. Sec. 3.** A new section is added to chapter 71.24 RCW to read as follows:

By January 1, 2023, the authority shall require that any contract with a managed care organization include a requirement to provide housing-related care coordination services for enrollees who need such services upon being discharged from inpatient behavioral health settings as allowed by the centers for medicare and medicaid services.

**NEW SECTION. Sec. 4.** A new section is added to chapter 71.12 RCW to read as follows:

With respect to a person enrolled in medical assistance under chapter 74.09 RCW, a psychiatric hospital shall make every effort to:

(1) Inform the medicaid managed care organization in which the person is enrolled of the person's discharge or change in care plan on the following timelines:

(a) For an anticipated discharge, no later than 24 hours prior to the known discharge date; or

(b) For all other discharges, including if the person leaves against medical advice, no later than the date of discharge or departure from the facility; and

(2) Engage with medicaid managed care organizations in discharge planning, which includes informing and connecting patients to care management resources at the appropriate managed care organization.

**NEW SECTION. Sec. 5.** A new section is added to chapter 74.09 RCW to read as follows:

To improve health outcomes and address health inequities, the authority shall evaluate incentive approaches and recommend funding options to increase the collection of Z codes on individual medicaid claims, in accordance with standard billing guidance and regulations.

Passed by the House March 8, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 216

[Engrossed Substitute House Bill 1866]

## APPLE HEALTH AND HOMES—SUPPORTIVE HOUSING AND COMMUNITY SUPPORT SERVICES

AN ACT Relating to assisting persons receiving community support services through medical assistance programs to receive supportive housing; amending RCW 36.22.176; adding new sections to chapter 74.09 RCW; adding new sections to chapter 43.330 RCW; adding a new section to chapter 44.28 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:

(a) The epidemic of homelessness apparent in communities throughout Washington is creating immense suffering. It is threatening the health of homeless families and individuals, sapping their human potential, eroding public confidence, and undermining the shared values that have driven our state's prosperity, including public safety and access to public streets, parks, and facilities;

(b) In seeking to identify the causes of this epidemic, a large proportion of those unsheltered also suffer from serious behavioral health or physical health conditions that will inevitably grow worse without timely and effective health care;

(c) Housing is an indispensable element of effective health care. Stable housing is a prerequisite to addressing behavioral health needs and lack of housing is a precursor to poor health outcomes;

(d) A home, health care, and wellness are fundamental for Washington residents;

(e) Reducing homelessness is a priority of the people of Washington state and that reducing homelessness through policy alignment and reform lessens fiscal impact to the state and improves the economic vitality of our businesses;

(f) The impact of this epidemic is falling most heavily on those communities that already suffer the most serious health disparities: Black, indigenous, people of color, and historically marginalized and underserved communities. It is a moral imperative to shelter chronically homeless populations; and

(g) Washington state has many of the tools needed to address this challenge, including a network of safety net health and behavioral health care providers in both urban and rural areas, an effective system of health care coverage through apple health, and excellent public and nonprofit affordable housing providers. Yet far too many homeless families and individuals are going without the housing and health care resources they need because these tools have yet to be combined in an effective way across the state.

(2) It is the intent of the legislature to treat chronic homelessness as a medical condition and that the apple health and homes act address the needs of chronically homeless populations by pairing a health care problem with a health care solution.

**NEW SECTION. Sec. 2.** A new section is added to chapter 74.09 RCW to read as follows:

The definitions in this section apply throughout sections 3 and 4 of this act unless the context clearly requires otherwise.



(1) "Community support services" means active search and promotion of access to, and choice of, appropriate, safe, and affordable housing and ongoing supports to assure ongoing successful tenancy. The term includes, but is not limited to, services to medical assistance clients who are homeless or at risk of becoming homeless through outreach, engagement, and coordination of services with shelter and housing. The term includes benefits offered through the foundational community supports program established pursuant to the authority's federal waiver, entitled "medicaid transformation project," as amended and reauthorized.

(2) "Community support services provider" means a local entity that contracts with a coordinating entity to provide community support services. A community support services provider may also separately perform the functions of a housing provider.

(3) "Coordinating entity" means one or more organizations, including medicaid managed care organizations, under contract with the authority to coordinate community support services as required under sections 3 and 4 of this act. There may only be one coordinating entity per regional service area.

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

(5) "Homeless person" has the same meaning as in RCW 43.185C.010.

(6) "Housing provider" means a public or private organization that supplies permanent supportive housing units consistent with RCW 36.70A.030 to meet the housing needs of homeless persons. A housing provider may supply permanent supportive housing in a site-based or scattered site arrangement using a variety of public, private, philanthropic, or tenant-based sources of funds to cover operating costs or rent. A housing provider may also perform the functions of a community support services provider.

(7) "Office" means the office of apple health and homes created in section 5 of this act.

(8) "Program" means the apple health and homes program established in section 3 of this act.

(9) "Permanent supportive housing" has the same meaning as in RCW 36.70A.030.

**NEW SECTION. Sec. 3.** A new section is added to chapter 74.09 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the apple health and homes program is established to provide a permanent supportive housing benefit and a community support services benefit through a network of community support services providers for persons assessed with specific health needs and risk factors.

(a) The program shall operate through the collaboration of the department, the authority, the department of social and health services, local governments, the coordinating entity or entities, community support services providers, local housing providers, local health care entities, and community-based organizations in contact with potentially eligible individuals, to assure seamless integration of community support services, stable housing, and health care services.

(b) The entities operating the program shall coordinate resources, technical assistance, and capacity building efforts to help match eligible individuals with community support services, health care, including behavioral health care and long-term care services, and stable housing.

(2) To be eligible for community support services and permanent supportive housing under subsection (3) of this section, a person must:

(a) Be 18 years of age or older;

(b)(i) Be enrolled in a medical assistance program under this chapter and eligible for community support services;

(ii)(A) Have a countable income that is at or below 133 percent of the federal poverty level, adjusted for family size, and determined annually by the federal department of health and human services; and

(B) Not be eligible for categorically needy medical assistance, as defined in the social security Title XIX state plan; or

(iii) Be assessed as likely eligible for, but not yet enrolled in, a medical assistance program under this chapter due to the severity of behavioral health symptom acuity level which creates barriers to accessing and receiving conventional services;

(c) Have been assessed:

(i) By a licensed behavioral health agency to have a behavioral health need which is defined as meeting one or both of the following criteria:

(A) Having mental health needs, including a need for improvement, stabilization, or prevention of deterioration of functioning resulting from the presence of a mental illness; or

(B) Having substance use disorder needs indicating the need for outpatient substance use disorder treatment which may be determined by an assessment using the American society of addiction medicine criteria or a similar assessment tool approved by the authority;

(ii) By the department of social and health services as needing either assistance with at least three activities of daily living or hands-on assistance with at least one activity of daily living and have the preliminary determination confirmed by the department of social and health services through an in-person assessment conducted by the department of social and health services; or

(iii) To be a homeless person with a long-continuing or indefinite physical condition requiring improvement, stabilization, or prevention of deterioration of functioning, including the ability to live independently without support; and

(d) Have at least one of the following risk factors:

(i)(A) Be a homeless person at the time of the eligibility determination for the program and have been homeless for 12 months prior to the eligibility determination; or

(B) Have been a homeless person on at least four separate occasions in the three years prior to the eligibility determination for the program, as long as the combined occasions equal at least 12 months;

(ii) Have a history of frequent or lengthy institutional contact, including contact at institutional care facilities such as jails, substance use disorder or mental health treatment facilities, hospitals, or skilled nursing facilities; or

(iii) Have a history of frequent stays at adult residential care facilities or residential treatment facilities.

(3) Once a coordinating entity verifies that a person has met the eligibility criteria established in subsection (2) of this section, it must connect the eligible person with a community support services provider. The community support services provider must:

(a) Deliver pretenancy support services to determine the person's specific housing needs and assist the person in identifying permanent supportive housing options that are appropriate and safe for the person;

(b) Fully incorporate the eligible person's available community support services into the case management services provided by the community support services provider; and

(c) Deliver ongoing tenancy-sustaining services to support the person in maintaining successful tenancy.

(4) Housing options offered to eligible participants may vary, subject to the availability of housing and funding.

(5) The community support services benefit must be sustained or renewed in accordance with the eligibility standards in subsection (2) of this section, except that the standards related to homelessness shall be replaced with an assessment of the person's likelihood to become homeless in the event that the community support services benefit is terminated. The coordinating entity must adopt procedures to conduct community support services benefit renewals, according to authority standards.

NEW SECTION. **Sec. 4.** A new section is added to chapter 74.09 RCW to read as follows:

(1) To establish and administer section 3 of this act, the authority shall:

(a)(i) Establish or amend a contract with a coordinating entity to:

(A) Assure the availability of access to eligibility determinations services for community support services benefits and permanent supportive housing benefits;

(B) Verify that persons meet the eligibility standards of section 3(2) of this act;

(C) Coordinate enrollment in medical assistance programs for persons who meet the eligibility standards of section 3(2) of this act, except for actual enrollment in a medical assistance program under this chapter; and

(D) Coordinate with a network of community support services providers to arrange with local housing providers for the placement of an eligible person in permanent supportive housing appropriate to the person's needs and assure that community support services are provided to the person by a community support services provider.

(ii) The primary role of the coordinating entity or entities is administrative and operational, while the authority shall establish the general policy parameters for the work of the coordinating entity or entities.

(iii) In selecting the coordinating entity or entities, the authority shall: Choose one or more organizations that are capable of coordinating access to both community support services and permanent supportive housing services to eligible persons under section 3 of this act; and select no more than one coordinating entity per region which is served by medicaid managed care organizations;

(b) Report to the office for the ongoing monitoring of the program; and

(c) Adopt any rules necessary to implement the program.

(2) The authority shall establish a work group to provide feedback to the agency on its foundational community supports program as it aligns with the work of the housing benefit. The work group may include representatives of state agencies, behavioral health administrative services organizations, the

coordinating entity or entities, and contracted agencies providing foundational community supports services. Topics may include, but are not limited to, best practices in eligibility screening processes and case rate billing for foundational community supports housing, regional cost differentials, costs consistent with specialized needs, improved data access and data sharing with foundational community supports providers, and requirements related to the use of a common practice tool among community support services providers to integrate social determinants of health into service delivery. The authority, in consultation with foundational community supports providers and their stakeholders, shall engage each region on case management tools and programs, evaluate effectiveness, and inform the appropriate committees of the legislature on the use of case management tools. Case management shall also be a regular item of engagement in the work group. The authority shall convene the work group at least once each quarter and may expand upon, but not duplicate, existing work groups or advisory councils at the authority or other state agencies.

(3) To support the goals of the program and the goals of other statewide initiatives to identify and address social needs, including efforts within the 1115 waiver renewal to advance health equity and health-related supports, the authority shall work with the office and the department of social and health services to research, identify, and implement statewide universal measures to identify and consider social determinants of health domains, including housing, food security, transportation, financial strain, and interpersonal safety. The authority shall select an accredited or nationally vetted tool, including criteria for prioritization, for the community support services provider to use when making determinations about housing options and other support services to offer individuals eligible for the program. This screening and prioritization process may not exclude clients transitioning from inpatient or other behavioral health residential treatment settings. The authority shall inform the governor and the appropriate committees of the legislature on progress to this end.

(4)(a) The authority and the department may seek and accept funds from private and federal sources to support the purposes of the program.

(b) The authority shall seek approval from the federal department of health and human services to:

(i) Receive federal matching funds for administrative costs and services provided under the program to persons enrolled in medicaid;

(ii) Align the eligibility and benefit standards of the foundational community supports program established pursuant to the waiver, entitled "medicaid transformation project" and initially approved November 2017, between the authority and the federal centers for medicare and medicaid services, as amended and reauthorized, with the standards of the program, including extending the duration of the benefits under the foundational community supports program to not less than 12 months; and

(iii) Implement a medical and psychiatric respite care benefit for certain persons enrolled in medicaid.

(5)(a) By December 1, 2022, the authority and the office shall report to the governor and the legislature on preparedness for the first year of program implementation, including the estimated enrollment, estimated program costs, estimated supportive housing unit availability, funding availability for the program from all sources, efforts to improve billing and administrative burdens

for foundational community supports providers, efforts to streamline continuity of care and system connection for persons who are potentially eligible for foundational community supports, and any statutory or budgetary needs to successfully implement the first year of the program.

(b) By December 1, 2023, the authority and the office shall report to the governor and the legislature on the progress of the first year of program implementation and preparedness for the second year of program implementation.

(c) By December 1, 2024, the authority and the office shall report to the governor and the legislature on the progress of the first two years of program implementation and preparedness for ongoing housing acquisition and development.

(d) By December 1, 2026, the authority and the office shall report to the governor and the legislature on the full implementation of the program, including the number of persons served by the program, available permanent supportive housing units, estimated unmet demand for the program, ongoing funding requirements for the program, and funding availability for the program from all sources. Beginning December 1, 2027, the authority and the office shall provide annual updates to the governor and the legislature on the status of the program.

NEW SECTION. Sec. 5. A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, there is created the office of apple health and homes within the department.

(2) Activities of the office of apple health and homes must be carried out by a director of the office of apple health and homes, supervised by the director of the department or their designee.

(3) The office of apple health and homes is responsible for leading efforts under this section and coordinating a spectrum of practice efforts related to providing permanent supportive housing, including leading efforts related to every aspect of creating housing, operating housing, obtaining services, and delivering those services to connect people with housing and maintain them in that housing.

(4) The office of apple health and homes shall:

(a) Subject to available funding, allocate funding for permanent supportive housing units sufficient in number to fulfill permanent supportive housing needs of persons determined to be eligible for the program by the coordinating entity or entities under section 3 of this act;

(b) Collaborate with department divisions responsible for making awards or loans to appropriate housing providers to acquire, build, and operate the housing units, including but not limited to nonprofit community organizations, local counties and cities, public housing authorities, and public development authorities;

(c) Collaborate with the authority on administrative functions, oversight, and reporting requirements, as necessary to implement the apple health and homes program established under section 3 of this act;

(d) Establish metrics and collect racially disaggregated data from the authority and the department related to the program's effect on providing persons

with permanent supportive housing, moving people into independent housing, long-term housing stability, improving health outcomes for people in the program, estimated reduced health care spending to the state on persons enrolled in the program, and outcomes related to social determinants of health;

(e) Develop a publicly accessible dashboard to make key program outcomes available to the public. Key program outcomes include, but are not limited to, the number of people served by the program and the number of housing units created by the office;

(f) Create work plans and establish milestones to achieve the goal of providing permanent supportive housing for all eligible individuals; and

(g) Oversee the allocation of community support services provider and housing provider capacity-building grants to further the state's interests of enhancing the ability of community support services providers and housing providers to deliver community support services and permanent supportive housing and assure that an initial infrastructure is established to create strong networks of community support services providers and housing providers.

(5) The office of apple health and homes must be operational no later than January 1, 2023. The department shall assure the coordination of the work of the office of apple health and homes with other offices within the department with similar or adjacent authorities and functions.

(6) For the purposes of this section:

(a) "Community support services provider" has the same meaning as in section 2 of this act.

(b) "Coordinating entity" has the same meaning as in section 2 of this act.

(c) "Housing provider" has the same meaning as in section 2 of this act.

(d) "Permanent supportive housing" has the same meaning as in section 2 of this act.

**NEW SECTION. Sec. 6.** A new section is added to chapter 43.330 RCW to read as follows:

The apple health and homes 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 permanent supportive housing programs administered by the office created in section 5 of this act, including acquisition and development of permanent supportive housing units, operations, maintenance, and services costs of permanent supportive housing units, project-based vouchers, provider grants, and other purposes authorized by appropriations made in the operating budget. The department must prioritize allocating at least 10 percent of the expenditures from the account to organizations that serve and are substantially governed by individuals disproportionately impacted by homelessness and behavioral health conditions, including black, indigenous, and other people of color, lesbian, gay, bisexual, queer, transgender, and other gender diverse individuals. When selecting projects supported by funds from the account, the office shall balance the state's interest in quickly approving and financing projects, the degree to which the project will leverage other funds, the extent to which the project promotes racial equity, and the extent to which the project will promote priorities of this act on a statewide basis, including in rural areas and in geographically diverse parts of the state.

**Sec. 7.** RCW 36.22.176 and 2021 c 214 s 1 are each amended to read as follows:

(1) Except as provided in subsection (2) of this section, a surcharge of \$100 must be charged by the county auditor for each document recorded, which is in addition to any other charge or surcharge allowed by law. The auditor must remit the funds to the state treasurer to be deposited and used as follows:

(a) Twenty percent of funds must be deposited in the affordable housing for all account for operations, maintenance, and service costs for permanent supportive housing as defined in RCW 36.70A.030;

(b) From July 1, 2021, through June 30, 2023, four percent of the funds must be deposited into the landlord mitigation program account created in RCW 43.31.615 for the purposes of RCW 43.31.605(1). Thereafter, two percent of funds must be deposited into the landlord mitigation program account created in RCW 43.31.615 for purposes of RCW 43.31.605(1); ~~((and))~~

(c)(i) The remainder of funds must be distributed to the home security fund account, with no less than 60 percent of funds to be used for project-based vouchers for nonprofit housing providers or public housing authorities, housing services, rapid rehousing, emergency housing, acquisition, or operations, maintenance, and service costs for permanent supportive housing as defined in RCW 36.70A.030 for persons with disabilities. Permanent supportive housing programs administered by the office of apple health and homes created in section 5 of this act are also eligible to use these funds. Priority for use must be given to ~~((project-based vouchers and related services, housing acquisition, or emergency housing, for))~~ purposes intended to house persons who are chronically homeless or maintain housing for individuals with disabilities and prior experiences of homelessness, including families with children. ~~((At least 50 percent of persons receiving a project-based voucher, rapid rehousing, emergency housing, or benefiting from housing acquisition must be living unsheltered at the time of initial engagement.))~~ In addition, funds may be used for eviction prevention rental assistance pursuant to RCW 43.185C.185, foreclosure prevention services, dispute resolution center eviction prevention services, rental assistance for people experiencing homelessness, and tenant education and legal assistance.

(ii) The department shall provide counties with the right of first refusal to receive grant funds distributed under this subsection (c). If a county refuses the funds or does not respond within a time frame established by the department, the department shall identify an alternative grantee. The alternative grantee shall distribute the funds in a manner that is in compliance with this chapter.

(2) The surcharge imposed in this section does not apply to: (a) Assignments or substitutions of previously recorded deeds of trust; (b) documents recording a birth, marriage, divorce, or death; (c) any recorded documents otherwise exempted from a recording fee or additional surcharges under state law; (d) marriage licenses issued by the county auditor; or (e) documents recording a federal, state, county, city, or water-sewer district, or wage lien or satisfaction of lien.

**NEW SECTION. Sec. 8.** Subject to amounts appropriated from the apple health and homes account created in section 6 of this act the department of commerce shall establish a rapid permanent supportive housing acquisition and development program to issue competitive financial assistance to eligible

organizations under RCW 43.185A.040 and to public development authorities established under RCW 35.21.730 through 35.21.755, for the acquisition or the construction of permanent supportive housing units, subject to the following conditions and limitations:

(1) Awards or loans provided under this section may be used to construct permanent supportive housing units or to acquire real property for quick conversion into permanent supportive housing units which may include predevelopment or development activities, renovation, and building update costs. Awards or loans provided under this section may not be used for operating or maintenance costs associated with providing permanent supportive housing, supportive services, or debt service.

(2) Projects acquired or constructed under this section must serve individuals eligible for a community support services benefit through the apple health and homes program, as established in section 3 of this act.

(3) The department of commerce shall establish criteria for the issuance of the awards or loans, including but not limited to:

(a) The date upon which structural modifications or construction would begin and the anticipated date of completion of the project;

(b) A detailed estimate of the costs associated with the construction or acquisition and any updates or improvements necessary to make the property habitable for its intended use;

(c) A detailed estimate of the costs associated with opening the units; and

(d) A financial plan demonstrating the ability to maintain and operate the property and support its intended tenants through the end of the award or loan contract.

(4) The department of commerce shall provide a progress report on its website by June 1, 2023. The report must include:

(a) The total number of applications and amount of funding requested; and

(b) A list and description of the projects approved for funding including state funding, total project cost, number of units, and anticipated completion date.

(5)(a) The funding in this section shall be allocated on an ongoing basis until all funds are expended. The department of commerce shall dispense funds to qualifying applicants within 45 days of receipt of documentation from the applicant for qualifying uses and execution of any necessary contracts with the department in order to effect the purpose of rapid deployment of funds under this section.

(b) The department of commerce shall ensure that proposals that reach the greatest public benefit, as defined by the department, are prioritized. For the purposes of this subsection, "greatest public benefit" must include, but is not limited to:

(i) The greatest number of qualifying permanent supportive housing units created by the state investment, determined by comparing simultaneous applications for funding from the same geographic region; and

(ii) Equitable geographic distribution, to the extent possible, relative to need, as determined by the establishment of regional targets.

**NEW SECTION. Sec. 9.** A new section is added to chapter 44.28 RCW to read as follows:



The joint committee must review the efficacy of the apple health and homes program established by this act and report its findings to the appropriate committees of the legislature by December 1, 2027. The review must include a recommendation on whether this program should be continued without change or should be amended or repealed.

**NEW SECTION. Sec. 10.** This act may be known and cited as the apple health and homes act.

Passed by the House March 9, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 217

[Engrossed Substitute House Bill 1881]

### BIRTH DOULAS

AN ACT Relating to creating a new health profession for birth doulas; amending RCW 18.130.040; adding a new chapter to Title 18 RCW; and providing an effective date.

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

**NEW SECTION. Sec. 1.** The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of health.

(2) "Birth doula" means a person that is a nonmedical birth coach or support person trained to provide physical, emotional, and informational support to birthing persons during pregnancy, antepartum, labor, birth, and the postpartum period. Birth doulas advocate for and support birthing people and families to self-advocate by helping them to know their rights and make informed decisions. Birth doulas do not provide medical care.

(3) "Postpartum period" means the 12-month period beginning on the last day of the pregnancy.

(4) "Secretary" means the secretary of health.

**NEW SECTION. Sec. 2.** (1) A birth doula may voluntarily apply for certification from the department under this section.

(2) The department shall issue a certification to any applicant who has met the following requirements:

(a) Submitted a completed application as required by the department;

(b) Satisfactorily completed competencies that meet the requirements established by the secretary;

(c) Has not engaged in unprofessional conduct as defined in RCW 18.130.180;

(d) Is not currently subject to any disciplinary proceedings; and

(e) Paid a certification fee established by the secretary in rule.

(3) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of certifications and the discipline of certified birth doulas under this chapter.

**NEW SECTION. Sec. 3.** (1) The secretary shall:

(a) In collaboration with community partners who advance equitable access to improve perinatal outcomes and care through holistic services for black and brown communities, adopt rules establishing the competency-based requirements that a birth doula must meet to obtain certification. The rules must establish processes that allow for applicants to meet the competency-based requirements through the following pathways:

(i) Successful completion of training and education programs approved by the secretary; and

(ii) Submission of proof of successful completion of culturally congruent ancestral practices, training, and education that the secretary must review and determine whether the training and education meet the competency-based requirements;

(b) Establish certification and renewal fees, administrative procedures, continuing education, administrative requirements, and forms necessary to implement this chapter in accordance with RCW 43.70.250 and 43.70.280;

(c) Maintain a record of all applicants and certifications under this chapter; and

(d) Hire clerical, administrative, and investigative staff as needed to implement and administer this chapter.

(2) All fees collected under this chapter must be credited to the health professions account as required under RCW 43.70.320.

**NEW SECTION. Sec. 4.** (1) Nothing in this chapter prohibits a person from practicing as a birth doula without obtaining certification under this chapter.

(2) No person may use the title "state-certified birth doula" in connection with the person's name to indicate or imply, directly or indirectly, that the person is a state-certified birth doula without being certified in accordance with this chapter as a birth doula.

**Sec. 5.** RCW 18.130.040 and 2021 c 179 s 7 are each amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Midwives licensed under chapter 18.50 RCW;

(iii) Ocularists licensed under chapter 18.55 RCW;

(iv) Massage therapists and businesses licensed under chapter 18.108 RCW;

(v) Dental hygienists licensed under chapter 18.29 RCW;

(vi) Acupuncturists or acupuncture and Eastern medicine practitioners licensed under chapter 18.06 RCW;

(vii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(viii) Respiratory care practitioners licensed under chapter 18.89 RCW;

(ix) Hypnotherapists and agency affiliated counselors registered and advisors and counselors certified under chapter 18.19 RCW;

(x) Persons licensed as mental health counselors, mental health counselor associates, marriage and family therapists, marriage and family therapist associates, social workers, social work associates—advanced, and social work associates—independent clinical under chapter 18.225 RCW;

(xi) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xii) Nursing assistants registered or certified or medication assistants endorsed under chapter 18.88A RCW;

(xiii) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xiv) Substance use disorder professionals, substance use disorder professional trainees, or co-occurring disorder specialists certified under chapter 18.205 RCW;

(xv) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xvi) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xvii) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xviii) Surgical technologists registered under chapter 18.215 RCW;

(xix) Recreational therapists under chapter 18.230 RCW;

(xx) Animal massage therapists certified under chapter 18.240 RCW;

(xxi) Athletic trainers licensed under chapter 18.250 RCW;

(xxii) Home care aides certified under chapter 18.88B RCW;

(xxiii) Genetic counselors licensed under chapter 18.290 RCW;

(xxiv) Reflexologists certified under chapter 18.108 RCW;

(xxv) Medical assistants-certified, medical assistants-hemodialysis technician, medical assistants-phlebotomist, forensic phlebotomist, and medical assistants-registered certified and registered under chapter 18.360 RCW; (~~and~~)

(xxvi) Behavior analysts, assistant behavior analysts, and behavior technicians under chapter 18.380 RCW; and

(xxvii) Birth doulas certified under chapter 18.--- RCW (the new chapter created in section 7 of this act).

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW, licenses and registrations issued under chapter 18.260 RCW, and certifications issued under chapter 18.350 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapter 18.57 RCW;

(viii) The pharmacy quality assurance commission as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The Washington medical commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW;

(xiv) The veterinary board of governors as established in chapter 18.92 RCW;

(xv) The board of naturopathy established in chapter 18.36A RCW, governing licenses and certifications issued under that chapter; and

(xvi) The board of denturists established in chapter 18.30 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses. The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the uniform disciplinary act, among the disciplining authorities listed in subsection (2) of this section.

**NEW SECTION. Sec. 6.** The secretary may adopt any rules necessary to implement this chapter.

**NEW SECTION. Sec. 7.** Sections 1 through 4 and 6 of this act constitute a new chapter in Title 18 RCW.

**NEW SECTION. Sec. 8.** Sections 1 through 5 of this act take effect October 1, 2023.

Passed by the House March 8, 2022.

Passed by the Senate March 1, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 218

[Senate Bill 5042]

### GROWTH MANAGEMENT ACT—EFFECTIVE DATE OF CERTAIN ACTIONS

AN ACT Relating to the effective date of certain actions taken under the growth management act; adding a new section to chapter 36.70A RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that climate change is one of the greatest challenges facing our state and the world today, an existential crisis with major negative impacts on environmental and human health. The legislature further finds that compact and responsibly planned development of residential and public facilities, intended under the growth management act,

mitigates climate change through the efficient use of energy resources and the corresponding decrease in greenhouse gas production. This dense development and the concentration of growth in urban areas also prevents sprawl, lessening development's impact on natural resources, ecosystems, and habitats.

The legislature also finds that current legal frameworks work against the act's goal of responsibly planned for growth by prematurely allowing development rights to vest before the validity of plans and regulations can be determined. This flawed process has led to the approval of development that has decreased resource lands and placed a strain on local infrastructure services. Furthermore, it makes it extremely difficult for local jurisdictions to come back into compliance with state laws and leaves citizens with no real remedy to undo these planning violations.

Therefore, the legislature intends to set the effective date of these impactful planning actions to a time that will allow for the thorough review of growth planning decisions intended under the act.

**NEW SECTION. Sec. 2.** A new section is added to chapter 36.70A RCW to read as follows:

The initial effective date of an action that expands an urban growth area designated under RCW 36.70A.110, removes the designation of agricultural, forest, or mineral resource lands designated under RCW 36.70A.170, creates or expands a limited area of more intensive rural development designated under RCW 36.70A.070(5)(d), establishes a new fully contained community under RCW 36.70A.350, or creates or expands a master planned resort designated under RCW 36.70A.360, is after the latest of the following dates:

- (1) 60 days after the date of publication of notice of adoption of the comprehensive plan, development regulation, or amendment to the plan or regulation, implementing the action, as provided in RCW 36.70A.290(2); or
- (2) If a petition for review to the growth management hearings board is timely filed, upon issuance of the board's final order.

Passed by the Senate January 26, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 219

[Engrossed Substitute Senate Bill 5268]

### INTELLECTUAL AND DEVELOPMENTAL DISABILITIES—VARIOUS PROVISIONS

AN ACT Relating to transforming services for individuals with intellectual and developmental disabilities by increasing the capabilities of community residential settings and redesigning the long-term nature of intermediate care facilities; amending RCW 43.88C.010; adding a new section to chapter 71A.18 RCW; creating new sections; and providing expiration dates.

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

Part 1: Increase the Capabilities of Community Residential Settings and Services

**NEW SECTION. Sec. 1.** (1) The legislature finds that the recommendations in the December 2019 report, "Rethinking Intellectual and Developmental Disability Policy to Empower Clients, Develop Providers, and Improve Services" and recommendations in the 2021 preliminary report of the

joint executive and legislative task force established in chapter 317, Laws of 2020 are the product of deliberations among a diverse and dedicated group of stakeholders and are critical to advancing the continuum of care for individuals with developmental disabilities.

(2) The legislature intends to continue efforts to expand community residential settings and supports with the goals of reducing the risk of federal divestment from Washington's intermediate care facilities and delivering appropriate care to clients of the developmental disabilities administration. To that end, the legislature finds that a reliable network of community providers is critical to meeting these goals and that community residential rates must be established at appropriate levels to ensure that individuals with intellectual and developmental disabilities have community residential options that appropriately address their needs and ensure stable, permanent outcomes.

(3) The legislature also finds that it is imperative that internal processes within the department of social and health services, including those that guide eligibility determinations, assess hours of service delivery, and measure quality of providers, be examined to ensure that these systems function in the most streamlined and efficient manner with the goal of achieving a system that has greater consistency with regard to expectations and requirements of providers and that is structured to be more person-centered and user-friendly at interface.

**Sec. 2.** RCW 43.88C.010 and 2021 c 334 s 975 are each amended to read as follows:

(1) The caseload forecast council is hereby created. The council shall consist of two individuals appointed by the governor and four individuals, one of whom is appointed by the chairperson of each of the two largest political caucuses in the senate and house of representatives. The chair of the council shall be selected from among the four caucus appointees. The council may select such other officers as the members deem necessary.

(2) The council shall employ a caseload forecast supervisor to supervise the preparation of all caseload forecasts. As used in this chapter, "supervisor" means the caseload forecast supervisor.

(3) Approval by an affirmative vote of at least five members of the council is required for any decisions regarding employment of the supervisor. Employment of the supervisor shall terminate after each term of three years. At the end of the first year of each three-year term the council shall consider extension of the supervisor's term by one year. The council may fix the compensation of the supervisor. The supervisor shall employ staff sufficient to accomplish the purposes of this section.

(4) The caseload forecast council shall oversee the preparation of and approve, by an affirmative vote of at least four members, the official state caseload forecasts prepared under RCW 43.88C.020. If the council is unable to approve a forecast before a date required in RCW 43.88C.020, the supervisor shall submit the forecast without approval and the forecast shall have the same effect as if approved by the council.

(5) A councilmember who does not cast an affirmative vote for approval of the official caseload forecast may request, and the supervisor shall provide, an alternative forecast based on assumptions specified by the member.

(6) Members of the caseload forecast council shall serve without additional compensation but shall be reimbursed for travel expenses in accordance with

RCW 44.04.120 while attending sessions of the council or on official business authorized by the council. Nonlegislative members of the council shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

(7) "Caseload," as used in this chapter, means:

(a) The number of persons expected to meet entitlement requirements and require the services of public assistance programs, state correctional institutions, state correctional noninstitutional supervision, state institutions for juvenile offenders, the common school system, long-term care, medical assistance, foster care, and adoption support;

(b) The number of students who are eligible for the Washington college bound scholarship program and are expected to attend an institution of higher education as defined in RCW 28B.92.030;

(c) The number of students who are eligible for the Washington college grant program under RCW 28B.92.200 and 28B.92.205 and are expected to attend an institution of higher education as defined in RCW 28B.92.030; and

(d) The number of children who are eligible, as defined in RCW 43.216.505, to participate in, and the number of children actually served by, the early childhood education and assistance program.

(8) The caseload forecast council shall forecast the temporary assistance for needy families and the working connections child care programs as a courtesy.

(9) ~~((The))~~ By January 1, 2023, the caseload forecast council shall present the number of individuals who are assessed as eligible for and have requested a service through the individual and family services waiver and the basic plus waiver administered by the developmental disabilities administration as a courtesy. The caseload forecast council shall be presented with the service request list as defined in RCW 71A.10.020 to aid in development of this information.

(10) Beginning with the official forecast submitted in November 2022 and subject to the availability of amounts appropriated for this specific purpose, the caseload forecast council shall forecast the number of individuals who are assessed as eligible for and have requested supported living services, a service through the core waiver, an individual and family services waiver, and the basic plus waiver administered by the developmental disabilities administration as a courtesy. The caseload forecast council shall be presented with the service request list as defined in RCW 71A.10.020 to aid in development of this information.

(11) As a courtesy, beginning with the official forecast submitted in November 2022, the caseload forecast council shall forecast the number of individuals who are expected to reside in state-operated living alternatives administered by the developmental disabilities administration.

(12) The caseload forecast council shall forecast youth participating in the extended foster care program pursuant to RCW 74.13.031 separately from other children who are residing in foster care and who are under eighteen years of age.

~~((++))~~ (13) The caseload forecast council shall forecast the number of youth expected to receive behavioral rehabilitation services while involved in the foster care system and the number of screened in reports of child abuse or neglect.

~~((12))~~ (14) Unless the context clearly requires otherwise, the definitions provided in RCW 43.88.020 apply to this chapter.

~~((13))~~ (15) During the 2021-2023 fiscal biennium, and beginning with the November 2021 forecast, the caseload forecast council shall produce an unofficial forecast of the long-term caseload for juvenile rehabilitation as a courtesy.

**NEW SECTION. Sec. 3.** A new section is added to chapter 71A.18 RCW to read as follows:

(1) Expenditures for the individual and family services waiver and the basic plus waiver administered under Title 71A RCW must be considered by the governor and the legislature for inclusion in maintenance level budgets beginning with the governor's budget proposal submitted in December 2022 and funding for these expenditures are subject to amounts appropriated for this specific purpose. The department of social and health services must annually submit a budget request for these expenditures.

(2) Beginning with the governor's budget proposal submitted in December 2022 and within the department's existing appropriations, the department of social and health services must annually submit a budget request for expenditures for the number of individuals who are expected to reside in state-operated living alternatives administered by the developmental disabilities administration under Title 71A RCW.

**NEW SECTION. Sec. 4.** (1) With consideration to legislative intent to expand community residential settings, and within the department's existing appropriations, the department of social and health services shall examine the need for community respite beds to serve eligible individuals and stabilization, assessment, and intervention beds to provide crisis stabilization services for individuals with complex behavioral needs. No later than October 1, 2022, the department of social and health services must submit a preliminary report to the governor and the legislature that estimates the number of beds needed in fiscal years 2023 through 2025, recommends geographic locations of these beds, provides options for contracting with community providers for these beds, provides options for utilizing existing intermediate care facilities to meet these needs, includes the average length of stay for clients residing in state-operated intermediate care facilities, and recommends whether or not an increase to respite hours is needed. A progress report is due on October 1, 2023, and a final report of this information shall be submitted no later than October 1, 2024.

(2) This section expires January 1, 2025.

**NEW SECTION. Sec. 5.** (1) The department of social and health services must contract with a private vendor for a study of medicaid rates for contracted community residential service providers. The study must be submitted to the governor and the appropriate committees of the legislature no later than December 1, 2023, and must include:

(a) A recommendation of rates needed for facilities to cover their costs and adequately recruit, train, and retain direct care professionals;

(b) Recommendations for an enhanced rate structure, including when and for whom this rate structure would be appropriate; and

(c) An assessment of options for an alternative, opt-in rate structure for contracted supported living providers who voluntarily serve individuals with



complex behaviors, complete additional training, and submit to additional monitoring.

(2) This section expires January 31, 2024.

**NEW SECTION. Sec. 6.** (1) With consideration to legislative intent to expand community residential settings and within the department's existing appropriations, the department of social and health services shall submit by October 1, 2022, a five-year plan to phase-in the appropriate level of funding and staffing to achieve case management ratios of one case manager to no more than 35 clients. The five-year plan must include:

(a) An analysis of current procedures to hire and train new staff within the developmental disabilities administration of the department of social and health services;

(b) Identification of any necessary changes to these procedures to ensure a more efficient and timely process for hiring and training staff; and

(c) Identification of the number of new hires needed on an annual basis to achieve the phased implementation included in the five-year plan.

(2) This section expires January 31, 2024.

**NEW SECTION. Sec. 7.** (1) Within the department's existing appropriations, and no later than June 30, 2023, the department of social and health services in collaboration with appropriate stakeholders shall develop uniform quality assurance metrics that are applied across community residential settings, intermediate care facilities, and state-operated nursing facilities. The department of social and health services must submit a report of these activities to the governor and the legislature no later than June 30, 2023.

(2) This section expires July 31, 2023.

**NEW SECTION. Sec. 8.** (1) The joint legislative audit and review committee shall:

(a) Review the developmental disabilities administration's existing processes and staffing methodology used for determining eligibility, assessing for eligibility, delivering services, and managing individuals who are waiting for services;

(b) Review best practices from other states regarding eligibility determination, eligibility assessment, service delivery, management of individuals who are waiting for services, and staffing models; and

(c) Identify options for streamlining the eligibility, assessment, service delivery, and management of individuals who are waiting for services processes and the potential staffing impacts.

(2) The joint legislative audit and review committee shall report its findings and recommendations to the governor and the appropriate committees of the legislature by December 1, 2024.

(3) This section expires January 31, 2025.

## **Part 2: Improve Cross-System Coordination**

**NEW SECTION. Sec. 9.** An individual's disability will often overshadow other medical or functional needs which can result in missed connections and poor outcomes. It is the intent of the legislature that cross-system coordination involving individuals with intellectual and developmental disabilities be improved to ensure that these individuals receive the appropriate types of services and supports when they are needed to adequately address mental health

conditions, medical conditions, individual preferences, and the natural aging process.

**NEW SECTION. Sec. 10.** (1) Within the department's existing appropriations, the department of social and health services shall work with the developmental disabilities council to:

(a) Coordinate collaboration efforts among relevant stakeholders to develop and disseminate best practices related to serving individuals with co-occurring intellectual and developmental disabilities and mental health conditions;

(b) Work with Washington state's apprenticeship and training council, colleges, and universities to establish medical, dental, nursing, and direct care apprenticeship programs that would address gaps in provider training and overall competence;

(c) Devise options for consideration by the governor and the legislature to prioritize funding for housing for individuals with intellectual and developmental disabilities when a lack of affordable housing is the barrier preventing an individual from moving to a least restrictive community setting; and

(d) Coordinate collaboration efforts among relevant stakeholders to examine existing law with regard to guardianship and protective proceedings and make any necessary recommendations for changes to existing law to ensure that guardianship or other protective proceedings are designed to provide individuals with intellectual and developmental disabilities with the decision-making support they require to live as independently as possible in the least restrictive environment, including consideration of mechanisms that enable regular payment for services rendered by these legal representatives when appropriate.

(2) Within the department's existing appropriations, the department of social and health services shall work with the health care authority and Washington state's managed care organizations to establish the necessary agreements for intellectual and developmental disabilities clients who live in the community to access intermediate care facility-based professionals to receive care covered under the state plan. The department of social and health services must consider methods to deliver these services at mobile or brick-and-mortar clinical settings in the community.

(3) No later than December 1, 2022, the department of social and health services shall submit a report describing the efforts outlined in subsections (1) and (2) of this section and any recommendations for policy or fiscal changes to the governor and the legislature for consideration in the 2023 legislative session.

(4) This section expires January 31, 2023.

### **Part 3: Redesign State-Operated Intermediate Care Facilities to Function as Short-Term Crisis Stabilization and Intervention**

**NEW SECTION. Sec. 11.** It is the intent of the legislature that intermediate care facilities be redesigned from long-term care settings to settings that support short-term crisis stabilization and intervention and that, in order to achieve stable, permanent placements in the least restrictive settings possible, an infrastructure of procedures be developed to ensure that individuals placed in intermediate care settings remain in that setting no longer than is absolutely necessary.

**NEW SECTION. Sec. 12.** (1) Within the department of social and health services' existing appropriations, the developmental disabilities administration must develop procedures that ensure that:

(a) Clear, written, and verbal information is provided to the individual and their family member that explains:

(i) That placement in the intermediate care facility is temporary; and

(ii) What constitutes continuous aggressive active treatment and its eligibility implications;

(b) Discharge planning begins immediately upon placement of an individual within the intermediate care facility and that the individual and their family member is provided clear descriptions of all placement options and their requirements;

(c) When stabilization services are available in the community, the individual is presented with the option to receive those services in the community prior to being offered services in a state-operated intermediate care facility; and

(d) When the individual has not achieved crisis stabilization after 60 consecutive days in the state-operated intermediate care facility, the department of social and health services must convene the individual's team of care providers including, but not limited to, the individual's case manager, the individual's community-based providers, and, if applicable, the individual's managed care organization to review and make any necessary changes to the individual's care plan.

(2) Subject to funding appropriated specifically for this purpose, the department of social and health services must expand the number of family mentors and establish peer mentors to connect each client in an intermediate care facility with a mentor to assist in their transition planning.

(3) Subject to funding appropriated specifically for this purpose, the department of social and health services must make every effort to ensure the individual does not lose their community residential services while the individual is receiving stabilization services in a state-operated intermediate care facility. The department of social and health services must:

(a) Work with community residential service providers to provide a 90-day vacancy payment for individuals who are transferred from the community residential service provider to a state-operated intermediate care facility for stabilization services; and

(b) Utilize client resources or other resources to pay the rent for individuals who are facing eviction due to failure to pay the rent caused by the transfer to a state-operated intermediate care facility for stabilization services.

(4) No later than November 1, 2022, the department of social and health services must submit a report describing the efforts outlined in subsections (1) through (3) of this section and make any necessary recommendations for policy or fiscal changes to the governor and the legislature for consideration in the 2023 legislative session.

(5) This section expires January 31, 2023.

**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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 220

[Second Engrossed Substitute Senate Bill 5275]

### GROWTH MANAGEMENT ACT—INTENSIVE RURAL DEVELOPMENT

AN ACT Relating to enhancing opportunity in limited areas of more intense rural development; and amending RCW 36.70A.070.

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

**Sec. 1.** RCW 36.70A.070 and 2021 c 254 s 2 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 groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and stormwater runoff 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 that identifies the number of housing units necessary to manage projected growth, as provided by the department of commerce, including:

(i) Units for moderate, low, very low, and extremely low-income households; and

(ii) Emergency housing, emergency shelters, and permanent supportive housing;

(b) Includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences, and within an urban growth area boundary,

moderate density housing options including  $\left(\frac{1}{17}\right)$ , but not limited to, duplexes, triplexes, and townhomes;

(c) Identifies sufficient capacity of land for housing including, but not limited to, government-assisted housing, housing for moderate, low, very low, and extremely low-income households, manufactured housing, multifamily housing, group homes, foster care facilities, emergency housing, emergency shelters, permanent supportive housing, and within an urban growth area boundary, consideration of duplexes, triplexes, and townhomes;

(d) Makes adequate provisions for existing and projected needs of all economic segments of the community, including:

(i) Incorporating consideration for low, very low, extremely low, and moderate-income households;

(ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations;

(iii) Consideration of housing locations in relation to employment location; and

(iv) Consideration of the role of accessory dwelling units in meeting housing needs;

(e) Identifies local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including:

(i) Zoning that may have a discriminatory effect;

(ii) Disinvestment; and

(iii) Infrastructure availability;

(f) Identifies and implements policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions;

(g) Identifies areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments; and

(h) Establishes antidisplacement policies, with consideration given to the preservation of historical and cultural communities as well as investments in low, very low, extremely low, and moderate-income housing; equitable development initiatives; inclusionary zoning; community planning requirements; tenant protections; land disposition policies; and consideration of land that may be used for affordable housing.

In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified. The housing element should link jurisdictional goals with overall county goals to ensure that the housing element goals are met.

(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. Park and recreation facilities shall be included in the capital facilities plan element.

(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. 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 economic advancement, 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 groundwater 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) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection

(5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity (~~shall be consistent with the character of the existing areas~~) may be permitted subject to confirmation from all existing providers of public facilities and public services of sufficient capacity of existing public facilities and public services to serve any new or additional demand from the new development or redevelopment. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5) and is consistent with the local character. Any commercial development or redevelopment within a mixed-use area must be principally designed to serve the existing and projected rural population and must meet the following requirements:

(I) Any included retail or food service space must not exceed the footprint of previously occupied space or 5,000 square feet, whichever is greater, for the same or similar use; and

(II) Any included retail or food service space must not exceed 2,500 square feet for a new use;

(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. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(23). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(23). 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 this subsection (5)(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.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including 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 within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;



(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) 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;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) 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. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) 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;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) 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 locally owned 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" means 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. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), 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, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

Passed by the Senate January 26, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 221

[Engrossed Second Substitute House Bill 1815]

### CATALYTIC CONVERTER THEFT

AN ACT Relating to deterring catalytic converter theft; amending RCW 19.290.020, 19.290.030, 19.290.070, 46.80.080, 36.28A.240, and 43.43.885; adding a new section to chapter 46.80 RCW; adding a new section to chapter 9A.56 RCW; creating new sections; recodifying RCW 19.290.070; 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 finds that rates of catalytic converter theft have rapidly increased statewide and nationwide, due in part to existing challenges with accurately identifying stolen catalytic converters. The legislature further finds that victims of catalytic converter theft often incur costs that far exceed the monetary value of the catalytic converters themselves. The legislature further finds that catalytic converter theft is a multifaceted issue that requires collaborative effort between law enforcement agencies, insurance companies, scrap metal dealers, and other involved parties to identify comprehensive solutions.

Therefore, the legislature intends to carefully examine the catalytic converter theft issues in Washington state and conduct a study to make a variety of recommendations to the legislature, including recommendations for a potential pilot program, to reduce the occurrence of catalytic converter theft. The legislature further intends to provide funding for a grant program focused on metal theft and unlawfully obtained metal.

NEW SECTION. **Sec. 2.** (1) The Washington State University shall convene a catalytic converter theft work group to study and provide options and recommendations related to reducing catalytic converter theft in Washington state.

(2) The work group shall consist of, but is not limited to, members representing the following:

- (a) One member representing the Washington state patrol;
- (b) One member representing the Washington association of sheriffs and police chiefs;
- (c) One member representing the Washington association of prosecuting attorneys;
- (d) One member representing the office of public defense;
- (e) One member representing the superior court judges' association;
- (f) One member representing the district and municipal court judges' association;
- (g) One member representing the association of Washington cities;
- (h) One member representing the office of the attorney general;
- (i) One member representing the property and casualty insurance industry;
- (j) One member representing the scrap metal recycling industry;
- (k) One member representing the auto dealer industry;
- (l) One member representing the auto manufacturer industry;
- (m) One member representing the catalytic converter manufacturer industry;
- (n) One member representing the towing and recovery association of Washington;
- (o) One member representing the Washington state independent auto dealers association;
- (p) One member representing the Washington independent business association;
- (q) One member representing the Washington organized retail crime association; and
- (r) Two members representing individuals with lived experience being charged with, or convicted of, organized theft.

(3) The work group's study shall include, but is not limited to, the following:

- (a) A review of state laws related to catalytic converter theft;
- (b) A review of national efforts to address catalytic converter theft to determine whether there are best practices from other jurisdictions on how to effectively deter and end catalytic converter theft;
- (c) Data collection and analysis of catalytic converter theft incidents across the state;
- (d) Options to deter and end catalytic converter theft, including marking of catalytic converters;
- (e) Options and opportunities to reduce costs to victims of catalytic converter theft; and
- (f) A review of the effectiveness of the grant and training program created under RCW 36.28A.240.

(4) The work group's recommendations shall include, but are not limited to, the following:

- (a) Changes to state law to reduce catalytic converter theft;

(b) A potential pilot program that could be implemented to decrease catalytic converter theft, including by prioritizing communities with the highest incidence of catalytic converter theft or communities experiencing the most financial impact due to catalytic converter theft; and

(c) Cost estimates for the pilot program and recommendations on evaluation criteria and metrics to determine the efficacy and benefits of the pilot program.

(5) The work group shall provide a preliminary report and recommendations to the transportation and public safety committees of the legislature by November 1, 2022. The work group shall provide a final report and recommendations, including recommendations on a potential pilot program, to the transportation and public safety committees of the legislature by January 1, 2023.

**Sec. 3.** RCW 19.290.020 and 2013 c 322 s 5 are each amended to read as follows:

(1) At the time of a transaction, every scrap metal business doing business in this state shall produce wherever that business is conducted an accurate and legible record of each transaction involving private metal property or nonferrous metal property. This record must be written in the English language, documented on a standardized form or in electronic form, and contain the following information:

(a) The signature of the person with whom the transaction is made;

(b) The time, date, location, and value of the transaction;

(c) The name of the employee representing the scrap metal business in the transaction;

(d) The name, street address, and telephone number of the person with whom the transaction is made;

(e) The license plate number and state of issuance of the license plate on the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(f) A description of the motor vehicle used to deliver the private metal property or nonferrous metal property subject to the transaction;

(g) The current driver's license number or other government-issued picture identification card number of the seller or a copy of the seller's government-issued picture identification card; ~~((and))~~

(h) A description of the predominant types of private metal property or nonferrous metal property subject to the transaction, utilizing the institute of scrap recycling industries' generally accepted terminology, and including weight, quantity, or volume; and

(i) For every transaction specifically involving a catalytic converter that has been removed from a vehicle, documentation indicating that the private metal property in the seller's possession is the result of the seller replacing private metal property from a vehicle registered in the seller's name.

(2) For every transaction that involves private metal property or nonferrous metal property, every scrap metal business doing business in the state shall require the person with whom a transaction is being made to sign a declaration. The declaration may be included as part of the transactional record required under subsection (1) of this section, or on a receipt for the transaction. The declaration must state substantially the following:

"I, the undersigned, affirm under penalty of law that the property that is subject to this transaction is not to the best of my knowledge stolen property."

The declaration must be signed and dated by the person with whom the transaction is being made. An employee of the scrap metal business must witness the signing and dating of the declaration and sign the declaration accordingly before any transaction may be consummated.

(3) The record and declaration required under this section must be open to the inspection of any commissioned law enforcement officer of the state or any of its political subdivisions at all times during the ordinary hours of business, or at reasonable times if ordinary hours of business are not kept, and must be maintained wherever that business is conducted for five years following the date of the transaction.

**Sec. 4.** RCW 19.290.030 and 2013 c 322 s 6 are each amended to read as follows:

(1) No scrap metal business may enter into a transaction to purchase or receive private metal property or nonferrous metal property from any person who cannot produce at least one piece of current government-issued picture identification, including a valid driver's license or identification card issued by any state.

(2) No scrap metal business may purchase or receive private metal property or commercial metal property unless the seller: (a) Has a commercial account with the scrap metal business; (b) can prove ownership of the property by producing written documentation that the seller is the owner of the property; or (c) can produce written documentation that the seller is an employee or agent authorized to sell the property on behalf of a commercial enterprise.

(3) No scrap metal business may enter into a transaction to purchase or receive metallic wire that was burned in whole or in part to remove insulation unless the seller can produce written proof to the scrap metal business that the wire was lawfully burned.

(4)(a) No transaction involving private metal property or nonferrous metal property may be made in cash or with any person who does not provide a street address and photographic identification under the requirements of RCW 19.290.020(1) (d) and (g) except as described in (b) and (c) of this subsection. The person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the scrap metal business to a street address provided under RCW 19.290.020, no earlier than three days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(b) A scrap metal business that is in compliance with this chapter (~~that~~) may pay up to a maximum of \$30 in cash, stored value device, or electronic funds transfer for nonferrous metal property. The balance of the value of the transaction may be made by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made if the scrap metal business digitally captures:

(i) A copy of one piece of current government-issued picture identification, including a current driver's license or identification card issued by any state; and

(ii) (~~either~~) Either a picture or video of either the material subject to the transaction in the form received or the material subject to the transaction within the vehicle which the material was transported to the scrap metal business(~~(-may~~

~~pay up to a maximum of thirty dollars in cash, stored value device, or electronic funds transfer. The balance of the value of the transaction may be made by nontransferable check, stored value device, or electronic funds transfer at the time the transaction is made. A scrap metal business's usage of video surveillance shall be sufficient to comply with this subsection (4)(b)(ii) as long as the video captures the material subject to the transaction. A digital image or picture taken under this subsection must be available for two years from the date of transaction, while a video recording must be available for thirty days).~~

(c) Payment to individual sellers of private metal property as defined in this chapter may not be made at the time of the transaction and shall not be paid earlier than three business days after the transaction was made. Records of payment for private metal property as defined in this chapter must be kept in the same file or record as all records collected under this subsection and retained and be available for review for two years from the date of the transaction.

(5)(a) A scrap metal business's usage of video surveillance shall be sufficient to comply with subsection (4)(b)(ii) of this section so long as the video captures the material subject to the transaction.

(b) A digital image or picture taken under this section must be available for two years from the date of transaction, while a video recording must be available for 30 days.

(6) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery.

**Sec. 5.** RCW 19.290.070 and 2013 c 322 s 10 are each amended to read as follows:

(1) It is a gross misdemeanor under chapter 9A.20 RCW for:

~~((1))~~ (a) Any person to deliberately remove, alter, or obliterate any manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon an item of private metal property, nonferrous metal property, or commercial metal property in order to deceive a scrap metal business;

~~((2))~~ (b) Any scrap metal business to enter into a transaction to purchase or receive any private metal property, nonferrous metal property, or commercial metal property where the manufacturer's make, model, or serial number, personal identification number, or identifying marks engraved or etched upon the property have been deliberately and conspicuously removed, altered, or obliterated;

~~((3))~~ (c) Any person to knowingly make, cause, or allow to be made any false entry or misstatement of any material matter in any book, record, or writing required to be kept under this chapter;

~~((4))~~ (d) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property from any person under the age of (~~eighteen~~) 18 years or any person who is discernibly under the influence of intoxicating liquor or drugs;

~~((5))~~ (e) Any scrap metal business to enter into a transaction to purchase or receive private metal property, nonferrous metal property, or commercial metal property with anyone whom the scrap metal business has been informed by a law enforcement agency to have been convicted of a crime involving drugs, burglary, robbery, theft, or possession of or receiving stolen property, manufacturing, delivering, or possessing with intent to deliver

methamphetamine, or possession of ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, or anhydrous ammonia with intent to manufacture methamphetamine within the past four years whether the person is acting in his or her own behalf or as the agent of another;

~~((6))~~ (f) Any person to sign the declaration required under RCW 19.290.020 knowing that the private metal property or nonferrous metal property subject to the transaction is stolen. The signature of a person on the declaration required under RCW 19.290.020 constitutes evidence of intent to defraud a scrap metal business if that person is found to have known that the private metal property or nonferrous metal property subject to the transaction was stolen;

~~((7))~~ (g) Any scrap metal business to possess private metal property or commercial metal property that was not lawfully purchased or received under the requirements of this chapter;

~~((8))~~ (h) Any scrap metal business to engage in a series of transactions valued at less than ~~(thirty dollars)~~ \$30 with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4); or

~~((9))~~ (i) Any person to knowingly make a false or fictitious oral or written statement or to furnish or exhibit any false, fictitious, or misrepresented identification, with the intent to deceive a scrap metal business as to the actual seller of the scrap metal.

(2) Notwithstanding any fines imposed as part of the sentence under this section, each offense is punishable by a \$1,000 fine per catalytic converter, 10 percent of which shall be directed to the no-buy list database program in RCW 43.43.885, and the remainder shall be directed to the Washington association of sheriffs and police chiefs solely for grants issued under RCW 36.28A.240.

(3)(a) Facilitating the offer of used catalytic converters for sale without first verifying proof of ownership of the catalytic converter, or failing to retain verified records of ownership of used catalytic converters offered for sale for at least two years, is an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce for purposes of the consumer protection act, chapter 19.86 RCW.

(b) All damages awarded to the state of Washington under chapter 19.86 RCW shall be distributed as follows:

(i) Ninety percent to the grant and training program in RCW 36.28A.240; and

(ii) Ten percent to the no-buy list database program in RCW 43.43.885.

NEW SECTION. Sec. 6. A new section is added to chapter 46.80 RCW to read as follows:

Payment to individual sellers of private metal property as defined in RCW 19.290.010 may not be made at the time of the transaction and shall not be paid earlier than three business days after the transaction was made.

No transaction involving catalytic converters may be made in cash or with any person who does not provide a street address and photographic identification. The person with whom the transaction is being made may only be paid by a nontransferable check, mailed by the licensed auto wrecker to a street address recorded according to RCW 46.80.080, no earlier than three days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 46.80.080.

**Sec. 7.** RCW 46.80.080 and 1999 c 278 s 2 are each amended to read as follows:

(1) Every vehicle wrecker shall maintain books or files in which the wrecker shall keep a record and a description of:

(a) Every vehicle wrecked, dismantled, disassembled, or substantially altered by the wrecker; and

(b) Every major component part, including catalytic converters, acquired by the wrecker; together with a bill of sale signed by a seller whose identity has been verified and the name and address of the person, firm, or corporation from whom the wrecker purchased the vehicle or part. Major component parts other than cores shall be further identified by the vehicle identification number of the vehicle from which the part came.

(2) The record shall also contain the following data regarding the wrecked or acquired vehicle or vehicle that is the source of a major component part, including catalytic converters, other than a core:

(a) The certificate of title number (if previously titled in this or any other state);

(b) Name of state where last registered;

(c) Number of the last license number plate issued;

(d) Name of vehicle;

(e) Motor or identification number and serial number of the vehicle;

(f) Date purchased;

(g) Disposition of the motor and chassis;

(h) Yard number assigned by the licensee to the vehicle or major component part, which shall also appear on the identified vehicle or part; and

(i) Such other information as the department may require.

(3) The records shall also contain a bill of sale signed by the seller for other minor component parts, including catalytic converters, acquired by the licensee, identifying the seller by name, address, and date of sale.

(4) The records shall be maintained by the licensee at his or her established place of business for a period of three years from the date of acquisition.

(5) The record is subject to inspection at all times during regular business hours by members of the police department, sheriff's office, members of the Washington state patrol, or officers or employees of the department.

(6) A vehicle wrecker shall also maintain a similar record of all disabled vehicles that have been towed or transported to the vehicle wrecker's place of business or to other places designated by the owner of the vehicle or his or her representative. This record shall specify the name and description of the vehicle, name of owner, number of license plate, condition of the vehicle and place to which it was towed or transported.

(7) Failure to comply with this section is a gross misdemeanor.

**Sec. 8.** RCW 36.28A.240 and 2013 c 322 s 24 are each amended to read as follows:

(1) ~~((When funded))~~ To the extent funds are appropriated, the Washington association of sheriffs and police chiefs shall ((establish)) develop a comprehensive state law enforcement strategy targeting metal theft in consultation with the criminal justice training commission, including:



(a) Development of best practices for targeting illegal purchasers and sellers involved in metal theft, with specific enforcement focus on catalytic converter theft;

(b) Strategies for development and maintenance of relationships between local law enforcement agencies and licensed scrap metal recyclers, including recommendations for scheduled or regular interactions, with a focus on deterring unlawful purchases and identifying individuals suspected of involvement in unlawful metal theft and individuals who attempt to conduct a transaction while under the influence of controlled substances; and

(c) Establishment of a grant and training program to assist local law enforcement agencies in the support of special enforcement ((emphasis)) targeting metal theft. Grant applications shall be reviewed ((and awarded through peer review panels)) by the Washington association of sheriffs and police chiefs in consultation with other appropriate entities, such as those involved in enforcement against metal theft. Grant applicants with a demonstrated increase in metal theft over the previous 24 months are encouraged to ((utilize multijurisdictional efforts)) focus solely on metal theft and unlawful purchasing and selling of unlawfully obtained metal in their jurisdiction, but may coordinate with other jurisdictions.

(2) Each grant applicant shall:

(a) Show a significant metal theft problem in the jurisdiction or jurisdictions receiving the grant;

~~(b) ((Verify that grant awards are sufficient to cover increased investigation, prosecution, and jail costs;~~

~~(c) ((Design))~~ Propose an enforcement program that best suits the specific metal theft problem in the jurisdiction ~~((or jurisdictions receiving the grant)), including the number of enforcement stings to be conducted under the program;~~

~~((d))~~ (c) Demonstrate community coordination focusing on prevention, intervention, and suppression; and

~~((e))~~ (d) Collect data on performance, including the number of enforcement stings to be conducted.

~~(3) ((The cost of administering the grants shall not exceed sixty thousand dollars, or three percent of appropriated funding, whichever is greater.~~

~~(4))~~ Grant awards may not be used to supplant preexisting funding sources for special enforcement targeting metal theft.

**Sec. 9.** RCW 43.43.885 and 2013 c 322 s 31 are each amended to read as follows:

(1) Beginning on July 1, 2014, ~~((when funded))~~ to the extent funds are appropriated, the Washington association of sheriffs and police chiefs shall implement and operate an ongoing electronic statewide no-buy list database program.

(2) The database must be made available on a secured network or website.

(3) The no-buy list database program shall allow for any scrap metal business to enter a customer's name and date of birth into the database. The database must determine if the customer pursuing the transaction with the scrap metal business has been convicted in Washington of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years.

(4) If the customer has been convicted of any crime involving burglary, robbery, theft, or possession of or receiving stolen property within the past four years despite whether the person was acting in his or her own behalf or as the agent of another then, at a minimum, the no-buy list database program must immediately send an alert to the scrap metal business stating: (a) That the customer is listed on a current no-buy list, (b) the four-year expiration period for the customer's most recent crime listed, and (c) a notification that entering into a transaction with the customer is prohibited under RCW 19.290.070 (as recodified by this act).

(5) The database shall also include individuals who have attempted to purchase or sell unlawfully obtained metals at licensed scrap metal recyclers and individuals who attempt to conduct a transaction while under the influence of controlled substances.

(6) Local jurisdictions applying for grants under RCW 36.28A.240 must provide updates to the no-buy list database annually and 120 days after a grant is distributed.

NEW SECTION. Sec. 10. RCW 19.290.070 is recodified as a section in chapter 9A.56 RCW.

NEW SECTION. Sec. 11. Section 4 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 May 1, 2022.

NEW SECTION. Sec. 12. Except for sections 4 through 7 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. 13. Sections 5 through 7 of this act take effect July 1, 2022.

Passed by the House March 8, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 222

[Substitute Senate Bill 5376]

### OFFICE OF THE EDUCATION OMBUDS—AWARENESS

AN ACT Relating to promoting awareness of the governor's office of the education ombuds; adding a new section to chapter 28A.600 RCW; adding a new section to chapter 28A.190 RCW; adding a new section to chapter 28A.710 RCW; adding a new section to chapter 28A.715 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that the office of the education ombuds within the office of the governor was established by the legislature in 2006 to reduce educational opportunity gaps by supporting families, students, educators, and communities in understanding the K-12 school system and resolving concerns collaboratively. The legislature recognizes that it

placed the education ombuds within the office of the governor to ensure independence and impartiality.

(2) The legislature further recognizes that the education ombuds provides services including:

(a) Informing students, parents or guardians, employees, and members of the public about the state's public elementary and secondary education system;

(b) Identifying obstacles and recommending strategies to help students and community members to participate effectively in schools;

(c) Identifying and recommending strategies for improving student success;

(d) Referring individuals and families to appropriate resources, agencies, or departments;

(e) Facilitating the resolution of informal complaints made by parents and students with regard to the state's public elementary and secondary education system; and

(f) Serving as the lead agency to provide resources and tools to parents and families about public school antiharassment policies and strategies.

(3) The legislature intends for public schools to annually notify parents or guardians, students, and school employees about these services.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.600 RCW to read as follows:

(1) Beginning August 1, 2023, public schools must:

(a) Provide students and their parents or guardians with a description of the services available through the office of the education ombuds and the contact information for the office of the education ombuds at the time of initial enrollment or admission; and

(b) Either: (i) Include on their website a description of the services available through the office of the education ombuds and a link to the website of the office of the education ombuds; or (ii) provide a description of the services available through the office of the education ombuds and the contact information for the office of the education ombuds in existing materials that are shared annually with families, students, and school employees, such as welcome packets, orientation guides, and newsletters.

(2) Public schools are encouraged to comply with both subsection (1)(b)(i) and (ii) of this section.

(3) By July 1, 2022, the office of the education ombuds must develop a template of the information described in subsection (1) of this section. The template must be translated into Spanish and into other languages as resources allow. The template must be made available upon request and updated as needed.

(4) For the purposes of this section, "public schools" has the same meaning as in RCW 28A.150.010.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.190 RCW to read as follows:

Institutional education providers must comply with the requirements in section 2(1) of this act, related to provision of information about the office of the education ombuds.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.710 RCW to read as follows:

Section 2 (1) and (2) of this act, related to provision of information about the office of the education ombuds, governs school operation and management under RCW 28A.710.040 and apply to charter schools established under this chapter.

NEW SECTION. **Sec. 5.** A new section is added to chapter 28A.715 RCW to read as follows:

Section 2 (1) and (2) of this act, related to provision of information about the office of the education ombuds, governs school operation and management under RCW 28A.715.020 and apply to state-tribal education compact schools established under this chapter.

Passed by the Senate March 7, 2022.

Passed by the House February 26, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 223

[Substitute Senate Bill 5488]

### TACOMA NARROWS BRIDGE—FINANCIAL OBLIGATIONS—TOLL REDUCTION

AN ACT Relating to state contributions in support of the Tacoma Narrows toll bridge; and amending RCW 47.56.165, 47.46.190, and 47.46.200.

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

**Sec. 1.** RCW 47.56.165 and 2009 c 567 s 1 are each amended to read as follows:

A special account to be known as the Tacoma Narrows toll bridge account is created in the motor vehicle fund in the state treasury.

(1) Deposits to the account must include:

(a) All proceeds of bonds issued for construction of the Tacoma Narrows public-private initiative project, including any capitalized interest;

(b) All of the toll charges and other revenues received from the operation of the Tacoma Narrows bridge as a toll facility, to be deposited at least monthly;

(c) Any interest that may be earned from the deposit or investment of those revenues;

(d) Notwithstanding RCW 47.12.063, proceeds from the sale of any surplus real property acquired for the purpose of building the second Tacoma Narrows bridge; ~~(and)~~

(e) All liquidated damages collected under any contract involving the construction of the second Tacoma Narrows bridge; and

(f) Beginning with September 2022 and ending July 1, 2032, by the last day of September, December, March, and June of each year, the state treasurer shall transfer from the general fund to the account the sum of \$3,250,000. The total amount that may be transferred pursuant to this subsection is \$130,000,000.

(2) Proceeds of bonds shall be used consistent with RCW 47.46.130, including the reimbursement of expenses and fees incurred under agreements entered into under RCW 47.46.040 as required by those agreements.

(3) Toll charges, other revenues, and interest may only be used to:

(a) Pay required costs that contribute directly to the financing, operation, maintenance, management, and necessary repairs of the tolled facility, as determined by rule by the transportation commission; and

(b) Repay amounts to the motor vehicle fund as required under RCW 47.46.140.

(4) Toll charges, other revenues, and interest may not be used to pay for costs that do not contribute directly to the financing, operation, maintenance, management, and necessary repairs of the tolled facility, as determined by rule by the transportation commission.

(5) The department shall make detailed quarterly expenditure reports available to the transportation commission and to the public on the department's website using current department resources.

(6) When repaying the motor vehicle fund under RCW 47.46.140, the state treasurer shall transfer funds from the Tacoma Narrows toll bridge account to the motor vehicle fund on or before each debt service date for bonds issued for the Tacoma Narrows public-private initiative project in an amount sufficient to repay the motor vehicle fund for amounts transferred from that fund to the highway bond retirement fund to provide for any bond principal and interest due on that date. The state treasurer may establish subaccounts for the purpose of segregating toll charges, bond sale proceeds, and other revenues.

**Sec. 2.** RCW 47.46.190 and 2018 c 195 s 1 are each amended to read as follows:

(1) The legislature finds funding of the Tacoma Narrows bridge facility to be distinct from other Washington state tolling facilities due to its increasing debt service costs, which is the primary driver of the facility's escalating costs. Washington state has since recommended and established financing structures with steadier levels of debt service payments for subsequent tolled transportation facilities, supporting better management of the state's debt burden and a lower financial burden for toll ratepayers.

(2) The Tacoma Narrows bridge facility debt service structure resulted, in part, from a decision by the legislature to fund construction of the bridge without drawing from state tax dollars. As a result, toll revenue was committed to fund ~~((ninety nine))~~ 99 percent of bridge construction costs, as well as the associated interest payments and other associated debt service costs. This is not the standard more recently utilized by the legislature, as is the case of the state route 520 bridge's construction, ~~((seventy two))~~ 72 percent of which is to be paid for with toll revenues. In light of the maximum burden for bridge construction that was placed on Tacoma Narrows bridge toll ratepayers, there is no equitable reason that the burden of future debt service payment increases should be borne by these same toll ratepayers.

(3) The legislature established the Tacoma Narrows bridge work group in 2017 and tasked it with identifying opportunities for long-term toll payer relief from increasing toll rates on the Tacoma Narrows bridge. The work group recommended a request of up to ~~((one hundred twenty five million dollars))~~ \$125,000,000 in state funding from the legislature to offset future debt service payment increases, allocated across the remaining years of tolling at levels that result in maintaining toll rates at fiscal year 2018 levels.

(4) Due to the findings aforementioned, an alternative is put forward by the legislature. State contribution loans for each fiscal biennium are to be made

through the life of the debt service plan of up to a total of ~~((eighty-five million dollars))~~ \$85,000,000, and will be repaid in annual amounts beginning after the debt service and deferred sales tax are fully repaid. It is the intent of the legislature that the commission will(=

~~(a) Maintain tolls at no more than toll rates effective at the fiscal year 2018 level until fiscal year 2022; and~~

~~(b) Maintain tolls at no more than twenty-five cents higher than the toll rates effective at the fiscal year 2018 level beginning in fiscal year 2022))~~ adjust tolls accordingly, in consideration of annual contributions from nontoll sources and the costs required to be covered under RCW 47.46.100, until such time as the debt service and deferred sales tax obligation is fully met according to the repayment schedule in place as of June 7, 2018, and until any state contribution loans are fully repaid.

(5) To offset part of the toll rate increases that would otherwise be necessary to meet increases in future debt service payments, it is the intent of the legislature that the state treasurer make state contribution loan transfers to the Tacoma Narrows toll bridge account created in RCW 47.56.165 on the first day of each fiscal biennium, beginning in the 2019-2021 fiscal biennium, through the life of the debt service plan. It is the intent of the legislature that the state treasurer make state contribution loan transfers in amounts necessary to ensure debt service payments are made in full after toll revenue from the Tacoma Narrows bridge toll facility is applied to the debt payment amounts and other required costs.

(6) This section does not create a private right of action.

**Sec. 3.** RCW 47.46.200 and 2018 c 195 s 2 are each amended to read as follows:

(1) Through 2031, the commission shall submit to the transportation committees of the legislature on an annual basis a report that includes sufficient information to enable the legislature to determine an adequate amount of contribution from nontoll sources required for each fiscal biennium to maintain ~~((tolls at no more than twenty-five cents higher than the toll rates effective at the fiscal year 2018 level, while also maintaining))~~ the debt service plan repayment schedule in place as of June 7, 2018. The report must be submitted by January 5th of each year.

(2) Beginning in 2031, and until such time as the state contribution loans described in RCW 47.46.190(4) are repaid, the commission shall submit to the transportation committees of the legislature on an annual basis a report that includes information detailing the annual expected toll revenue to be used for repayment of the state contribution loans ~~((while maintaining tolls at no more than twenty-five cents higher than the toll rates effective at the fiscal year 2018 level))~~. The report must be submitted by January 5th of each year.

(3) This section does not create a private right of action.

Passed by the Senate March 10, 2022.

Passed by the House March 8, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 224

[Senate Bill 5498]

## POSTHUMOUS HIGH SCHOOL DIPLOMAS

AN ACT Relating to posthumous high school diplomas; amending RCW 28A.230.120; and creating new sections.

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

**NEW SECTION. Sec. 1.** (1) The legislature affirms its statutory assertion that the purpose of a high school diploma is to declare that a student is ready for success in postsecondary education, gainful employment, and citizenship, and is equipped with the skills to be a lifelong learner.

(2) The legislature finds that, on rare occasions and due to unforeseen circumstances, school districts may wish to provide recognition of a student's status of being on-track to graduate, which is interrupted by an untimely passing that prevents the completion of the secondary education program. In these limited instances, school districts should have discretion to issue a posthumous high school diploma with an "honoris causa" inscription.

(3) The legislature recognizes that the authority to issue a high school diploma properly rests with the local school district and its determination of whether a student has met the applicable state and local graduation requirements. The legislature finds, however, that establishing uniform requirements governing the issuance of posthumous diplomas by school districts will promote the proper and effective administration of the public education system.

(4) The legislature, therefore, intends to authorize school districts to issue posthumous high school diplomas for qualifying students and in accordance with delineated requirements that promote local discretion, consistent administration, and the acknowledgment of academic achievements that were prematurely interrupted by the student's untimely passing.

**Sec. 2.** RCW 28A.230.120 and 2008 c 185 s 1 are each amended to read as follows:

(1) School districts shall issue diplomas to students signifying graduation from high school upon the students' satisfactory completion of all local and state graduation requirements. Districts shall grant students the option of receiving a final transcript in addition to the regular diploma.

(2) School districts or schools of attendance shall establish policies and procedures to notify senior students of the transcript option and shall direct students to indicate their decisions in a timely manner. School districts shall make appropriate provisions to assure that students who choose to receive a copy of their final transcript shall receive such transcript after graduation.

(3)(a) A school district may issue a high school diploma to a person who:

(i) Is an honorably discharged member of the armed forces of the United States; and

(ii) Left high school before graduation to serve in World War II, the Korean conflict, or the Vietnam era as defined in RCW 41.04.005.

(b) A school district may issue a diploma to or on behalf of a person otherwise eligible under (a) of this subsection notwithstanding the fact that the person holds a high school equivalency certification or is deceased.

(c) The superintendent of public instruction shall adopt a form for a diploma application to be used by a veteran or a person acting on behalf of a deceased

veteran under this subsection (3). The superintendent of public instruction shall specify what constitutes acceptable evidence of eligibility for a diploma.

(4)(a) A school district, at the request of the parent, guardian, or custodian, may issue a posthumous high school diploma for a deceased student if the student:

(i) Was enrolled in a public school of the district at the time of death;

(ii) Was deemed on-track for graduation before the time of death; and

(iii) Died after matriculating into high school.

(b) A high school diploma issued under this subsection (4) must bear the inscription "honoris causa" and may not be issued before the graduation date of the class in which the student was enrolled.

(c) Nothing in this subsection (4):

(i) Obligates school districts to award a diploma for a deceased student at the same ceremony or event as other graduating students; or

(ii) Limits the retroactive issuance of a high school diploma.

(d) Diplomas issued under this subsection (4) may not be applied toward student graduation counts or for any other purpose of federal and state accountability data collection.

NEW SECTION. Sec. 3. This act may be known and cited as Evitan's law.

Passed by the Senate March 7, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 225

[Engrossed Substitute Senate Bill 5531]

### REVISED UNIFORM UNCLAIMED PROPERTY ACT

AN ACT Relating to the revised uniform unclaimed property act; adding a new chapter to Title 63 RCW; creating a new section; repealing RCW 63.29.010, 63.29.020, 63.29.030, 63.29.040, 63.29.050, 63.29.060, 63.29.070, 63.29.080, 63.29.090, 63.29.100, 63.29.110, 63.29.120, 63.29.130, 63.29.133, 63.29.135, 63.29.140, 63.29.150, 63.29.160, 63.29.165, 63.29.170, 63.29.180, 63.29.190, 63.29.192, 63.29.193, 63.29.194, 63.29.195, 63.29.200, 63.29.210, 63.29.220, 63.29.230, 63.29.240, 63.29.250, 63.29.260, 63.29.270, 63.29.280, 63.29.290, 63.29.300, 63.29.310, 63.29.320, 63.29.330, 63.29.340, 63.29.350, 63.29.360, 63.29.370, 63.29.380, 63.29.900, 63.29.902, 63.29.903, 63.29.905, and 63.29.906; prescribing penalties; and providing an effective date.

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

### PART 1

#### GENERAL PROVISIONS

NEW SECTION. Sec. 101. SHORT TITLE. This chapter may be cited as the revised uniform unclaimed property act.

NEW SECTION. Sec. 102. DEFINITIONS. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Administrator" means the department of revenue established under RCW 82.01.050.

(2) "Administrator's agent" means a person with which the administrator contracts to conduct an examination under sections 1001 through 1013 of this act on behalf of the administrator. The term includes an independent contractor



of the person and each individual participating in the examination on behalf of the person or contractor.

(3) "Apparent owner" means a person whose name appears on the records of a holder as the owner of property held, issued, or owing by the holder.

(4) "Business association" means a corporation, joint stock company, investment company other than an investment company registered under the investment company act of 1940, as amended, 15 U.S.C. Secs. 80a-1 through 80a-64, partnership, unincorporated association, joint venture, limited liability company, business trust, trust company, land bank, safe deposit company, safekeeping depository, financial organization, insurance company, federally chartered entity, utility, sole proprietorship, or other business entity, whether or not for profit.

(5) "Confidential information" means records, reports, and information that are confidential under section 1402 of this act.

(6) "Domicile" means:

(a) For a corporation, the state of its incorporation;

(b) For a business association whose formation requires a filing with a state, other than a corporation, the state of the principal place of business of such a business association, if formed under the laws of a state other than the state in which its principal place of business is located, unless determined to be otherwise by a court of competent jurisdiction;

(c) For a federally chartered entity or an investment company registered under the investment company act of 1940, as amended, 15 U.S.C. Secs. 80a-1 through 80a-64, the state of its home office; and

(d) For any other holder, the state of its principal place of business.

(7) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(8) "Email" means a communication by electronic means which is automatically retained and stored and may be readily accessed or retrieved.

(9) "Financial organization" means a savings and loan association, building and loan association, savings bank, industrial bank, bank, banking organization, or credit union.

(10) "Game-related digital content" means digital content that exists only in an electronic game or electronic game platform. The term:

(a) Includes:

(i) Game-play currency such as a virtual wallet, even if denominated in United States currency; and

(ii) The following if for use or redemption only within the game or platform or another electronic game or electronic game platform:

(A) Points sometimes referred to as gems, tokens, gold, and similar names; and

(B) Digital codes; and

(b) Does not include an item that the issuer:

(i) Permits to be redeemed for use outside a game or platform for:

(A) Money; or

(B) Goods or services that have more than minimal value; or

(ii) Otherwise monetizes for use outside a game or platform.

(11) "Gift certificate" means a record described in RCW 19.240.010, and includes both gift cards and gift certificates, including both tangible instruments and electronic records.

(12) "Holder" means a person obligated to hold for the account of, or to deliver or pay to, the owner, property subject to this chapter.

(13) "Insurance company" means an association, corporation, or fraternal or mutual benefit organization, whether or not for profit, engaged in the business of providing life endowments, annuities, or insurance, including accident, burial, casualty, credit life, contract performance, dental, disability, fidelity, fire, health, hospitalization, illness, life, malpractice, marine, mortgage, surety, wage protection, and worker compensation insurance.

(14) "Loyalty card" means a record given without direct monetary consideration under an award, reward, benefit, loyalty, incentive, rebate, or promotional program which may be used or redeemed only to obtain goods or services or a discount on goods or services. The term does not include a record that may be redeemed for money or otherwise monetized by the issuer.

(15) "Mineral" means gas, oil, coal, oil shale, other gaseous liquid or solid hydrocarbon, cement material, sand and gravel, road material, building stone, chemical raw material, gemstone, fissionable and nonfissionable ores, colloidal and other clay, steam and other geothermal resources, and any other substance defined as a mineral by law of this state other than this chapter.

(16) "Mineral proceeds" means an amount payable for extraction, production, or sale of minerals, or, on the abandonment of the amount, an amount that becomes payable after abandonment. The term includes an amount payable:

(a) For the acquisition and retention of a mineral lease, including a bonus, royalty, compensatory royalty, shut-in royalty, minimum royalty, and delay rental;

(b) For the extraction, production, or sale of minerals, including a net revenue interest, royalty, overriding royalty, extraction payment, and production payment; and

(c) Under an agreement or option, including a joint operating agreement, unit agreement, pooling agreement, and farm-out agreement.

(17) "Money order" means a payment order for a specified amount of money. The term includes an express money order and a personal money order on which the remitter is the purchaser.

(18) "Municipal bond" means a bond or evidence of indebtedness issued by a municipality or other political subdivision of a state.

(19) "Net card value" means the original purchase price or original issued value of a stored value card, plus amounts added to the original price or value, minus amounts used and any service charge, fee, or dormancy charge permitted by law.

(20) "Nonfreely transferable security" means a security that cannot be delivered to the administrator by the depository trust clearing corporation or similar custodian of securities providing posttrade clearing and settlement services to financial markets or cannot be delivered because there is no agent to effect transfer. The term includes a worthless security.

(21) "Owner" means a person that has a legal, beneficial, or equitable interest in property subject to this chapter or the person's legal representative when acting on behalf of the owner. The term includes:

- (a) A depositor, for a deposit;
- (b) A beneficiary, for a trust other than a deposit in trust;
- (c) A creditor, claimant, or payee, for other property; and
- (d) The lawful bearer of a record that may be used to obtain money, a reward, or a thing of value.

(22) "Payroll card" means a record that evidences a payroll card account as defined in Regulation E, 12 C.F.R. Part 1005, as it existed on the effective date of this section.

(23) "Person" means an individual, estate, business association, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(24) "Property" means tangible property described in section 205 of this act or a fixed and certain interest in intangible property held, issued, or owed in the course of a holder's business or by a government, governmental subdivision, agency, or instrumentality. The term:

- (a) Includes all income from or increments to the property;
- (b) Includes property referred to as or evidenced by:
  - (i) Money, virtual currency, interest, or a dividend, check, draft, deposit, or payroll card;
  - (ii) A credit balance, customer's overpayment, stored value card, security deposit, refund, credit memorandum, unpaid wage, unused ticket for which the issuer has an obligation to provide a refund, mineral proceeds, or unidentified remittance;
  - (iii) A security except for:
    - (A) A worthless security; or
    - (B) A security that is subject to a lien, legal hold, or restriction evidenced on the records of the holder or imposed by operation of law, if the lien, legal hold, or restriction restricts the holder's or owner's ability to receive, transfer, sell, or otherwise negotiate the security;
  - (iv) A bond, debenture, note, or other evidence of indebtedness;
  - (v) Money deposited to redeem a security, make a distribution, or pay a dividend;
  - (vi) An amount due and payable under an annuity contract or insurance policy; and
  - (vii) An amount distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit-sharing, employee savings, supplemental unemployment insurance, or a similar benefit; and
- (c) Does not include:
  - (i) Property held in a plan described in section 529A of the internal revenue code, as it existed on the effective date of this section, 26 U.S.C. Sec. 529A;
  - (ii) Game-related digital content;
  - (iii) A loyalty card;
  - (iv) A gift certificate complying with chapter 19.240 RCW;
  - (v) Store credit for returned merchandise; and

(vi) A premium paid by an agricultural fair by check. For the purposes of this subsection, the following definitions apply:

(A) "Agricultural fair" means a fair or exhibition that is intended to promote agriculture by including a balanced variety of exhibits of livestock and agricultural products, as well as related manufactured products and arts, including products of the farm home and educational contests, displays, and demonstrations designed to train youth and to promote the welfare of farmers and rural living; and

(B) "Premium" means an amount paid for exhibits and educational contests, displays, and demonstrations of an educational nature. A "premium" does not include judges' fees and expenses; livestock sale revenues; or prizes or amounts paid for promotion or entertainment activities such as queen contests, parades, dances, rodeos, and races.

(25) "Putative holder" means a person believed by the administrator to be a holder, until the person pays or delivers to the administrator property subject to this chapter or the administrator or a court makes a final determination that the person is or is not a holder.

(26) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(27) "Security" means:

(a) A security as defined in RCW 62A.8-102;

(b) A security entitlement as defined in RCW 62A.8-102, including a customer security account held by a registered broker-dealer, to the extent the financial assets held in the security account are not:

(i) Registered on the books of the issuer in the name of the person for which the broker-dealer holds the assets;

(ii) Payable to the order of the person; or

(iii) Specifically indorsed to the person; or

(c) An equity interest in a business association not included in (a) or (b) of this subsection.

(28) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(29) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(30) "Stored value card" means a record evidencing a promise made for consideration by the seller or issuer of the record that goods, services, or money will be provided to the owner of the record to the value or amount shown in the record. The term:

(a) Includes:

(i) A record that contains or consists of a microprocessor chip, magnetic strip, or other means for the storage of information, which is prefunded and whose value or amount is decreased on each use and increased by payment of additional consideration; and

(ii) A payroll card; and

(b) Does not include a loyalty card, gift certificate, or game-related digital content.

(31) "Utility" means a person that owns or operates for public use a plant, equipment, real property, franchise, or license for the following public services:

(a) Transmission of communications or information;

(b) Production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas; or

(c) Provision of sewage or septic services, or trash, garbage, or recycling disposal.

(32) "Virtual currency" means a digital representation of value used as a medium of exchange, unit of account, or store of value, which does not have legal tender status recognized by the United States. The term does not include:

(a) The software or protocols governing the transfer of the digital representation of value;

(b) Game-related digital content; or

(c) A loyalty card or gift certificate.

(33) "Worthless security" means a security whose cost of liquidation and delivery to the administrator would exceed the value of the security on the date a report is due under this chapter.

**NEW SECTION. Sec. 103. INAPPLICABILITY TO FOREIGN TRANSACTION.** This chapter does not apply to property held, due, and owing in a foreign country if the transaction out of which the property arose was a foreign transaction.

**NEW SECTION. Sec. 104. RULE MAKING.** The administrator may adopt rules under chapter 34.05 RCW to implement and administer this chapter.

## PART 2

### PRESUMPTION OF ABANDONMENT

**NEW SECTION. Sec. 201. WHEN PROPERTY PRESUMED ABANDONED.** Subject to section 209 of this act, the following property is presumed abandoned if it is unclaimed by the apparent owner during the period specified below:

(1) A traveler's check, 15 years after issuance;

(2) A money order, five years after issuance;

(3) A state or municipal bond, bearer bond, or original issue discount bond, three years after the earliest of the date the bond matures or is called or the obligation to pay the principal of the bond arises;

(4) A debt of a business association, three years after the obligation to pay arises;

(5) A demand, savings, or time deposit, including a deposit that is automatically renewable, three years after the later of maturity, if applicable, of the deposit or the owner's last indication of interest in the deposit, except a deposit that is automatically renewable is deemed matured on its initial date of maturity unless the apparent owner consented in a record on file with the holder to renew at or about the time of the renewal;

(6) Money or a credit owed to a customer as a result of a retail business transaction, three years after the obligation arose;

(7) An amount owed by an insurance company on a life or endowment insurance policy or an annuity contract that has matured or terminated, three

years after the obligation to pay arose under the terms of the policy or contract or, if a policy or contract for which an amount is owed on proof of death has not matured by proof of the death of the insured or annuitant, as follows:

(a) With respect to an amount owed on a life or endowment insurance policy, three years after the earlier of the date:

(i) The insurance company has knowledge of the death of the insured; or

(ii) The insured has attained, or would have attained if living, the limiting age under the mortality table on which the reserve for the policy is based; and

(b) With respect to an amount owed on an annuity contract, three years after the date the insurance company has knowledge of the death of the annuitant;

(8) Property distributable by a business association in the course of dissolution, one year after the property becomes distributable;

(9) Property held by a court, including property received as proceeds of a class action, one year after the property becomes distributable;

(10) Property held by a government or governmental subdivision, agency, or instrumentality, including municipal bond interest and unredeemed principal under the administration of a paying agent or indenture trustee, one year after the property becomes distributable;

(11) Wages, commissions, bonuses, or reimbursements to which an employee is entitled, or other compensation for personal services, one year after the amount becomes payable;

(12) A deposit or refund owed to a subscriber by a utility, one year after the deposit or refund becomes payable; and

(13) Payroll card, one year after the amount becomes payable; and

(14) Property not specified in this section or section 202 through 207 of this act, the earlier of three years after the owner first has a right to demand the property or the obligation to pay or distribute the property arises.

**NEW SECTION. Sec. 202. WHEN TAX DEFERRED RETIREMENT ACCOUNT PRESUMED ABANDONED.** (1) Subject to section 209 of this act, property held in a pension account or retirement account that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the later of:

(a) The following dates:

(i) Except as in (a)(ii) of this subsection, the date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(ii) If the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered by the United States postal service; or

(b) The earlier of the following dates:

(i) The date the apparent owner becomes 72 years of age, if determinable by the holder; or

(ii) If the internal revenue code, as it existed on the effective date of this section, 26 U.S.C. Sec. 1 et seq., requires distribution to avoid a tax penalty, two years after the date the holder:

(A) Receives confirmation of the death of the apparent owner in the ordinary course of its business; or

(B) Confirms the death of the apparent owner under subsection (2) of this section.

(2) If a holder in the ordinary course of its business receives notice or an indication of the death of an apparent owner and subsection (1)(b) of this section applies, the holder shall attempt not later than 90 days after receipt of the notice or indication to confirm whether the apparent owner is deceased.

(3) If the holder does not send communications to the apparent owner of an account described in subsection (1) of this section by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the property by sending the apparent owner an email communication not later than two years after the apparent owner's last indication of interest in the property. However, the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(a) The holder does not have information needed to send the apparent owner an email communication or the holder believes that the apparent owner's email address in the holder's records is not valid;

(b) The holder receives notification that the email communication was not received; or

(c) The apparent owner does not respond to the email communication not later than 30 days after the communication was sent.

(4) If first-class United States mail sent under subsection (3) of this section is returned to the holder undelivered by the United States postal service, the property is presumed abandoned three years after the later of:

(a) Except as in (b) of this subsection, the date a second consecutive communication to contact the apparent owner sent by first-class United States mail is returned to the holder undelivered;

(b) If the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(c) The date established by subsection (1)(b) of this section.

(5) This section does not apply to property held in a pension account or retirement account established by the state of Washington or any local governmental entity under chapter 41.28 RCW.

**NEW SECTION. Sec. 203.** WHEN OTHER TAX DEFERRED ACCOUNT PRESUMED ABANDONED. Subject to section 209 of this act and except for property described in section 202 of this act and property held in a plan described in section 529A of the internal revenue code, as it existed on the effective date of this section, 26 U.S.C. Sec. 529A, property held in an account or plan, including a health savings account, that qualifies for tax deferral under the income tax laws of the United States is presumed abandoned if it is unclaimed by the apparent owner three years after the earlier of:

(1) The date, if determinable by the holder, specified in the income tax laws and regulations of the United States by which distribution of the property must begin to avoid a tax penalty, with no distribution having been made; or

(2) Thirty years after the date the account was opened.

**NEW SECTION. Sec. 204.** WHEN CUSTODIAL ACCOUNT FOR MINOR PRESUMED ABANDONED. (1) Subject to section 209 of this act, property held in an account established under a state's uniform gifts to minors act

or uniform transfers to minors act is presumed abandoned if it is unclaimed by or on behalf of the minor on whose behalf the account was opened three years after the later of:

(a) Except as in (b) of this subsection, the date a second consecutive communication sent by the holder by first-class United States mail to the custodian of the minor on whose behalf the account was opened is returned undelivered to the holder by the United States postal service;

(b) If the second communication is sent later than 30 days after the date the first communication is returned undelivered, the date the first communication was returned undelivered; or

(c) The date on which the custodian is required to transfer the property to the minor or the minor's estate in accordance with the uniform gifts to minors act or uniform transfers to minors act of the state in which the account was opened.

(2) If the holder does not send communications to the custodian of the minor on whose behalf an account described in subsection (1) of this section was opened by first-class United States mail, the holder shall attempt to confirm the custodian's interest in the property by sending the custodian an email communication not later than two years after the custodian's last indication of interest in the property. However, the holder promptly shall attempt to contact the custodian by first-class United States mail if:

(a) The holder does not have information needed to send the custodian an email communication or the holder believes that the custodian's email address in the holder's records is not valid;

(b) The holder receives notification that the email communication was not received; or

(c) The custodian does not respond to the email communication not later than 30 days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) of this section is returned undelivered to the holder by the United States postal service, the property is presumed abandoned three years after the later of:

(a) The date a second consecutive communication to contact the custodian by first-class United States mail is returned to the holder undelivered by the United States postal service; or

(b) The date established by subsection (1)(c) of this section.

(4) When the property in the account described in subsection (1) of this section is transferred to the minor on whose behalf an account was opened or to the minor's estate, the property in the account is no longer subject to this section.

**NEW SECTION. Sec. 205.** WHEN CONTENTS OF SAFE DEPOSIT BOX PRESUMED ABANDONED. Tangible property held in a safe deposit box and proceeds from a sale of the property by the holder permitted by law of this state other than this chapter are presumed abandoned if the property remains unclaimed by the apparent owner five years after the earlier of the:

(1) Expiration of the lease or rental period for the box; or

(2) Earliest date when the lessor of the box is authorized by law of this state other than this chapter to enter the box and remove or dispose of the contents without consent or authorization of the lessee.

**NEW SECTION. Sec. 206.** WHEN STORED VALUE CARD PRESUMED ABANDONED. (1) Subject to section 209 of this act, the net card



value of a stored value card, other than a payroll card, is presumed abandoned on the latest of three years after:

(a) December 31st of the year in which the card is issued or additional funds are deposited into it;

(b) The most recent indication of interest in the card by the apparent owner; or

(c) A verification or review of the balance by or on behalf of the apparent owner.

(2) The amount presumed abandoned in a stored value card is the net card value at the time it is presumed abandoned.

**NEW SECTION. Sec. 207.** WHEN SECURITY PRESUMED ABANDONED. (1) Subject to section 209 of this act, a security is presumed abandoned three years after:

(a) The date a second consecutive communication sent by the holder by first-class United States mail to the apparent owner is returned to the holder undelivered by the United States postal service; or

(b) If the second communication is made later than 30 days after the first communication is returned, the date the first communication is returned undelivered to the holder by the United States postal service.

(2) If the holder does not send communications to the apparent owner of a security by first-class United States mail, the holder shall attempt to confirm the apparent owner's interest in the security by sending the apparent owner an email communication not later than two years after the apparent owner's last indication of interest in the security. However the holder promptly shall attempt to contact the apparent owner by first-class United States mail if:

(a) The holder does not have information needed to send the apparent owner an email communication or the holder believes that the apparent owner's email address in the holder's records is not valid;

(b) The holder receives notification that the email communication was not received; or

(c) The apparent owner does not respond to the email communication not later than 30 days after the communication was sent.

(3) If first-class United States mail sent under subsection (2) of this section is returned to the holder undelivered by the United States postal service, the security is presumed abandoned three years after the date the mail is returned.

**NEW SECTION. Sec. 208.** WHEN RELATED PROPERTY PRESUMED ABANDONED. At and after the time property is presumed abandoned under this chapter, any other property right or interest accrued or accruing from the property and not previously presumed abandoned is also presumed abandoned.

**NEW SECTION. Sec. 209.** INDICATION OF APPARENT OWNER INTEREST IN PROPERTY. (1) The period after which property is presumed abandoned is measured from the later of:

(a) The date the property is presumed abandoned under this section and sections 201 through 208, 210, and 211 of this act; or

(b) The latest indication of interest by the apparent owner in the property.

(2) Under this chapter, an indication of an apparent owner's interest in property includes:

(a) A record communicated by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held;

(b) An oral communication by the apparent owner to the holder or agent of the holder concerning the property or the account in which the property is held, if the holder or its agent contemporaneously makes and preserves a record of the fact of the apparent owner's communication;

(c) Presentment of a check or other instrument of payment of a dividend, interest payment, or other distribution, or evidence of receipt of a distribution made by electronic or similar means, with respect to an account, underlying security, or interest in a business association;

(d) Activity directed by an apparent owner in the account in which the property is held, including accessing the account or information concerning the account, or a direction by the apparent owner to increase, decrease, or otherwise change the amount or type of property held in the account;

(e) A deposit into or withdrawal from an account at a financial organization, including an automatic deposit or withdrawal previously authorized by the apparent owner other than an automatic reinvestment of dividends or interest;

(f) Subject to subsection (5) of this section, payment of a premium on an insurance policy; and

(g) Any other action by the apparent owner which reasonably demonstrates to the holder that the apparent owner knows that the property exists.

(3) An action by an agent or other representative of an apparent owner, other than the holder acting as the apparent owner's agent, is presumed to be an action on behalf of the apparent owner.

(4) A communication with an apparent owner by a person other than the holder or the holder's representative is not an indication of interest in the property by the apparent owner unless a record of the communication evidences the apparent owner's knowledge of a right to the property.

(5) If the insured dies or the insured or beneficiary of an insurance policy otherwise becomes entitled to the proceeds before depletion of the cash surrender value of the policy by operation of an automatic premium loan provision or other nonforfeiture provision contained in the policy, the operation does not prevent the policy from maturing or terminating.

**NEW SECTION. Sec. 210. KNOWLEDGE OF DEATH OF INSURED OR ANNUITANT.** (1) In this section, "death master file" means the United States social security administration death master file or other database or service that is at least as comprehensive as the United States social security administration death master file for determining that an individual reportedly has died.

(2) With respect to a life or endowment insurance policy or annuity contract for which an amount is owed on proof of death, but which has not matured by proof of death of the insured or annuitant, the company has knowledge of the death of an insured or annuitant when:

(a) The company receives a death certificate or court order determining that the insured or annuitant has died;

(b) Due diligence, performed as required under chapter 48.23 RCW and rules promulgated thereunder to maintain contact with the insured or annuitant or determine whether the insured or annuitant has died, validates the death of the insured or annuitant;

(c) The company conducts a comparison for any purpose between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and validates the death;

(d)(i) The administrator or the administrator's agent conducts a comparison for the purpose of finding matches during an examination conducted under sections 1001 through 1013 of this act between a death master file and the names of some or all of the company's insureds or annuitants, finds a match that provides notice that the insured or annuitant has died, and the company validates the death.

(ii) The administrator or the administrator's agent may not exercise the authority provided in (d)(i) of this subsection (2) when the company has conducted a death master file comparison, relevant to the period under examination, in accordance with (c) of this subsection (2) and subsection (3) of this section; or

(e) The company:

(i) Receives notice of the death of the insured or annuitant from an administrator, beneficiary, policy owner, relative of the insured, or trustee or from a personal representative or other legal representative of the insured's or annuitant's estate; and

(ii) Validates the death of the insured or annuitant.

(3) The following rules apply under this section:

(a) A death master file match under subsection (2)(c) and (d) of this section occurs if the criteria for an exact or partial match are satisfied as provided by:

(i) Law of this state other than this chapter;

(ii) A rule or policy adopted by the office of the insurance commissioner; or

(iii) Absent a law, rule, or policy under (a)(i) or (ii) of this subsection standards in the national conference of insurance legislators' "model unclaimed life insurance benefits act" as published in 2014.

(b) The death master file match does not constitute proof of death for the purpose of submission to an insurance company of a claim by a beneficiary, annuitant, or owner of the policy or contract for an amount due under an insurance policy or annuity contract.

(c) The death master file match or validation of the insured's or annuitant's death does not alter the requirements for a beneficiary, annuitant, or owner of the policy or contract to make a claim to receive proceeds under the terms of the policy or contract.

(d) If no provision in Title 48 RCW or rules promulgated thereunder establishes a time for validation of a death of an insured or annuitant, the insurance company shall make a good faith effort using other available records and information to validate the death and document the effort taken not later than 90 days after the insurance company has notice of the death.

(4) This chapter does not affect the determination of the extent to which an insurance company before the effective date of this section had knowledge of the death of an insured or annuitant or was required to conduct a death master file comparison to determine whether amounts owed by the company on a life or endowment insurance policy or annuity contract were presumed abandoned or unclaimed.

**NEW SECTION. Sec. 211.** DEPOSIT ACCOUNT FOR PROCEEDS OF INSURANCE POLICY OR ANNUITY CONTRACT. If proceeds payable under a life or endowment insurance policy or annuity contract are deposited into an account with check or draft writing privileges for the beneficiary of the policy or contract and, under a supplementary contract not involving annuity benefits other than death benefits, the proceeds are retained by the insurance company or the financial organization where the account is held, the policy or contract includes the assets in the account.

### PART 3

## RULES FOR TAKING CUSTODY OF PROPERTY PRESUMED ABANDONED

**NEW SECTION. Sec. 301.** ADDRESS OF APPARENT OWNER TO ESTABLISH PRIORITY. In this section and sections 302 through 307 of this act, the following rules apply:

(1) The last known address of an apparent owner is any description, code, or other indication of the location of the apparent owner which identifies the state, even if the description, code, or indication of location is not sufficient to direct the delivery of first-class United States mail to the apparent owner.

(2) If the United States postal zip code associated with the apparent owner is for a post office located in this state, this state is deemed to be the state of the last known address of the apparent owner unless other records associated with the apparent owner specifically identify the physical address of the apparent owner to be in another state.

(3) If the address under subsection (2) of this section is in another state, the other state is deemed to be the state of the last known address of the apparent owner.

(4) The address of the apparent owner of a life or endowment insurance policy or annuity contract or its proceeds is presumed to be the address of the insured or annuitant if a person other than the insured or annuitant is entitled to the amount owed under the policy or contract and the address of the other person is not known by the insurance company and cannot be determined under section 302 of this act.

**NEW SECTION. Sec. 302.** ADDRESS OF APPARENT OWNER IN THIS STATE. The administrator may take custody of property that is presumed abandoned, whether located in this state, another state, or a foreign country if:

(1) The last known address of the apparent owner in the records of the holder is in this state; or

(2) The records of the holder do not reflect the identity or last known address of the apparent owner, but the administrator has determined that the last known address of the apparent owner is in this state.

**NEW SECTION. Sec. 303.** IF RECORDS SHOW MULTIPLE ADDRESSES OF APPARENT OWNER. (1) Except as in subsection (2) of this section, if records of a holder reflect multiple addresses for an apparent owner and this state is the state of the most recently recorded address, this state may take custody of property presumed abandoned, whether located in this state or another state.

(2) If it appears from records of the holder that the most recently recorded address of the apparent owner under subsection (1) of this section is a temporary

address and this state is the state of the next most recently recorded address that is not a temporary address, this state may take custody of the property presumed abandoned.

**NEW SECTION. Sec. 304. HOLDER DOMICILED IN THIS STATE.** (1) Except as in subsection (2) of this section or section 302 or 303 of this act, the administrator may take custody of property presumed abandoned, whether located in this state, another state, or a foreign country, if the holder is domiciled in this state or is this state or a governmental subdivision, agency, or instrumentality of this state, and:

(a) Another state or foreign country is not entitled to the property because there is no last known address of the apparent owner or other person entitled to the property in the records of the holder; or

(b) The state or foreign country of the last known address of the apparent owner or other person entitled to the property does not provide for custodial taking of the property.

(2) Property is not subject to custody of the administrator under subsection (1) of this section if the property is specifically exempt from custodial taking under the law of this state or the state or foreign country of the last known address of the apparent owner.

(3) If a holder's state of domicile has changed since the time property was presumed abandoned, the holder's state of domicile in this section is deemed to be the state where the holder was domiciled at the time the property was presumed abandoned.

**NEW SECTION. Sec. 305. CUSTODY IF TRANSACTION TOOK PLACE IN THIS STATE.** Except as in section 302, 303, or 304 of this act, the administrator may take custody of property presumed abandoned whether located in this state or another state if:

(1) The transaction out of which the property arose took place in this state;

(2) The holder is domiciled in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the holder's domicile, the property is not subject to the custody of the administrator; and

(3) The last known address of the apparent owner or other person entitled to the property is unknown or in a state that does not provide for the custodial taking of the property, except that if the property is specifically exempt from custodial taking under the law of the state of the last known address, the property is not subject to the custody of the administrator.

**NEW SECTION. Sec. 306. TRAVELER'S CHECK, MONEY ORDER, OR SIMILAR INSTRUMENT.** The administrator may take custody of sums payable on a traveler's check, money order, or similar instrument presumed abandoned to the extent permissible under 12 U.S.C. Secs. 2501 through 2503, as it existed on the effective date of this section.

**NEW SECTION. Sec. 307. BURDEN OF PROOF TO ESTABLISH ADMINISTRATOR'S RIGHT TO CUSTODY.** If the administrator asserts a right to custody of unclaimed property, the administrator has the burden to prove:

(1) The existence and amount of the property;

(2) The property is presumed abandoned; and

(3) The property is subject to the custody of the administrator.

#### PART 4

#### REPORT BY HOLDER

**NEW SECTION. Sec. 401.** REPORT REQUIRED BY HOLDER. (1) A holder of property presumed abandoned and subject to the custody of the administrator shall report in a record to the administrator concerning the property.

(2) A holder may contract with a third party to make the report required under subsection (1) of this section.

(3) Whether or not a holder contracts with a third party under subsection (2) of this section, the holder is responsible:

(a) To the administrator for the complete, accurate, and timely reporting of property presumed abandoned; and

(b) For paying or delivering to the administrator property described in the report.

(4)(a) Reports due under this section must be filed electronically in a form or manner provided or authorized by the administrator. However, the administrator, upon request or its own initiative, may relieve any holder or class of holders from the electronic filing requirement under this subsection for good cause as determined by the administrator.

(b) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the administrator's judgment, prevents the holder from electronically filing the report due under this section; or

(ii) The administrator determines that relief from the electronic filing requirement under this subsection supports the efficient or effective administration of this chapter.

**NEW SECTION. Sec. 402.** CONTENT OF REPORT. (1) The report required under section 401 of this act must:

(a) Be signed by or on behalf of the holder and verified as to its completeness and accuracy;

(b) If filed electronically, be in a secure format approved by the administrator which protects confidential information of the apparent owner in the same manner as required of the administrator and the administrator's agent under sections 1401 through 1408 of this act;

(c) Describe the property;

(d) Except for a traveler's check, money order, or similar instrument, contain the name, if known, last known address, if known, and social security number or taxpayer identification number, if known or readily ascertainable, of the apparent owner of property with a value of \$50 or more;

(e) For an amount held or owing under a life or endowment insurance policy or annuity contract, contain the name and last known address of the insured, annuitant, or other apparent owner of the policy or contract and of the beneficiary;

(f) For property held in or removed from a safe deposit box, indicate the location of the property, where it may be inspected by the administrator, and any amounts owed to the holder under section 606 of this act;

(g) Contain the commencement date for determining abandonment under sections 201 through 211 of this act;

(h) State that the holder has complied with the notice requirements of section 501 of this act;

(i) Identify property that is a nonfreely transferable security and explain why it is a nonfreely transferable security; and

(j) Contain other information the administrator prescribes by rules.

(2) A report under section 401 of this act may include in the aggregate items valued under \$50 each. If the report includes items in the aggregate valued under \$50 each, the administrator may not require the holder to provide the name and address of an apparent owner of an item unless the information is necessary to verify or process a claim in progress by the apparent owner.

(3) A report under section 401 of this act may include personal information as defined in section 1401(1) of this act about the apparent owner or the apparent owner's property to the extent not otherwise prohibited by federal law.

(4) If a holder has changed its name while holding property presumed abandoned or is a successor to another person that previously held the property for the apparent owner, the holder must include in the report under section 401 of this act its former name or the name of the previous holder, if any, and the known name and address of each previous holder of the property.

**NEW SECTION. Sec. 403. WHEN REPORT TO BE FILED.** (1) Except as otherwise provided in subsection (2) of this section and subject to subsection (3) of this section, the report under section 401 of this act must be filed before November 1st of each year and cover the 12 months preceding July 1st of that year.

(2) Subject to subsection (3) of this section, the report under section 401 of this act to be filed by an insurance company must be filed before May 1st of each year for the immediately preceding calendar year.

(3) Before the date for filing the report under section 401 of this act, the holder of property presumed abandoned may request the administrator to extend the time for filing. The administrator may grant an extension. If the extension is granted, the holder may pay or make a partial payment of the amount the holder estimates ultimately will be due. The payment or partial payment terminates accrual of interest on the amount paid.

**NEW SECTION. Sec. 404. RETENTION OF RECORDS BY HOLDER.** A holder required to file a report under section 401 of this act must retain records for six years after the later of the date the report was filed or the last date a timely report was due to be filed, unless a shorter period is provided by rule of the administrator. The holder may satisfy the requirement to retain records under this section through an agent. The records must contain:

(1) The information required to be included in the report;

(2) The date, place, and nature of the circumstances that gave rise to the property right;

(3) The amount or value of the property;

(4) The last address of the apparent owner, if known to the holder; and

(5) If the holder sells, issues, or provides to others for sale or issue in this state traveler's checks, money orders, or similar instruments, other than third-party bank checks, on which the holder is directly liable, a record of the instruments while they remain outstanding indicating the state and date of issue.

**NEW SECTION. Sec. 405.** PROPERTY REPORTABLE AND PAYABLE OR DELIVERABLE ABSENT OWNER DEMAND. Property is reportable and payable or deliverable under this chapter even if the owner fails to make demand or present an instrument or document otherwise required to obtain payment.

**NEW SECTION. Sec. 406.** ABANDONED INTANGIBLE PROPERTY HELD BY A LOCAL GOVERNMENT. (1) A local government holding abandoned intangible property that is not forwarded to the department of revenue in subsection (2) of this section is not required to maintain current records of this property for longer than five years after the property is presumed abandoned, and at that time may archive records of this intangible property and transfer the intangible property to its general fund. However, the local government remains liable to pay the intangible property to a person or entity subsequently establishing its ownership of this intangible property.

(2) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in this chapter. Counties, cities, towns, or other municipal and quasi-municipal corporations must provide to the administrator a report of property it is holding pursuant to this section. The report must identify the property and owner in the manner provided in this part 4 and the administrator must publish the information as provided in section 503 of this act.

## PART 5

### NOTICE TO APPARENT OWNER OF PROPERTY PRESUMED ABANDONED

**NEW SECTION. Sec. 501.** NOTICE TO APPARENT OWNER BY HOLDER. (1) Subject to subsection (2) of this section, the holder of property presumed abandoned shall send to the apparent owner notice by first-class United States mail that complies with section 502 of this act in a format acceptable to the administrator not more than 180 days nor less than 60 days before filing the report under section 401 of this act if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be invalid and is sufficient to direct the delivery of first-class United States mail to the apparent owner; and

(b) The value of the property is \$75 or more.

(2) If an apparent owner has consented to receive email delivery from the holder, the holder shall send the notice described in subsection (1) of this section both by first-class United States mail to the apparent owner's last known mailing address and by email, unless the holder believes that the apparent owner's email address is invalid.

**NEW SECTION. Sec. 502.** CONTENTS OF NOTICE BY HOLDER. (1) Notice under section 501 of this act must contain a heading that reads substantially as follows:

"Notice

The state of Washington requires us to notify you that your property may be transferred to the custody of the department of revenue if you do not contact us before (insert date that is 30 days after the date of this notice)."



(2) The notice under section 501 of this act must:

- (a) Identify the nature and, except for property that does not have a fixed value, the value of the property that is the subject of the notice;
- (b) State that the property will be turned over to the administrator;
- (c) State that after the property is turned over to the administrator an apparent owner that seeks return of the property must file a claim with the administrator;
- (d) State that property that is not legal tender of the United States may be sold by the administrator; and
- (e) Provide instructions that the apparent owner must follow to prevent the holder from reporting and paying or delivering the property to the administrator.

**NEW SECTION. Sec. 503.** NOTICE BY ADMINISTRATOR. (1) The administrator shall give notice to an apparent owner that property presumed abandoned and appears to be owned by the apparent owner is held by the administrator under this chapter.

(2) In providing notice under subsection (1) of this section, the administrator shall:

(a) Except as otherwise provided in (b) of this subsection, send written notice by first-class United States mail to each apparent owner of property valued at \$75 or more held by the administrator, unless the administrator determines that a mailing by first-class United States mail would not be received by the apparent owner, and, in the case of a security held in an account for which the apparent owner had consented to receiving email from the holder, send notice by email if the email address of the apparent owner is known to the administrator instead of by first-class United States mail; or

(b) Send the notice to the apparent owner's email address if the administrator does not have a valid United States mail address for an apparent owner, but has an email address that the administrator does not know to be invalid.

(3) In addition to the notice under subsection (2) of this section, the administrator shall:

(a) Publish every 12 months in the printed or online version of a newspaper of general circulation within this state, which the administrator determines is most likely to give notice to the apparent owner of the property, notice of property held by the administrator which must include:

(i) The total value of property received by the administrator during the preceding 12-month period, taken from the reports under section 401 of this act;

(ii) The total value of claims paid by the administrator during the preceding 12-month period;

(iii) The internet web address of the unclaimed property website maintained by the administrator;

(iv) A telephone number and email address to contact the administrator to inquire about or claim property; and

(v) A statement that a person may access the internet by a computer to search for unclaimed property and a computer may be available as a service to the public at a local public library; and

(b) Maintain a website or database accessible by the public and electronically searchable which contains the names reported to the administrator of all apparent owners for whom property is being held by the administrator.

(4) The website or database maintained under subsection (3)(b) of this section must include instructions for filing with the administrator a claim to property and a printable claim form with instructions for its use.

(5) In addition to giving notice under subsection (2) of this section, publishing the information under subsection (3)(a) of this section and maintaining the website or database under subsection (3)(b) of this section, the administrator may use other printed publication, telecommunications, the internet, or other media to inform the public of the existence of unclaimed property held by the administrator.

**NEW SECTION. Sec. 504.** COOPERATION AMONG STATE OFFICERS AND AGENCIES TO LOCATE APPARENT OWNER. Unless prohibited by law of this state other than this chapter, on request of the administrator, each officer, agency, board, commission, division, and department of this state, any body politic and corporate created by this state for a public purpose, and each political subdivision of this state shall make its books and records available to the administrator and cooperate with the administrator to determine the current address of an apparent owner of property held by the administrator under this chapter.

## PART 6

### TAKING CUSTODY OF PROPERTY BY ADMINISTRATOR

**NEW SECTION. Sec. 601.** DEFINITION OF GOOD FAITH. In this section and sections 602 through 610 of this act, payment or delivery of property is made in good faith if a holder:

(1) Had a reasonable basis for believing, based on the facts then known, that the property was required or permitted to be paid or delivered to the administrator under this chapter; or

(2) Made payment or delivery:

(a) In response to a demand by the administrator or administrator's agent; or

(b) Under a guidance or ruling issued by the administrator which the holder reasonably believed required or permitted the property to be paid or delivered.

**NEW SECTION. Sec. 602.** DORMANCY CHARGE. (1) A holder may deduct a dormancy charge from property required to be paid or delivered to the administrator if:

(a) A valid contract between the holder and the apparent owner authorizes imposition of the charge for the apparent owner's failure to claim the property within a specified time; and

(b) The holder regularly imposes the charge and regularly does not reverse or otherwise cancel the charge.

(2) The amount of the deduction under subsection (1) of this section is limited to an amount that is not unconscionable considering all relevant factors, including the marginal transactional costs incurred by the holder in maintaining the apparent owner's property and any services received by the apparent owner.

**NEW SECTION. Sec. 603.** PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR. (1)(a) Except as otherwise provided in this section, on filing a report under section 401 of this act, the holder shall pay or deliver to the administrator the property described in the report. Holders who are required to file a report electronically under this chapter must remit payments under this section by electronic funds transfer or other form of electronic payment

acceptable to the administrator. However, the administrator, upon request or its own initiative, may relieve any holder or class of holders from the electronic payment requirement under this subsection for good cause as determined by the administrator.

(b) For purposes of this subsection, "good cause" means:

(i) A circumstance or condition exists that, in the administrator's judgment, prevents the holder from remitting payments due under this section electronically; or

(ii) The administrator determines that relief from the electronic payment requirement under this subsection supports the efficient or effective administration of this chapter.

(2) If property in a report under section 401 of this act is an automatically renewable deposit and a penalty or forfeiture in the payment of interest would result from paying the deposit to the administrator at the time of the report, the date for payment of the property to the administrator is extended until a penalty or forfeiture no longer would result from payment, if the holder informs the administrator of the extended date.

(3) Tangible property in a safe deposit box may not be delivered to the administrator until 180 days after filing the report under section 401 of this act.

(4) If property reported to the administrator under section 401 of this act is a security, the administrator may:

(a) Make an endorsement, instruction, or entitlement order on behalf of the apparent owner to invoke the duty of the issuer, its transfer agent, or the securities intermediary to transfer the security; or

(b) Dispose of the security under section 702 of this act.

(5) If the holder of that property reported to the administrator under section 401 of this act is the issuer of a certificated security, the administrator may obtain a replacement certificate in physical or book-entry form under RCW 62A.8-405. An indemnity bond is not required.

(6) The administrator shall establish procedures for the registration, issuance, method of delivery, transfer, and maintenance of securities delivered to the administrator by a holder.

(7) An issuer, holder, and transfer agent or other person acting under this section under instructions of and on behalf of the issuer or holder is not liable to the apparent owner for, and must be indemnified by the state against, a claim arising with respect to property after the property has been delivered to the administrator.

(8) A holder is not required to deliver to the administrator a security identified by the holder as a nonfreely transferable security. If the administrator or holder determines that a security is no longer a nonfreely transferable security, the holder shall deliver the security on the next regular date prescribed for delivery of securities under this chapter. The holder shall make a determination annually whether a security identified in a report filed under section 401 of this act as a nonfreely transferable security is no longer a nonfreely transferable security.

**NEW SECTION. Sec. 604. EFFECT OF PAYMENT OR DELIVERY OF PROPERTY TO ADMINISTRATOR.** (1) On payment or delivery of property to the administrator under this chapter, the administrator as agent for the state assumes custody and responsibility for safekeeping the property. A holder that

pays or delivers property to the administrator in good faith and substantially complies with sections 501 and 502 of this act is relieved of liability arising thereafter with respect to payment or delivery of the property to the administrator.

(2) This state shall defend and indemnify a holder against liability on a claim against the holder resulting from the payment or delivery of property to the administrator made in good faith and after the holder substantially complied with sections 501 and 502 of this act.

NEW SECTION. Sec. 605. RECOVERY OF PROPERTY BY HOLDER FROM ADMINISTRATOR. (1) A holder that under this chapter pays money to the administrator may file a claim for reimbursement from the administrator of the amount paid if the holder:

(a) Paid the money in error; or

(b) After paying the money to the administrator, paid money to a person the holder reasonably believed was entitled to the money.

(2) If a claim for reimbursement under subsection (1) of this section is made for a payment made on a negotiable instrument, including a traveler's check, money order, or similar instrument, the holder must submit proof that the instrument was presented and payment was made to a person the holder reasonably believed was entitled to payment. The holder may claim reimbursement even if the payment was made to a person whose claim was made after expiration of a period of limitation on the owner's right to receive or recover property, whether specified by contract, statute, or court order.

(3) If a holder is reimbursed by the administrator under subsection (1)(b) of this section, the holder may also recover from the administrator income or gain under section 607 of this act that would have been paid to the owner if the money had been claimed from the administrator by the owner to the extent the income or gain was paid by the holder to the owner.

(4) A holder that under this chapter delivers property other than money to the administrator may file a claim for return of the property from the administrator if:

(a) The holder delivered the property in error; or

(b) The apparent owner has claimed the property from the holder.

(5) If a claim for return of property under subsection (4) of this section is made, the holder shall include with the claim evidence sufficient to establish that the apparent owner has claimed the property from the holder or that the property was delivered by the holder to the administrator in error.

(6) The administrator may determine that an affidavit submitted by a holder is evidence sufficient to establish that the holder is entitled to reimbursement or to recover property under this section.

(7) A holder is not required to pay a fee or other charge for reimbursement or return of property under this section.

(8) Not later than 90 days after a claim is filed under subsection (1) or (4) of this section, the administrator shall allow or deny the claim and give the claimant notice of the decision in a record. If the administrator does not take action on a claim during the 90-day period, the claim is deemed denied.

(9) Decisions under this section are subject to review under sections 1103 and 1104 of this act.

**NEW SECTION. Sec. 606.** PROPERTY REMOVED FROM SAFE DEPOSIT BOX. Property removed from a safe deposit box and delivered to the administrator under this chapter is subject to the holder's right to reimbursement for the cost of opening the box and a lien or contract providing reimbursement to the holder for unpaid rent charges for the box. The administrator shall reimburse the holder from the proceeds remaining after deducting the expense incurred by the administrator in selling the property.

**NEW SECTION. Sec. 607.** CREDITING INCOME OR GAIN TO OWNER'S ACCOUNT. If property other than money is delivered to the administrator, the owner is entitled to receive from the administrator income or gain realized or accrued on the property before the property is sold. If the property was an interest-bearing demand, savings, or time deposit, the administrator shall pay interest at the rate the property earned while in possession of the holder. Interest begins to accrue when the property is delivered to the administrator and ends on the earlier of the expiration of 10 years after its delivery or the date on which payment is made to the owner.

**NEW SECTION. Sec. 608.** ADMINISTRATOR'S OPTIONS AS TO CUSTODY. (1) The administrator may decline to take custody of property reported under section 401 of this act if the administrator determines that:

(a) The property has a value less than the estimated expenses of notice and sale of the property; or

(b) Taking custody of the property would be unlawful.

(2) A holder may pay or deliver property to the administrator before the property is presumed abandoned under this chapter if the holder:

(a) Sends the apparent owner of the property notice required by section 501 of this act and provides the administrator evidence of the holder's compliance with this subsection (2)(a);

(b) Includes with the payment or delivery a report regarding the property conforming to section 402 of this act; and

(c) First obtains the administrator's consent in a record to accept payment or delivery.

(3) A holder's request for the administrator's consent under subsection (2)(c) of this section must be in a record. If the administrator fails to respond to the request not later than 30 days after receipt of the request, the administrator is deemed to consent to the payment or delivery of the property and the payment or delivery is considered to have been made in good faith.

(4) On payment or delivery of property under subsection (2) of this section, the property is presumed abandoned.

**NEW SECTION. Sec. 609.** DISPOSITION OF PROPERTY HAVING NO SUBSTANTIAL VALUE—IMMUNITY FROM LIABILITY. (1) If the administrator takes custody of property delivered under this chapter and later determines that the property has no substantial commercial value or that the cost of disposing of the property will exceed the value of the property, the administrator may return the property to the holder or destroy or otherwise dispose of the property.

(2) An action or proceeding may not be commenced against the state, an agency of the state, the administrator, another officer, employee, or agent of the

state, or a holder for or because of an act of the administrator under this section, except for intentional misconduct or malfeasance.

**NEW SECTION. Sec. 610. PERIODS OF LIMITATION AND REPOSE.**

(1) Expiration, before, on, or after the effective date of this section, of a period of limitation on an owner's right to receive or recover property, whether specified by contract, statute, or court order, does not prevent the property from being presumed abandoned or affect the duty of a holder under this chapter to file a report or pay or deliver property to the administrator.

(2) The administrator may not commence an action or proceeding to enforce this chapter with respect to the reporting, payment, or delivery of property more than six years after the holder filed a nonfraudulent report under section 401 of this act with the administrator. The parties may agree in a record to extend the limitation in this subsection.

(3) The administrator may not commence an action, proceeding, or examination with respect to a duty of a holder under this chapter more than 10 years after the duty arose.

## PART 7

### SALE OF PROPERTY BY ADMINISTRATOR

**NEW SECTION. Sec. 701. PUBLIC SALE OF PROPERTY.** (1) Except as otherwise provided in section 702 of this act, the administrator may sell the property (a) not earlier than two years after receipt of property stored in a safe deposit box and presumed abandoned; and (b) not earlier than three years after receipt of all other property presumed abandoned.

(2) Before selling property under subsection (1) of this section, the administrator shall give notice to the public of:

(a) The date of the sale; and

(b) A reasonable description of the property.

(3) A sale under subsection (1) of this section must be to the highest bidder:

(a) At public sale at a location in this state which the administrator determines to be the most favorable market for the property;

(b) On the internet; or

(c) On another forum the administrator determines is likely to yield the highest net proceeds of sale.

(4) The administrator may decline the highest bid at a sale under this section and reoffer the property for sale if the administrator determines the highest bid is insufficient.

(5) The administrator must publish at least one notice of the sale, at least three weeks but not more than five weeks before the sale, in a newspaper of general circulation in the county in which the property is sold.

**NEW SECTION. Sec. 702. DISPOSAL OF SECURITIES.** (1) Except as otherwise provided in this subsection, the administrator must sell all securities delivered to the administrator as required by this chapter as soon as practicable after taking custody, in the judgment of the administrator, after receipt by the administrator. However, this subsection does not apply with respect to any securities that, in the judgment of the administrator, cannot be sold, are worthless, or are not cost-effective to sell.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over

the counter at prices prevailing at the time of sale or by any other method the administrator considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the administrator deems advisable.

**NEW SECTION. Sec. 703.** RECOVERY OF SECURITIES OR VALUE BY OWNER. (1) Except as otherwise provided in this section, a person making a claim under this chapter with respect to securities is only entitled to receive the proceeds received from sale, even if the sale of the securities has not been completed at the time the administrator receives the claim. However, if the administrator receives a claim for securities and the administrator has not ordered those securities to be sold as of the time the claim is received by the administrator, the claimant is entitled to receive either the securities delivered to the administrator by the holder, or the proceeds received from the sale, less any amounts deducted pursuant to section 803 of this act.

(2) With respect to securities that, in the judgment of the administrator, cannot be sold or are not cost-effective to sell and that remain in the possession of the administrator, a person making a claim under this chapter is only entitled to receive the securities delivered to the administrator by the holder.

**NEW SECTION. Sec. 704.** PURCHASER OWNS PROPERTY AFTER SALE. A purchaser of property at a sale conducted by the administrator under this chapter takes the property free of all claims of the owner, a previous holder, or a person claiming through the owner or holder. The administrator shall execute documents necessary to complete the transfer of ownership to the purchaser.

**NEW SECTION. Sec. 705.** MILITARY MEDAL OR DECORATION. (1) The administrator may not sell a medal or decoration awarded for military service in the armed forces of the United States.

(2) The administrator, with the consent of the respective organization under (a) of this subsection, agency under (b) of this subsection, or entity under (c) of this subsection, may deliver a medal or decoration described in subsection (1) of this section to be held in custody for the owner, to:

- (a) A military veterans organization qualified under the internal revenue code, as it existed on the effective date of this section, 26 U.S.C. Sec. 501(c)(19);
- (b) The agency that awarded the medal or decoration; or
- (c) A governmental entity.

(3) On delivery under subsection (2) of this section, the administrator is not responsible for safekeeping the medal or decoration.

## PART 8

### ADMINISTRATION OF PROPERTY

**NEW SECTION. Sec. 801.** DEPOSIT OF FUNDS BY ADMINISTRATOR. (1) Except as otherwise provided by this section, the administrator shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of property under sections 701 through 705 of this act. The administrator shall retain in a separate trust fund, the nonappropriated unclaimed personal property account, an amount not less than \$750,000 from which prompt payment of claims duly allowed must be made by the administrator.

(2) The administrator may pay from the trust fund provided in subsection (1) of this section any costs of administering this chapter including those costs set forth in section 803 of this act. Such amounts may be expended without appropriation.

(3) The department may periodically transfer from the general fund of this state to the unclaimed personal property account amounts necessary to accommodate the requirements of this section.

**NEW SECTION. Sec. 802.** ADMINISTRATOR TO RETAIN RECORDS OF PROPERTY. The administrator shall:

(1) Record and retain the name and last known address of each person shown on a report filed under section 401 of this act to be the apparent owner of property delivered to the administrator;

(2) Record and retain the name and last known address of each insured or annuitant and beneficiary shown on the report;

(3) For each policy of insurance or annuity contract listed in the report of an insurance company, record and retain the policy or account number, the name of the company, and the amount due or paid; and

(4) For each apparent owner listed in the report, record and retain the name of the holder that filed the report and the amount due or paid.

**NEW SECTION. Sec. 803.** EXPENSES AND SERVICE CHARGES OF ADMINISTRATOR. The administrator may expend from the unclaimed personal property account for the following purposes:

(1) Expenses of disposition of property delivered to the administrator under this chapter;

(2) Costs of mailing and publication in connection with property delivered to the administrator under this chapter;

(3) Reasonable service charges; and

(4) Expenses incurred in examining records of or collecting property from a putative holder or holder.

**NEW SECTION. Sec. 804.** ADMINISTRATOR HOLDS PROPERTY AS CUSTODIAN FOR OWNER. Property received by the administrator under this chapter is held in custody for the benefit of the owner and is not owned by the state.

## PART 9

### CLAIM TO RECOVER PROPERTY FROM ADMINISTRATOR

**NEW SECTION. Sec. 901.** CLAIM OF ANOTHER STATE TO RECOVER PROPERTY. (1) If the administrator knows that property held by the administrator under this chapter is subject to a superior claim of another state, the administrator shall:

(a) Report and pay or deliver the property to the other state; or

(b) Return the property to the holder so that the holder may pay or deliver the property to the other state.

(2) The administrator is not required to enter into an agreement to transfer property to the other state under subsection (1) of this section.

**NEW SECTION. Sec. 902.** WHEN PROPERTY SUBJECT TO RECOVERY BY ANOTHER STATE. (1) Property held under this chapter by



the administrator is subject to the right of another state to take custody of the property if:

(a) The property was paid or delivered to the administrator because the records of the holder did not reflect a last known address in the other state of the apparent owner and:

(i) The other state establishes that the last known address of the apparent owner or other person entitled to the property was in the other state; or

(ii) Under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(b) The records of the holder did not accurately identify the owner of the property, the last known address of the owner was in another state, and, under the law of the other state, the property has become subject to a claim by the other state of abandonment;

(c) The property was subject to the custody of the administrator of this state under section 305 of this act and, under the law of the state of domicile of the holder, the property has become subject to a claim by the state of domicile of the holder of abandonment; or

(d) The property:

(i) Is a sum payable on a traveler's check, money order, or similar instrument that was purchased in the other state and delivered to the administrator under section 306 of this act; and

(ii) Under the law of the other state, has become subject to a claim by the other state of abandonment.

(2) A claim by another state to recover property under this section must be presented in a form prescribed by the administrator, unless the administrator waives presentation of the form.

(3) The administrator shall decide a claim under this section not later than 90 days after it is presented. If the administrator determines that the other state is entitled under subsection (1) of this section to custody of the property, the administrator shall allow the claim and pay or deliver the property to the other state.

(4) The administrator may require another state, before recovering property under this section, to agree to indemnify this state and its agents, officers, and employees against any liability on a claim to the property.

**NEW SECTION. Sec. 903. CLAIM FOR PROPERTY BY PERSON CLAIMING TO BE OWNER.** (1) A person claiming to be the owner of property held under this chapter by the administrator may file a claim for the property on a form prescribed by the administrator. The claimant must verify the claim as to its completeness and accuracy.

(2) The administrator may waive the requirement in subsection (1) of this section and may pay or deliver property directly to a person if:

(a) The person receiving the property or payment is shown to be the apparent owner included on a report filed under section 401 of this act; and

(b) The administrator reasonably believes the person is entitled to receive the property or payment.

**NEW SECTION. Sec. 904. WHEN ADMINISTRATOR MUST HONOR CLAIM FOR PROPERTY.** (1) The administrator shall pay or deliver property to a claimant under section 903(1) of this act if the administrator receives evidence

sufficient to establish to the satisfaction of the administrator that the claimant is the owner of the property.

(2) Not later than 90 days after a claim is filed under section 903(1) of this act, the administrator shall allow or deny the claim and give the claimant notice in a record of the decision.

(3) If the claim is denied under subsection (2) of this section:

(a) The administrator shall inform the claimant of the reason for the denial and specify what additional evidence, if any, is required for the claim to be allowed;

(b) The claimant may file an amended claim with the administrator or commence an action under section 906 of this act; and

(c) The administrator shall consider an amended claim filed under (b) of this subsection as an initial claim.

(4) If the administrator does not take action on a claim during the 90-day period following the filing of a claim under section 903(1) of this act, the claim is deemed denied.

**NEW SECTION. Sec. 905. ALLOWANCE OF CLAIM FOR PROPERTY.**

(1) Not later than 30 days after a claim is allowed under section 904(2) of this act, the administrator shall pay or deliver to the owner the property or pay to the owner the net proceeds of a sale of the property, together with income or gain to which the owner is entitled under section 607 of this act. On request of the owner, the administrator may sell or liquidate a security and pay the net proceeds to the owner, even if the security had been held by the administrator for less than three years or the administrator has not complied with the notice requirements under section 702 of this act.

(2) Property held under this chapter by the administrator is subject to a claim for the payment of an enforceable debt the owner owes in this state for:

(a) Child support arrearages, including child support collection costs and child support arrearages that are combined with maintenance;

(b) A civil or criminal fine or penalty, court costs, a surcharge, or restitution imposed by a final order of an administrative agency or a final court judgment; or

(c) State or local taxes, penalties, and interest that have been determined to be delinquent.

(3) Before delivery or payment to an owner under subsection (1) of this section of property or payment to the owner of net proceeds of a sale of the property, the administrator first shall apply the property or net proceeds to a debt under subsection (2) of this section the administrator determines is owed by the owner. The administrator shall pay the amount to the appropriate state or local agency and notify the owner of the payment.

(4) The administrator may make periodic inquiries of state and local agencies in the absence of a claim filed under section 903 of this act to determine whether an apparent owner included in the unclaimed property records of this state has enforceable debts described in subsection (2) of this section. The administrator first shall apply the property or net proceeds of a sale of property held by the administrator to a debt under subsection (2) of this section of an apparent owner which appears in the records of the administrator and deliver the amount to the appropriate state or local agency. The administrator shall notify the apparent owner of the payment.

**NEW SECTION. Sec. 906.** ACTION BY PERSON WHOSE CLAIM IS DENIED. Not later than one year after filing a claim under section 904(1) of this act, the claimant may commence an action against the administrator in Thurston county superior court to establish a claim that has been denied or deemed denied under section 904 of this act.

## PART 10

### VERIFIED REPORT OF PROPERTY—EXAMINATION OF RECORDS

**NEW SECTION. Sec. 1001.** VERIFIED REPORT OF PROPERTY. If a person does not file a report required by section 401 of this act or the administrator believes that a person may have filed an inaccurate, incomplete, or false report, the administrator may require the person to file a verified report in a form prescribed by the administrator. The verified report must:

- (1) State whether the person is holding property reportable under this chapter;
- (2) Describe property not previously reported or about which the administrator has inquired;
- (3) Specifically identify property described under subsection (2) of this section about which there is a dispute whether it is reportable under this section; and
- (4) State the amount or value of the property.

**NEW SECTION. Sec. 1002.** EXAMINATION OF RECORDS TO DETERMINE COMPLIANCE. The administrator, at reasonable times and on reasonable notice, may:

- (1) Examine the records of a person, including examination of appropriate records in the possession of an agent of the person under examination, if the records are reasonably necessary to determine whether the person has complied with this chapter;
- (2) Issue an administrative subpoena requiring the person or agent of the person to make records available for examination; and
- (3) Bring an action seeking judicial enforcement of the subpoena.

**NEW SECTION. Sec. 1003.** RULES FOR CONDUCTING EXAMINATION. (1) The administrator shall adopt rules governing procedures and standards for an examination under section 1002 of this act, including rules for use of an estimation, extrapolation, and statistical sampling in conducting an examination.

(2) An examination under section 1002 of this act must be performed under rules adopted under subsection (1) of this section and with generally accepted examination practices and standards applicable to an unclaimed property examination.

(3) If a person subject to examination under section 1002 of this act has filed the reports required under sections 401 and 1001 of this act and has retained the records required by section 404 of this act, the following rules apply:

- (a) The examination must include a review of the person's records.
- (b) The examination may not be based on an estimate unless the person expressly consents in a record to the use of an estimate or the person has failed to make its records available to the administrator for examination.

(c) The person conducting the examination shall consider the evidence presented in good faith by the person in preparing the findings of the examination under section 1007 of this act.

**NEW SECTION. Sec. 1004.** RECORDS OBTAINED IN EXAMINATION. Records obtained and records, including work papers, compiled by the administrator in the course of conducting an examination under section 1002 of this act:

(1) Are subject to the confidentiality and security provisions of sections 1401 through 1408 of this act and are not public records;

(2) May be used by the administrator in an action to collect property or otherwise enforce this chapter;

(3) May be used in a joint examination conducted with another state, the United States, a foreign country or subordinate unit of a foreign country, or any other governmental entity if the governmental entity conducting the examination is legally bound to maintain the confidentiality and security of information obtained from a person subject to examination in a manner substantially equivalent to sections 1401 through 1408 of this act;

(4) Must be disclosed, on request, to the person that administers the unclaimed property law of another state for that state's use in circumstances equivalent to circumstances described in this section and sections 1001 through 1003 and 1005 through 1013 of this act, if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to sections 1401 through 1408 of this act;

(5) Must be produced by the administrator under an administrative or judicial subpoena or administrative or court order; and

(6) Must be produced by the administrator on request of the person subject to the examination in an administrative or judicial proceeding relating to the property.

**NEW SECTION. Sec. 1005.** EVIDENCE OF UNPAID DEBT OR UNDISCHARGED OBLIGATION. (1) A record of a putative holder showing an unpaid debt or undischarged obligation is prima facie evidence of the debt or obligation.

(2) A putative holder may establish by a preponderance of the evidence that there is no unpaid debt or undischarged obligation for a debt or obligation described in subsection (1) of this section or that the debt or obligation was not, or no longer is, a fixed and certain obligation of the putative holder.

(3) A putative holder may overcome prima facie evidence under subsection (1) of this section by establishing by a preponderance of the evidence that a check, draft, or similar instrument was:

(a) Issued as an unaccepted offer in settlement of an unliquidated amount;

(b) Issued but later was replaced with another instrument because the earlier instrument was lost or contained an error that was corrected;

(c) Issued to a party affiliated with the issuer;

(d) Paid, satisfied, or discharged;

(e) Issued in error;

(f) Issued without consideration;

(g) Issued but there was a failure of consideration;

(h) Voided within a reasonable time after issuance for a valid business reason set forth in a contemporaneous record; or

(i) Issued but not delivered to the third-party payee for a sufficient reason recorded within a reasonable time after issuance.

(4) In asserting a defense under this section, a putative holder may present evidence of a course of dealing between the putative holder and the apparent owner or of custom and practice.

**NEW SECTION. Sec. 1006.** FAILURE OF PERSON EXAMINED TO RETAIN RECORDS. If a person subject to examination under section 1002 of this act does not retain the records required by section 404 of this act, the administrator may determine the value of property due using a reasonable method of estimation based on all information available to the administrator, including extrapolation and use of statistical sampling when appropriate and necessary, consistent with examination procedures and standards adopted under section 1003(1) of this act and in accordance with section 1003(2) of this act.

**NEW SECTION. Sec. 1007.** REPORT TO PERSON WHOSE RECORDS WERE EXAMINED. At the conclusion of an examination under section 1002 of this act, the administrator shall provide to the person whose records were examined a complete and unredacted examination report that specifies:

- (1) The work performed;
  - (2) The property types reviewed;
  - (3) The methodology of any estimation technique, extrapolation, or statistical sampling used in conducting the examination;
  - (4) Each calculation showing the value of property determined to be due;
- and
- (5) The findings of the person conducting the examination.

**NEW SECTION. Sec. 1008.** COMPLAINT TO ADMINISTRATOR ABOUT CONDUCT OF PERSON CONDUCTING EXAMINATION. (1) If a person subject to examination under section 1002 of this act believes the person conducting the examination has made an unreasonable or unauthorized request or is not proceeding expeditiously to complete the examination, the person in a record may ask the administrator to intervene and take appropriate remedial action, including countermanding the request of the person conducting the examination, imposing a time limit for completion of the examination, or reassigning the examination to another person.

(2) If a person in a record requests a conference with the administrator to present matters that are the basis of a request under subsection (1) of this section, the administrator shall hold the conference not later than 30 days after receiving the request. The administrator may hold the conference in person, by telephone, or by electronic means.

(3) If a conference is held under subsection (2) of this section, not later than 30 days after the conference ends, the administrator shall provide a report in a record of the conference to the person that requested the conference.

**NEW SECTION. Sec. 1009.** ADMINISTRATOR'S CONTRACT WITH ANOTHER TO CONDUCT EXAMINATION. (1) In this section, "related to the administrator" refers to an individual who is:

(a) The administrator's spouse, partner in a civil union, domestic partner, or reciprocal beneficiary;

(b) The administrator's child, stepchild, grandchild, parent, stepparent, sibling, stepsibling, half-sibling, aunt, uncle, niece, or nephew;

(c) A spouse, partner in a civil union, domestic partner, or reciprocal beneficiary of an individual under (b) of this subsection; or

(d) Any individual residing in the administrator's household.

(2) The administrator may contract with a person to conduct an examination under this section and sections 1001 through 1008 and 1010 through 1013 of this act. The contract may be awarded only under chapter 39.26 RCW.

(3) If the person with which the administrator contracts under subsection (2) of this section is:

(a) An individual, the individual may not be related to the administrator; or

(b) A business entity, the entity may not be owned in whole or in part by the administrator or an individual related to the administrator.

(4) At least 60 days before assigning a person under contract with the administrator under subsection (2) of this section to conduct an examination, the administrator shall demand in a record that the person to be examined submit a report and deliver property that is previously unreported.

(5) If the administrator contracts with a person under subsection (2) of this section:

(a) The contract may provide for compensation of the person based on a fixed fee, hourly fee, or contingent fee;

(b) A contingent fee arrangement may not provide for a payment that exceeds 10 percent of the amount or value of property paid or delivered as a result of the examination; and

(c) On request by a person subject to examination by a contractor, the administrator shall deliver to the person a complete and unredacted copy of the contract.

(6) A contract under subsection (2) of this section is subject to public disclosure without redaction under chapter 42.56 RCW.

**NEW SECTION. Sec. 1010. LIMIT ON FUTURE EMPLOYMENT.** The administrator or an individual employed by the administrator who participates in, recommends, or approves the award of a contract under section 1009(2) of this act on or after the effective date of this section may not be employed by, contracted with, or compensated in any capacity by the contractor or an affiliate of the contractor for two years after the latest of participation in, recommendation of, or approval of the award or conclusion of the contract.

**NEW SECTION. Sec. 1011. REPORT BY ADMINISTRATOR TO STATE OFFICIAL.** (1) Not later than three months after the end of the state fiscal year, the administrator shall compile and submit a report to the governor and legislature. The report must contain the following information about property presumed abandoned for the preceding fiscal year for the state:

(a) The total amount and value of all property paid or delivered under this chapter to the administrator, separated into:

(i) The part voluntarily paid or delivered; and

(ii) The part paid or delivered as a result of an examination under section 1002 of this act, separated into the part recovered as a result of an examination conducted by:

(A) A state employee; and

(B) A contractor under section 1009 of this act;

(b) The name of and amount paid to each contractor under section 1009 of this act and the percentage the total compensation paid to all contractors under section 1009 of this act bears to the total amount paid or delivered to the administrator as a result of all examinations performed under section 1009 of this act;

(c) The total amount and value of all property paid or delivered by the administrator to persons that made claims for property held by the administrator under this chapter and the percentage the total payments made and value of property delivered to claimants bears to the total amounts paid and value delivered to the administrator; and

(d) The total amount of claims made by persons claiming to be owners which:

- (i) Were denied;
- (ii) Were allowed; and
- (iii) Are pending.

(2) The report under subsection (1) of this section is a public record subject to public disclosure without redaction under chapter 42.56 RCW.

**NEW SECTION. Sec. 1012.** DETERMINATION OF LIABILITY FOR UNREPORTED REPORTABLE PROPERTY. If the administrator determines from an examination conducted under section 1002 of this act that a putative holder failed or refused to pay or deliver to the administrator property which is reportable under this chapter, the administrator shall issue a determination of the putative holder's liability to pay or deliver and give notice in a record to the putative holder of the determination.

**NEW SECTION. Sec. 1013.** INTEREST AND PENALTIES. (1) A person who fails to pay or deliver property when due is required to pay to the administrator interest at the rate as computed under RCW 82.32.050(1)(c) and set under RCW 82.32.050(2). However, the administrator must waive or cancel interest imposed under this subsection if:

(a) The administrator finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105;

(b) The failure to timely pay or deliver the property within the time prescribed by this chapter was the direct result of written instructions given to the person by the administrator; or

(c) The extension of a due date for payment or delivery under an assessment issued by the administrator was not at the person's request and was for the sole convenience of the administrator.

(2) If a person fails to file any report or to pay or deliver any amounts or property when due under a report required under this chapter, there is assessed a penalty equal to 10 percent of the amount unpaid and the value of any property not delivered.

(3) If an examination results in an assessment for amounts unpaid or property not delivered, there is assessed a penalty equal to 10 percent of the amount unpaid and the value of any property not delivered.

(4) If a person fails to pay or deliver to the administrator by the due date any amounts or property due under an assessment issued by the administrator to the person, there is assessed an additional penalty of five percent of the amount unpaid and the value of any property not delivered.

(5) If a holder makes a fraudulent report under this chapter, the administrator may require the holder to pay the administrator, in addition to interest under this section, a civil penalty of \$1,000 for each day from the date the report was made until corrected, up to a cumulative maximum amount of \$25,000, plus 25 percent of the amount or value of any property that should have been reported or was underreported.

(6) Penalties under subsections (2) through (4) of this section may be waived or canceled only if the administrator finds that the failure to pay or deliver within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of penalties under RCW 82.32.105.

(7) If a person willfully fails to file a report or to provide written notice to apparent owners as required under this chapter, the administrator may assess a civil penalty of \$100 for each day the report is withheld or the notice is not sent, but not more than \$5,000.

(8) If a holder, having filed a report, failed to file the report electronically as required by RCW 63.29.170, or failed to pay electronically any amounts due under the report as required by RCW 63.29.190, the administrator must assess a penalty equal to five percent of the amount payable or deliverable under the report, unless the administrator grants the taxpayer relief from the electronic filing and payment requirements. Total penalties assessed under this subsection may not exceed five percent of the amount payable and value of property deliverable under the report.

(9) If a holder enters into a contract or other arrangement for the purpose of evading an obligation under this chapter or otherwise willfully fails to perform a duty imposed on the holder under this chapter, the administrator may require the holder to pay the administrator, in addition to interest as provided in this section, a civil penalty of \$1,000 for each day the obligation is evaded or the duty not performed, up to a cumulative maximum amount of \$25,000, plus 25 percent of the amount or value of property that should have been but was not reported, paid, or delivered as a result of the evasion or failure to perform.

(10) The penalties imposed in this section are cumulative.

**NEW SECTION. Sec. 1014.** The administrator may waive, in whole and in part, interest under section 1013 of this act and penalties under section 1013 (5) and (9) of this act.

## PART 11

### DETERMINATION OF LIABILITY—PUTATIVE HOLDER REMEDIES

**NEW SECTION. Sec. 1101. INFORMAL CONFERENCE.** (1) Not later than 30 days after receipt of a notice under section 1012 of this act, the putative holder may request an informal conference with the administrator to review the determination. Except as otherwise provided in this section, the administrator may designate an employee to act on behalf of the administrator.

(2) If a putative holder makes a timely request under subsection (1) of this section for an informal conference:



(a) Not later than 20 days after the date of the request, the administrator shall set the time and place of the conference;

(b) The administrator shall give the putative holder notice in a record of the time and place of the conference;

(c) The conference may be held in person, by telephone, or by electronic means, as determined by the administrator;

(d) The request tolls the 90-day period under sections 1103 and 1104 of this act until notice of a decision under (g) of this subsection has been given to the putative holder or the putative holder withdraws the request for the conference;

(e) The conference may be postponed, adjourned, and reconvened as the administrator determines appropriate;

(f) The administrator or administrator's designee with the approval of the administrator may modify a determination made under section 1012 of this act or withdraw it; and

(g) The administrator shall issue a decision in a record and provide a copy of the record to the putative holder and examiner not later than 20 days after the conference ends.

(3) A conference under subsection (2) of this section is not an administrative remedy and is not a contested case subject to chapter 34.05 RCW. An oath is not required and rules of evidence do not apply in the conference.

(4) At a conference under subsection (2) of this section, the putative holder must be given an opportunity to confer informally with the administrator and the person that examined the records of the putative holder to:

(a) Discuss the determination made under section 1012 of this act; and

(b) Present any issue concerning the validity of the determination.

(5) If the administrator fails to act within the period prescribed in subsection (2)(a) or (g) of this section, the failure does not affect a right of the administrator, except that interest does not accrue on the amount for which the putative holder was determined to be liable under section 1012 of this act during the period in which the administrator failed to act until the earlier of:

(a) The date under section 1103 of this act the putative holder initiates administrative review or files an action under section 1104 of this act; or

(b) Ninety days after the putative holder received notice of the administrator's determination under section 1012 of this act if no review was initiated under section 1103 of this act and no action was filed under section 1104 of this act.

(6) The administrator may hold an informal conference with a putative holder about a determination under section 1012 of this act without a request at any time before the putative holder initiates administrative review under section 1103 of this act or files an action under section 1104 of this act.

(7) Interest and penalties under section 1013 of this act continue to accrue on property not reported, paid, or delivered as required by this chapter after the initiation, and during the pendency, of an informal conference under this section.

**NEW SECTION. Sec. 1102.** REVIEW OF ADMINISTRATOR'S DETERMINATION. A putative holder may seek relief from a determination under section 1012 of this act by:

(1) Administrative review under section 1103 of this act; or

(2) Judicial review under section 1104 of this act.

**NEW SECTION. Sec. 1103. ADMINISTRATIVE REVIEW.** Any person having been issued a determination by the administrator, or a denial of an application for a refund or return of property, under the provisions of this chapter is entitled to a review by the administrator conducted in accordance with the provisions of RCW 34.05.410 through 34.05.494, subject to judicial review under RCW 34.05.510 through 34.05.598. A petition for review under this section is timely if received in writing by the administrator on or before 90 days after the holder receives the determination from the administrator pursuant to section 1012 of this act or from any extension of the due date granted by the administrator, or in the case of a refund or return application, 30 days after the administrator rejects the application in writing, regardless of any subsequent action by the administrator to reconsider its initial decision. The period for filing a petition for review under this section may be extended as provided in a rule adopted by the administrator under chapter 34.05 RCW or upon a written agreement signed by the holder and the administrator.

**NEW SECTION. Sec. 1104. JUDICIAL REMEDY.** (1) Any person who has paid or delivered property to the administrator under the provisions of this chapter, except one who has failed to keep and preserve records as required in this chapter, feeling aggrieved by such payment or delivery, may appeal to the Thurston county superior court. The person filing a notice of appeal under this section is deemed the plaintiff, and the administrator, the defendant.

(2) An appeal under this section must be made within 30 days after the administrator rejects in writing an application for refund or return of property, regardless of any subsequent action by the administrator to reconsider its initial decision.

(3)(a) In an appeal filed under this section, the plaintiff must set forth the amount or property, if any, payable or deliverable on the report or assessment that the plaintiff is contesting, which the holder concedes to be the correct amount payable or deliverable, and the reason why the amount payable or deliverable should be reduced or abated.

(b) The appeal is perfected only by serving a copy of the notice of appeal upon the administrator and filing the original with proof of service with the clerk of the superior court of Thurston county, within the time specified in subsection (2) of this section.

(4)(a) The trial in the superior court on appeal must be de novo and without the necessity of any pleadings other than the notice of appeal. At trial, the burden is on the plaintiff to (i) prove that the amount paid by that person is incorrect, either in whole or in part, or the property in question was delivered in error to the administrator, and (ii) establish the correct amount payable or the property required to be delivered to the administrator, if any.

(b) Both parties are entitled to subpoena the attendance of witnesses as in other civil actions and to produce evidence that is competent, relevant, and material to determine the correct amount due, if any, that should be paid by the plaintiff.

(c) Either party may seek appellate review in the same manner as other civil actions are appealed to the appellate courts.

(5) An appeal may be maintained under this section without the need for the plaintiff to first:

(a) Protest against the payment of any amount due or reportable under this chapter or to make any demand to have such amount refunded or returned; or

(b) Petition the administrator for a refund, return of property, or a review of its action as authorized in section 1103 of this act.

(6) No court action or proceeding of any kind may be maintained by the plaintiff to recover any amount paid, delivered, or reported to the administrator under this chapter, except as provided in this section or as may be available to the plaintiff under RCW 34.05.510 through 34.05.598.

(7) No appeal may be maintained under this section with respect to matters reviewed by the administrator under the provisions of chapter 34.05 RCW.

## PART 12

### ENFORCEMENT BY ADMINISTRATOR

**NEW SECTION. Sec. 1201. JUDICIAL ACTION TO ENFORCE LIABILITY.** (1) If a determination under section 1012 of this act becomes final and is not subject to administrative or judicial review, the administrator may commence an action in superior court or in an appropriate court of another state to enforce the determination and secure payment or delivery of past due, unpaid, or undelivered property. The action must be brought not later than one year after the determination becomes final.

(2) In an action under subsection (1) of this section, if no court in this state has jurisdiction over the defendant, the administrator may commence an action in any court having jurisdiction over the defendant.

**NEW SECTION. Sec. 1202. INTERSTATE AND INTERNATIONAL AGREEMENT—COOPERATION.** (1) Subject to subsection (2) of this section, the administrator may:

(a) Exchange information with another state or foreign country relating to property presumed abandoned or relating to the possible existence of property presumed abandoned; and

(b) Authorize in a record another state or foreign country or a person acting on behalf of the other state or country to examine its records of a putative holder as provided in sections 1001 through 1013 of this act.

(2) An exchange or examination under subsection (1) of this section may be done only if the state or foreign country has confidentiality and security requirements substantially equivalent to those in sections 1401 through 1408 of this act or agrees in a record to be bound by this state's confidentiality and security requirements.

**NEW SECTION. Sec. 1203. ACTION INVOLVING ANOTHER STATE OR FOREIGN COUNTRY.** (1) The administrator may join another state or foreign country to examine and seek enforcement of this chapter against a putative holder.

(2) On request of another state or foreign country, the attorney general may commence an action on behalf of the other state or country to enforce, in this state, the law of the other state or country against a putative holder subject to a claim by the other state or country, if the other state or country agrees to pay costs incurred by the attorney general in the action.

(3) The administrator may request the official authorized to enforce the unclaimed property law of another state or foreign country to commence an action to recover property in the other state or country on behalf of the

administrator. This state shall pay the costs, including reasonable attorneys' fees and expenses, incurred by the other state or foreign country in an action under this subsection.

(4) The administrator may pursue an action on behalf of this state to recover property subject to this chapter but delivered to the custody of another state if the administrator believes the property is subject to the custody of the administrator.

(5) The administrator may retain an attorney in this state, another state, or a foreign country to commence an action to recover property on behalf of the administrator and may agree to pay attorneys' fees based in whole or in part on a fixed fee, hourly fee, or a percentage of the amount or value of property recovered in the action.

(6) Expenses incurred by this state in an action under this section may be paid from property received under this chapter or the net proceeds of the property. Expenses paid to recover property may not be deducted from the amount that is subject to a claim under this chapter by the owner.

### PART 13

#### AGREEMENT TO LOCATE PROPERTY OF APPARENT OWNER HELD BY ADMINISTRATOR

NEW SECTION. **Sec. 1301.** WHEN AGREEMENT TO LOCATE PROPERTY ENFORCEABLE. An agreement by an apparent owner and another person, the primary purpose of which is to locate, deliver, recover, or assist in the location, delivery, or recovery of property held by the administrator, is enforceable only if the agreement:

(1) Is in a record that clearly states the nature of the property and the services to be provided;

(2) Is signed by or on behalf of the apparent owner; and

(3) States the amount or value of the property reasonably expected to be recovered, computed before and after a fee or other compensation to be paid to the person has been deducted.

NEW SECTION. **Sec. 1302.** WHEN AGREEMENT TO LOCATE PROPERTY VOID. (1) Subject to subsection (2) of this section, an agreement under section 1301 of this act is void if it is entered into during the period beginning on the date the property was paid or delivered by a holder to the administrator and ending 24 months after the payment or delivery.

(2) If a provision in an agreement described in subsection (1) of this section applies to mineral proceeds for which compensation is to be paid to the other person based in whole or in part on a part of the underlying minerals or mineral proceeds not then presumed abandoned, the provision is void regardless of when the agreement was entered into.

(3) An agreement under subsection (1) of this section which provides for compensation in an amount that is unconscionable is unenforceable except by the apparent owner. An apparent owner that believes the compensation the apparent owner has agreed to pay is unconscionable or the administrator, acting on behalf of an apparent owner, or both, may file an action in superior court to reduce the compensation to the maximum amount that is not unconscionable.

(4) An apparent owner or the administrator may assert that an agreement described in this section is void on a ground other than it provides for payment of unconscionable compensation.

(5) This section does not apply to an apparent owner's agreement with an attorney to pursue a claim for recovery of specifically identified property held by the administrator or to contest the administrator's denial of a claim for recovery of the property.

**NEW SECTION. Sec. 1303. RIGHT OF AGENT OF APPARENT OWNER TO RECOVER PROPERTY HELD BY ADMINISTRATOR.** (1) An apparent owner that contracts with another person to locate, deliver, recover, or assist in the location, delivery, or recovery of property of the apparent owner which is held by the administrator may designate the person as the agent of the apparent owner. The designation must be in a record signed by the apparent owner.

(2) The administrator shall give the agent of the apparent owner all information concerning the property which the apparent owner is entitled to receive, including information that otherwise is confidential information under section 1402 of this act.

(3) If authorized by the apparent owner, the agent of the apparent owner may bring an action against the administrator on behalf of and in the name of the apparent owner.

## PART 14

### CONFIDENTIALITY AND SECURITY OF INFORMATION

**NEW SECTION. Sec. 1401. DEFINITIONS—APPLICABILITY.** (1) In this section and sections 1402 through 1408 of this act, "personal information" means:

(a) Information that identifies or reasonably can be used to identify an individual, such as first and last name in combination with the individual's:

- (i) Social security number or other government-issued number or identifier;
- (ii) Date of birth;
- (iii) Home or physical address;
- (iv) Email address or other online contact information or internet provider address;
- (v) Financial account number or credit or debit card number;
- (vi) Biometric data, health or medical data, or insurance information; or
- (vii) Passwords or other credentials that permit access to an online or other account;

(b) Personally identifiable financial or insurance information, including nonpublic personal information defined by applicable federal law; and

(c) Any combination of data that, if accessed, disclosed, modified, or destroyed without authorization of the owner of the data or if lost or misused, would require notice or reporting under chapter 19.255 RCW and federal privacy and data security law, whether or not the administrator or the administrator's agent is subject to the law.

(2) A provision of this section or sections 1402 through 1408 of this act that applies to the administrator or the administrator's records applies to an administrator's agent.

**NEW SECTION. Sec. 1402. CONFIDENTIAL INFORMATION.** (1) Except as otherwise provided in this chapter, the following are confidential and exempt from public inspection or disclosure:

(a) Reports and records of a holder in the possession of the administrator or the administrator's agent; and

(b) Personal information and other information derived or otherwise obtained by or communicated to the administrator or the administrator's agent from an examination under this chapter of the records of a person.

(2) A record or other information that is confidential under law of this state other than this chapter, another state, or the United States continues to be confidential when disclosed or delivered under this chapter to the administrator or administrator's agent.

**NEW SECTION. Sec. 1403. WHEN CONFIDENTIAL INFORMATION MAY BE DISCLOSED.** (1) When reasonably necessary to enforce or implement this chapter, the administrator may disclose confidential information concerning property held by the administrator or the administrator's agent only to:

(a) An apparent owner or the apparent owner's personal representative, attorney, other legal representative, relative, or agent designated under section 1303 of this act to have the information;

(b) The personal representative, other legal representative, relative of a deceased apparent owner, agent designated under section 1303 of this act by the deceased apparent owner, or a person entitled to inherit from the deceased apparent owner;

(c) Another department or agency of this state or the United States;

(d) The person that administers the unclaimed property law of another state, if the other state accords substantially reciprocal privileges to the administrator of this state if the other state is required to maintain the confidentiality and security of information obtained in a manner substantially equivalent to this section and sections 1401, 1402, and 1404 through 1408 of this act; or

(e) A person subject to an examination as required by section 1004(6) of this act.

(2) Except as otherwise provided in section 1402(1) of this act, the administrator shall include on the website or in the database required by section 503(3)(b) of this act the name of each apparent owner of property held by the administrator. The administrator may include in published notices, printed publications, telecommunications, the internet, or other media and on the website or in the database additional information concerning the apparent owner's property if the administrator believes the information will assist in identifying and returning property to the owner and does not disclose personal information except the home or physical address of an apparent owner.

(3) The administrator and the administrator's agent may not use confidential information provided to them or in their possession except as expressly authorized by this chapter or required by law other than this chapter.

**NEW SECTION. Sec. 1404. CONFIDENTIALITY AGREEMENT.** A person to be examined under section 1002 of this act may require, as a condition of disclosure of the records of the person to be examined, that each person having access to the records disclosed in the examination execute and deliver to the person to be examined a confidentiality agreement that:

(1) Is in a form that is reasonably satisfactory to the administrator; and

(2) Requires the person having access to the records to comply with the provisions of this section and sections 1401 through 1403 and 1405 through 1408 of this act applicable to the person.

**NEW SECTION. Sec. 1405. NO CONFIDENTIAL INFORMATION IN NOTICE.** Except as otherwise provided in sections 501 and 502 of this act, a holder is not required under this chapter to include confidential information in a notice the holder is required to provide to an apparent owner under this chapter.

**NEW SECTION. Sec. 1406. SECURITY OF INFORMATION.** (1) If a holder is required to include confidential information in a report to the administrator, the information must be provided by a secure means.

(2) If confidential information in a record is provided to and maintained by the administrator or administrator's agent as required by this chapter, the administrator or agent shall:

(a) Implement administrative, technical, and physical safeguards to protect the security, confidentiality, and integrity of the information required by chapter 19.255 RCW and federal privacy and data security law whether or not the administrator or the administrator's agent is subject to the law;

(b) Protect against reasonably anticipated threats or hazards to the security, confidentiality, or integrity of the information; and

(c) Protect against unauthorized access to or use of the information which could result in substantial harm or inconvenience to a holder or the holder's customers, including insureds, annuitants, and policy or contract owners and their beneficiaries.

(3) The administrator:

(a) After notice and comment, shall adopt and implement a security plan that identifies and assesses reasonably foreseeable internal and external risks to confidential information in the administrator's possession and seeks to mitigate the risks; and

(b) Shall ensure that an administrator's agent adopts and implements a similar plan with respect to confidential information in the agent's possession.

(4) The administrator and the administrator's agent shall educate and train their employees regarding the plan adopted under subsection (3) of this section.

(5) The administrator and the administrator's agent shall in a secure manner return or destroy all confidential information no longer reasonably needed under this chapter.

**NEW SECTION. Sec. 1407. SECURITY BREACH.** (1) Except to the extent prohibited by law other than this chapter, the administrator or administrator's agent shall notify a holder as soon as practicable of:

(a) A suspected loss, misuse, or unauthorized access, disclosure, modification, or destruction of confidential information obtained from the holder in the possession of the administrator or an administrator's agent; and

(b) Any interference with operations in any system hosting or housing confidential information which:

(i) Compromises the security, confidentiality, or integrity of the information; or

(ii) Creates a substantial risk of identity fraud or theft.

(2) Except as necessary to inform an insurer, attorney, investigator, or others as required by law, the administrator and an administrator's agent may not

disclose, without the express consent in a record of the holder, an event described in subsection (1) of this section to a person whose confidential information was supplied by the holder.

(3) If an event described in subsection (1) of this section occurs, the administrator and the administrator's agent shall:

(a) Take action necessary for the holder to understand and minimize the effect of the event and determine its scope; and

(b) Cooperate with the holder with respect to:

(i) Any notification required by law concerning a data or other security breach; and

(ii) A regulatory inquiry, litigation, or similar action.

**NEW SECTION. Sec. 1408. INDEMNIFICATION FOR BREACH.** (1) If a claim is made or action commenced arising out of an event described in section 1407(1) of this act relating to confidential information possessed by the administrator, this state shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(a) Any claim or action; and

(b) A liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorneys' fees and costs, established by the claim or action.

(2) If a claim is made or action commenced arising out of an event described in section 1407(1) of this act relating to confidential information possessed by an administrator's agent, the administrator's agent shall indemnify, defend, and hold harmless a holder and the holder's affiliates, officers, directors, employees, and agents as to:

(a) Any claim or action; and

(b) A liability, obligation, loss, damage, cost, fee, penalty, fine, settlement, charge, or other expense, including reasonable attorneys' fees and costs, established by the claim or action.

(3) The administrator shall require an administrator's agent that will receive confidential information required under this chapter to maintain adequate insurance for indemnification obligations of the administrator's agent under subsection (2) of this section. The agent required to maintain the insurance shall provide evidence of the insurance to:

(a) The administrator not less frequently than annually; and

(b) The holder on commencement of an examination and annually thereafter until all confidential information is returned or destroyed under section 1406(5) of this act.

## PART 15

### MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 1501. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this uniform chapter and this act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**NEW SECTION. Sec. 1502. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This chapter modifies, limits, or supersedes the electronic signatures in global and national commerce act, 15 U.S.C. Sec. 7001 et seq., but does not modify, limit,



or supersede section 101(c) of that act, 15 U.S.C. Sec. 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. Sec. 7003(b).

**NEW SECTION. Sec. 1503. TRANSITIONAL PROVISION.** (1) An initial report filed under this chapter for property that was not required to be reported before the effective date of this section, but that is required to be reported under this chapter, must include all items of property that would have been presumed abandoned during the six-year period preceding the effective date of this section as if this chapter had been in effect during that period.

(2) This chapter does not relieve a holder of a duty that arose before the effective date of this section to report, pay, or deliver property. Subject to section 610 (2) and (3) of this act, a holder that did not comply with the law governing unclaimed property before the effective date of this section is subject to applicable provisions for enforcement and penalties in effect before the effective date of this section.

**NEW SECTION. Sec. 1504. SEVERABILITY.** 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. 1505. REPEALS.** The following acts or parts of acts are each repealed:

(1) RCW 63.29.010 (Definitions and use of terms) and 2012 c 117 s 177, 2005 c 285 s 1, 2004 c 168 s 13, & 1983 c 179 s 1;

(2) RCW 63.29.020 (Property presumed abandoned—General rule—Exceptions) and 2015 3rd sp.s. c 6 s 2101, 2011 c 116 s 1, & 2010 c 29 s 1;

(3) RCW 63.29.030 (General rules for taking custody of intangible unclaimed property) and 1983 c 179 s 3;

(4) RCW 63.29.040 (Travelers checks and money orders) and 1983 c 179 s 4;

(5) RCW 63.29.050 (Checks, drafts, and similar instruments issued or certified by banking and financial organizations) and 2003 1st sp.s. c 13 s 2 & 1983 c 179 s 5;

(6) RCW 63.29.060 (Bank deposits and funds in financial organizations) and 2003 1st sp.s. c 13 s 3 & 1983 c 179 s 6;

(7) RCW 63.29.070 (Funds owing under life insurance policies) and 2012 c 117 s 178, 2003 1st sp.s. c 13 s 4, & 1983 c 179 s 7;

(8) RCW 63.29.080 (Deposits held by utilities) and 1983 c 179 s 8;

(9) RCW 63.29.090 (Refunds held by business associations) and 1983 c 179 s 9;

(10) RCW 63.29.100 (Stock and other intangible interests in business associations) and 2003 1st sp.s. c 13 s 5, 1996 c 45 s 1, & 1983 c 179 s 10;

(11) RCW 63.29.110 (Property of business associations held in course of dissolution) and 1983 c 179 s 11;

(12) RCW 63.29.120 (Property held by agents and fiduciaries) and 2012 c 117 s 179, 2003 1st sp.s. c 13 s 6, & 1983 c 179 s 12;

(13) RCW 63.29.130 (Property held by courts and public agencies—When abandoned—Overpayments) and 2007 c 183 s 1, 1993 c 498 s 2, & 1983 c 179 s 13;

- (14) RCW 63.29.133 (Property held by landlord) and 1992 c 38 s 9;
- (15) RCW 63.29.135 (Abandoned intangible property held by local government) and 1990 2nd ex.s. c 1 s 301;
- (16) RCW 63.29.140 (Gift certificates and credit memos) and 2015 3rd sp.s. c 6 s 2102, 2004 c 168 s 15, 2003 1st sp.s. c 13 s 7, & 1983 c 179 s 14;
- (17) RCW 63.29.150 (Wages) and 1983 c 179 s 15;
- (18) RCW 63.29.160 (Contents of safe deposit box or other safekeeping repository) and 1983 c 179 s 16;
- (19) RCW 63.29.165 (Property in self-storage facility) and 1993 c 498 s 4 & 1988 c 240 s 21;
- (20) RCW 63.29.170 (Report of abandoned property) and 2015 3rd sp.s. c 6 s 2103, 2004 c 168 s 16, 2003 c 237 s 1, 1996 c 45 s 2, 1993 c 498 s 7, & 1983 c 179 s 17;
- (21) RCW 63.29.180 (Notice and publication of information about unclaimed property) and 2015 3rd sp.s. c 6 s 2104, 2005 c 367 s 2, 2003 c 237 s 2, 1993 c 498 s 9, 1986 c 84 s 1, & 1983 c 179 s 18;
- (22) RCW 63.29.190 (Payment or delivery of abandoned property) and 2015 3rd sp.s. c 6 s 2105;
- (23) RCW 63.29.192 (Penalty and interest paid in excess—Refunds—Returns) and 2015 3rd sp.s. c 6 s 2110;
- (24) RCW 63.29.193 (Petition for review—Denied application for refund or return) and 2015 3rd sp.s. c 6 s 2111;
- (25) RCW 63.29.194 (Appeal of payment or delivered property) and 2015 3rd sp.s. c 6 s 2112;
- (26) RCW 63.29.195 (Agreement—Established between a holder and the department) and 2015 3rd sp.s. c 6 s 2113;
- (27) RCW 63.29.200 (Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges) and 2012 c 117 s 180 & 1983 c 179 s 20;
- (28) RCW 63.29.210 (Crediting of dividends, interest, or increments to owner's account) and 1983 c 179 s 21;
- (29) RCW 63.29.220 (Public sale of abandoned property) and 2011 2nd sp.s. c 8 s 1, 2005 c 367 s 4, 1996 c 45 s 3, 1993 c 498 s 10, & 1983 c 179 s 22;
- (30) RCW 63.29.230 (Deposit of funds) and 1983 c 179 s 23;
- (31) RCW 63.29.240 (Filing of claim with department) and 2011 2nd sp.s. c 8 s 2 & 1983 c 179 s 24;
- (32) RCW 63.29.250 (Claim of another state to recover property—Procedure) and 1983 c 179 s 25;
- (33) RCW 63.29.260 (Action to establish claim) and 1983 c 179 s 26;
- (34) RCW 63.29.270 (Election to take payment or delivery) and 1983 c 179 s 27;
- (35) RCW 63.29.280 (Destruction or disposition of property having insubstantial commercial value—Immunity from liability) and 2005 c 367 s 5 & 1983 c 179 s 28;
- (36) RCW 63.29.290 (Periods of limitation) and 2015 3rd sp.s. c 6 s 2106 & 1983 c 179 s 29;
- (37) RCW 63.29.300 (Requests for reports and examination of records) and 2015 3rd sp.s. c 6 s 2107 & 1983 c 179 s 30;

(38) RCW 63.29.310 (Retention of records) and 1983 c 179 s 31;

(39) RCW 63.29.320 (Enforcement) and 1983 c 179 s 32;

(40) RCW 63.29.330 (Interstate agreements and cooperation—Joint and reciprocal actions with other states) and 1983 c 179 s 33;

(41) RCW 63.29.340 (Interest and penalties) and 2015 3rd sp.s. c 6 s 2108 & 2011 c 96 s 45;

(42) RCW 63.29.350 (Penalty for excessive fee for locating abandoned property—Consumer protection act application) and 2012 c 117 s 181, 2010 c 29 s 2, & 1983 c 179 s 35;

(43) RCW 63.29.360 (Foreign transactions) and 1983 c 179 s 36;

(44) RCW 63.29.370 (Rules) and 1983 c 179 s 38;

(45) RCW 63.29.380 (Information and records confidential) and 1983 c 179 s 39;

(46) RCW 63.29.900 (Effect of new provisions—Clarification of application) and 1983 c 179 s 37;

(47) RCW 63.29.902 (Uniformity of application and construction) and 1983 c 179 s 41;

(48) RCW 63.29.903 (Short title) and 1983 c 179 s 42;

(49) RCW 63.29.905 (Effective date—1983 c 179) and 1983 c 179 s 47; and

(50) RCW 63.29.906 (Effective date—1996 c 45) and 1996 c 45 s 5.

NEW SECTION. Sec. 1506. CODIFICATION. Sections 101 through 1503 and 1507 of this act constitute a new chapter in Title 63 RCW.

NEW SECTION. Sec. 1507. EFFECTIVE DATE. This act takes effect January 1, 2023.

NEW SECTION. Sec. 1508. SEVERABILITY. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

Passed by the Senate March 10, 2022.

Passed by the House March 9, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 226

[Engrossed Substitute Senate Bill 5544]

### WASHINGTON BLOCKCHAIN WORK GROUP

AN ACT Relating to establishing the Washington blockchain work group; creating a new section; and providing an expiration date.

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

NEW SECTION. Sec. 1. (1) Subject to the availability of amounts appropriated for this specific purpose, the Washington blockchain work group is established. The purpose of the work group is to examine various potential

applications of and policies for blockchain technology including, but not limited to, applications in computing, banking and other financial services, the real estate transaction process, health care, supply chain management, higher education, identity verification, and public recordkeeping to help attract and support employees and new businesses with a supportive ecosystem.

(2) The work group is composed of the following members:

- (a) The director of the department of commerce or the director's designee;
- (b) An individual representing a federally recognized tribe located in Washington;
- (c) A cybersecurity expert with experience in blockchain technology or its applications;
- (d) A privacy expert with experience in blockchain technology or its applications;
- (e) An individual representing a Washington-based technology trade association for the full cross section of the technology sector;
- (f) An individual from the Cascadia blockchain council;
- (g) An individual from a higher education institution in the field of blockchain;
- (h) An individual representing a trade association for financial services companies that do business in Washington;
- (i) An individual representing a trade association for title insurance companies that do business in Washington;
- (j) An individual representing a trade association for health care companies that do business in Washington;
- (k) An individual representing an association for county government officials in Washington;
- (l) An individual representing a trade association for Washington-based agriculture;
- (m) An individual representing a trade association for property and casualty insurance companies that do business in Washington;
- (n) An individual representing a consumer advocacy organization;
- (o) An individual representing a large company who has experience working with blockchain applications;
- (p) An individual representing a small company who has experience working with blockchain applications;
- (q) Two individuals representing the Washington state labor council working in the fields impacted by blockchain technology or its applications;
- (r) Two individuals representing advocacy organizations that represent individuals or protected classes of communities historically impacted by surveillance technologies and bias in technology-based systems including, but not limited to, African American, Latino American, Native American, Pacific Islander American, and Asian American communities, religious minorities, protest and activist groups, and other vulnerable communities;
- (s) An individual representing an environmental advocacy organization with expertise in energy policy;
- (t) An individual representing an environmental advocacy organization with expertise in sustainability; and
- (u) An individual representing an association for public utility districts in Washington.

(3) The individuals listed in subsection (2)(b) through (u) of this section must be designated by their organization or association or the director of the department of commerce.

(4) The work group shall also include as members:

(a) One senator from each of the two largest caucuses of the senate, appointed by the president of the senate; and

(b) One representative from each of the two largest caucuses of the house of representatives, appointed by the speaker of the house of representatives.

(5) In addition to the members listed in subsections (2) and (4) of this section, the following individuals shall serve as ex officio members of the work group: The director of the department of financial institutions, or the director's designee; the director of Washington technology solutions, the consolidated technology services agency, or the director's designee; the director of the department of agriculture, or the director's designee; the insurance commissioner, or the insurance commissioner's designee; the director of the department of ecology, or the director's designee; the state auditor, or the state auditor's designee; the secretary of state, or the secretary's designee; the director of the department of revenue, or the director's designee; the director of the department of licensing, or the director's designee; the director of the office of equity, or the director's designee; and the director of the health care authority, or the director's designee.

(6) In addition to the members of the work group under subsections (2), (4), and (5) of this section, individuals representing other sectors may be invited by the chair, in consultation with the other appointed members of the work group, to participate in an advisory capacity in meetings of the work group. Individuals participating in an advisory capacity under this subsection are not members of the work group, may not vote, and are not subject to the appointment process established in this section. There is no limit to the number of individuals who may participate in work group meetings in an advisory capacity under this subsection.

(7) A majority of the work group members constitutes a quorum. If a member has not been designated for a position set forth in this section, that position may not be counted for the purpose of determining a quorum.

(8) The work group shall hold its inaugural meeting by December 1, 2022. The work group shall elect a chair from among its members at the inaugural meeting. The election of the chair must be by a majority vote of the work group members who are present at the inaugural meeting. The chair of the work group is responsible for arranging subsequent meetings and developing meeting agendas.

(9) Staff support for the work group, including arranging the inaugural meeting of the work group and assisting the chair of the work group in arranging subsequent meetings, must be provided by the department of commerce.

(10) Legislative members of the work group may be reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members of the work group are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(11) The work group is a class one group under chapter 43.03 RCW.

(12) A public comment period must be provided at every meeting of the work group.

(13) The work group shall submit a report to the governor and the appropriate committees of the legislature by December 1, 2023, on potential uses and impacts of blockchain, including impacts on existing industries, utilities, demand for electricity, and demand for computer processing capacity, and recommended policies that will facilitate the development of blockchain applications and the sector overall in Washington, grow the related workforce, evaluate environmental advantages and concerns, make Washington a favorable place to do business, address racial equity considerations, and improve the lives of Washington residents.

(14) The work group may create subcommittees to perform duties under this section.

(15) This section expires January 1, 2024. The work group is dissolved upon the expiration of this section.

Passed by the Senate March 7, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 227

[Senate Bill 5585]

### WATER QUALITY PERMIT FEES—SETTING

AN ACT Relating to setting domestic wastewater discharge fees; reenacting and amending RCW 90.48.465; creating new sections; and providing an expiration date.

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

**Sec. 1.** RCW 90.48.465 and 2009 c 456 s 6 and 2009 c 249 s 1 are each reenacted and amended to read as follows:

(1) The department shall establish 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 and 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 eighteen cents per~~

~~month per residence or residential equivalent contributing to the municipality's wastewater system.~~

~~(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))~~ (3) 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 stormwater runoff and shall provide appropriate adjustments.

~~((5))~~ (4) 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 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 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))~~ (5) The fee for a general permit or an individual permit developed solely as a result of the federal court of appeals decision in *Headwaters, Inc. v. Talent Irrigation District*, 243 F.3rd 526 (9th Cir. 2001) is limited, until June 30, 2003, to a maximum of three hundred dollars. Such a permit is required only, and as long as, the interpretation of this court decision is not overturned or modified by future court rulings, administrative rule making, or clarification of scope by the United States environmental protection agency or legislative action. In such a case the department shall take appropriate action to rescind or modify these permits.

~~((7))~~ (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 90.46.220, 90.48.160, 90.48.162, and 90.48.260.

~~((8))~~ (7) 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. 2.** (1)(a) Recognizing the importance of close coordination and partnership between the department of ecology and municipal treatment plants, the department shall form an advisory committee, appointed by the director of ecology or the director's designee, to create recommendations for adjusting the fee schedule for permits authorized by RCW 90.48.162 and 90.48.165 by rule. The advisory committee must include:

(i) Two representatives of permitted facilities representing communities of 25,000 or fewer in population;

(ii) Two representatives of permitted facilities representing communities greater than 25,000 and up to 200,000 in population;

(iii) One representative of permitted facilities representing communities greater than 200,000 in population;

(iv) Two representatives of nonprofit environmental organizations;

(v) One representative of a statewide association representing cities;

- (vi) One representative of a statewide association representing counties;
- (vii) One representative of a statewide association representing special purpose districts with responsibilities for domestic wastewater; and
- (viii) One representative of a statewide business association.

(b) The department must also offer tribal consultation and invite federally recognized tribes to participate on the advisory committee.

(2) By December 31, 2022, the advisory committee must submit recommendations to the department of ecology that will identify fees needed to fully recover expenses incurred by the department of ecology to administer municipal wastewater permits issued under RCW 90.48.162 and 90.48.260, as required under RCW 90.48.465(1), to include permit writing and public review, inspections and technical assistance, discharge monitoring reporting and data support, and supporting the overhead expenses related to administering the wastewater discharge permits.

(3) The advisory committee recommendations must:

(a) Assess the municipal wastewater permitting backlogs and permit workloads;

(b) Assess staffing and revenue needed to meet state and federal legal mandates and the needs of permittees; and

(c) Recommend how to structure the permit fees to reduce permitting backlogs and achieve goals for timely issuance of permits under RCW 90.48.162 and 90.48.260.

(4) The department of ecology must use these recommendations as the basis, in a manner consistent with rule-making procedures under chapter 34.05 RCW, for updates in 2023 to the relevant water quality permit fees set in chapter 173-224 WAC. The department of ecology will present the recommendations of the advisory committee to the legislature at some point after the recommendations are available through the 2023 legislative session.

(5) This section expires January 1, 2024.

**NEW SECTION. Sec. 3.** Beginning in 2025, the department of ecology's biennial progress report required in RCW 90.48.465(7) must include information on the implementation of a revised fee structure for full cost recovery for municipal wastewater discharge permits and the use of the fees to administer the municipal discharge permitting program and issue permits in a timely manner. The biennial report must also include information demonstrating progress towards achieving the goal of reducing the wastewater discharge permit backlog to no more than 40 percent by July 1, 2025, and not more than a 20 percent backlog by July 1, 2027.

Passed by the Senate March 8, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 228

[Substitute Senate Bill 5610]

### PRESCRIPTION DRUG COST SHARING—ENROLLEE CONTRIBUTION CALCULATION

AN ACT Relating to requiring cost sharing for prescription drugs to be counted against an enrollee's out-of-pocket costs, deductible, cost sharing, out-of-pocket maximum, or similar enrollee



obligation, regardless of the source of the payment; amending RCW 41.05.017; and adding a new section to chapter 48.43 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 48.43 RCW to read as follows:

(1)(a) Except as provided in (b) of this subsection, when calculating an enrollee's contribution to any applicable cost-sharing or out-of-pocket maximum, a health carrier offering a nongrandfathered health plan with a pharmacy benefit, or a health care benefit manager administering benefits for the health carrier, shall include any cost-sharing amounts paid by the enrollee directly or on behalf of the enrollee by another person for a covered prescription drug that is:

(i) Without a generic equivalent or a therapeutic equivalent preferred under the health plan's formulary;

(ii) With a generic equivalent or a therapeutic equivalent preferred under the health plan's formulary where the enrollee has obtained access to the drug through:

(A) Prior authorization;

(B) Step therapy; or

(C) The prescription drug exception request process under RCW 48.43.420;

or

(iii) With a generic equivalent or therapeutic equivalent preferred under the health plan's formulary, throughout an exception request process under RCW 48.43.420, including any appeal of a denial of an exception request. If the health carrier utilizes a health care benefit manager to approve or deny exception requests, the exception request process for the purposes of this subsection (1)(a)(iii) also includes any time between the completion of the exception request process, including any appeal of a denial, and when the health care benefit manager communicates the status of the request to the health carrier.

(b) When calculating an enrollee's contribution to any applicable deductible, any amount paid on behalf of the enrollee by another person for a prescription drug that is not subject to payment of a deductible need not be included in the calculation, unless the terms of the enrollee's health plan require inclusion.

(2) Any cost-sharing amounts paid directly by or on behalf of the enrollee by another person for a covered prescription drug under subsection (1) of this section shall be applied towards the enrollee's applicable cost-sharing or out-of-pocket maximum in full at the time it is rendered.

(3) The commissioner may adopt any rules necessary to implement this section.

(4) This section applies to nongrandfathered health plans issued or renewed on or after January 1, 2023.

(5) This section does not apply to a qualifying health plan for a health savings account to the extent necessary to preserve the enrollee's ability to claim tax exempt contributions and withdrawals from the enrollee's health savings account under internal revenue service laws, regulations, and guidance.

(6) For purposes of this section:

(a) "Health care benefit manager" has the same meaning as in RCW 48.200.020.

(b) "Person" has the same meaning as in RCW 48.01.070.

**Sec. 2.** RCW 41.05.017 and 2021 c 280 s 2 are each amended to read as follows:

Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128, section 1 of this act, and chapter 48.49 RCW.

Passed by the Senate March 7, 2022.

Passed by the House March 2, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 229

[Senate Bill 5612]

### DOMESTIC VIOLENCE—VICTIM STATEMENTS AT SENTENCING

AN ACT Relating to ensuring domestic violence victims and survivors of victims have the opportunity to make a statement during sentencing for all domestic violence convictions; and amending RCW 7.69.030.

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

**Sec. 1.** RCW 7.69.030 and 2009 c 138 s 5 are each amended to read as follows:

There shall be a reasonable effort made to ensure that victims, survivors of victims, and witnesses of crimes have the following rights, which apply to any criminal court and/or juvenile court proceeding:

(1) With respect to victims of violent or sex crimes, to receive, at the time of reporting the crime to law enforcement officials, a written statement of the rights of crime victims as provided in this chapter. The written statement shall include the name, address, and telephone number of a county or local crime victim/witness program, if such a crime victim/witness program exists in the county;

(2) To be informed by local law enforcement agencies or the prosecuting attorney of the final disposition of the case in which the victim, survivor, or witness is involved;

(3) To be notified by the party who issued the subpoena that a court proceeding to which they have been subpoenaed will not occur as scheduled, in order to save the person an unnecessary trip to court;

(4) To receive protection from harm and threats of harm arising out of cooperation with law enforcement and prosecution efforts, and to be provided with information as to the level of protection available;

(5) To be informed of the procedure to be followed to apply for and receive any witness fees to which they are entitled;

(6) To be provided, whenever practical, a secure waiting area during court proceedings that does not require them to be in close proximity to defendants and families or friends of defendants;

(7) To have any stolen or other personal property expeditiously returned by law enforcement agencies or the superior court when no longer needed as

evidence. When feasible, all such property, except weapons, currency, contraband, property subject to evidentiary analysis, and property of which ownership is disputed, shall be photographed and returned to the owner within ten days of being taken;

(8) To be provided with appropriate employer intercession services to ensure that employers of victims, survivors of victims, and witnesses of crime will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearance;

(9) To access to immediate medical assistance and not to be detained for an unreasonable length of time by a law enforcement agency before having such assistance administered. However, an employee of the law enforcement agency may, if necessary, accompany the person to a medical facility to question the person about the criminal incident if the questioning does not hinder the administration of medical assistance. Victims of domestic violence, sexual assault, or stalking, as defined in RCW 49.76.020, shall be notified of their right to reasonable leave from employment under chapter 49.76 RCW;

(10) With respect to victims of violent and sex crimes, to have a crime victim advocate from a crime victim/witness program, or any other support person of the victim's choosing, present at any prosecutorial or defense interviews with the victim, and at any judicial proceedings related to criminal acts committed against the victim. This subsection applies if practical and if the presence of the crime victim advocate or support person does not cause any unnecessary delay in the investigation or prosecution of the case. The role of the crime victim advocate is to provide emotional support to the crime victim;

(11) With respect to victims and survivors of victims, to be physically present in court during trial, or if subpoenaed to testify, to be scheduled as early as practical in the proceedings in order to be physically present during trial after testifying and not to be excluded solely because they have testified;

(12) With respect to victims and survivors of victims in any felony case or any case involving domestic violence, to be informed by the prosecuting attorney of the date, time, and place of the trial and of the sentencing hearing (~~(for felony convictions)~~) upon request by a victim or survivor;

(13) To submit a victim impact statement or report to the court, with the assistance of the prosecuting attorney if requested, which shall be included in all presentence reports and permanently included in the files and records accompanying the offender committed to the custody of a state agency or institution;

(14) With respect to victims and survivors of victims in any felony case or any case involving domestic violence, to present a statement, personally or by representation, at the sentencing hearing (~~(for felony convictions)~~); and

(15) With respect to victims and survivors of victims, to entry of an order of restitution by the court in all felony cases, even when the offender is sentenced to confinement, unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment.

Passed by the Senate March 8, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 230

[Second Substitute Senate Bill 5619]

## KELP FOREST AND EELGRASS MEADOW HEALTH AND CONSERVATION

AN ACT Relating to conserving and restoring kelp forests and eelgrass meadows in Washington state; adding a new section to chapter 79.135 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 coastal ecosystems and marine vegetation provide an array of valuable ecosystem goods and services to deep water and nearshore environments in Puget Sound and along the coastline. In particular, kelp forests and eelgrass meadows act as three dimensional foundations for diverse and productive nearshore ecosystems, supporting food webs and providing important habitat for a wide array of marine life, including orcas and threatened and endangered salmon and salmonid species. These marine forests and meadows play an important role in climate mitigation and adaptation by sequestering carbon and relieving impacts from ocean acidification. Marine vegetation can sequester up to 20 times more carbon than terrestrial forests, and therefore represent a critical tool in the fight against climate change.

(2) Washington state is home to 22 species of kelp and is a global hotspot for kelp diversity. However, these kelp forests are under threat and have declined in recent decades. A 2018 study conducted by the Samish Indian Nation on the bull kelp beds in the San Juan Islands found a 305-acre loss of kelp beds from 2006 to 2016, a 36 percent decline in one decade. A statewide study published in 2021 by the department of natural resources found that compared to the earliest baseline in 1878, the amount of bull kelp in 2017 had decreased by 63 percent in south Puget Sound, with individual areas showing up to 96 percent loss.

(3) The legislature also finds that kelp and eelgrass have important cultural value to northwest tribal nations and have provided diverse marine resources that have sustained and inspired indigenous traditions over generations. In particular, bull kelp has played a prominent role in traditional knowledge and technology and is used in fishing, hunting, and food preparation and storage. Decline in kelp forests threatens these uses, and the cultural livelihoods of Northwest tribal nations.

(4) Washington state's native eelgrass meadows (*Zostera marina*) also provide vital habitat for many organisms, including nursery habitat for juvenile salmon and feeder fish. Native eelgrass can provide a refuge for shellfish from the effects of ocean acidification. Native eelgrass also helps prevent erosion and maintain shoreline stability by anchoring seafloor sediment with its spreading roots and rhizomes. Native eelgrass is used as an indicator of estuary health, because of its fast response to changes in water quality. Examples of rapid native eelgrass loss include Westcott Bay in San Juan county, where in 2000 there were 37 acres of eelgrass meadows and 20 years later less than one acre remains. Changes in the abundance or distribution of this resource are likely to reflect changes in environmental conditions and therefore are key species to monitor and protect to ensure marine ecosystem health.

(5) Kelp forests and eelgrass meadows also provide and enhance diverse recreational opportunities, including productive fishing and picturesque

kayaking and diving. These activities are important for local economies and for promoting strong senses of place and overall human well-being in communities.

(6) There is a need for greater education and outreach to communities to promote sustainable recreation practices in and near native kelp forests and eelgrass meadows, such as those called for in the Puget Sound kelp conservation and recovery plan.

(7) Existing regional plans for conservation of kelp forests and eelgrass meadows, including the Puget Sound kelp conservation and recovery plan (2020) and the Puget Sound eelgrass recovery strategy (2015), identify the need to prioritize areas for conservation and restoration based on historical and current distributions.

(8) Existing state plans for combatting ocean acidification in Washington, adopted in 2013 and 2017, identify actions to advance research and explore conservation and restoration of kelp and eelgrass, along with other aquatic vegetation, to help mitigate impacts of ocean acidification locally.

(9) The legislature further finds that our terrestrial and marine ecosystems are interlinked and the state must be proactive in conserving our resources from trees to seas by protecting and restoring our marine forests and meadows in concert with conservation and reforestation of terrestrial forests. Therefore, it is the intent of the legislature to conserve and restore 10,000 acres of native kelp forests and eelgrass meadows by 2040.

**NEW SECTION. Sec. 2.** A new section is added to chapter 79.135 RCW to read as follows:

(1) The department shall, consistent with this section, and subject to available funding, work with partners to establish a native kelp forest and eelgrass meadow health and conservation plan that endeavors to, by the year 2040, conserve and restore at least 10,000 acres of native kelp forests and eelgrass meadows. The plan should proactively and systematically address:

(a) The potential loss of native kelp forest and eelgrass meadow habitat throughout Puget Sound and along the Washington state coastline;

(b) Potential current and future stressors related to the decline of native kelp forests and eelgrass meadows; and

(c) Awareness, action, and engagement tools being used by public and private entities in the Puget Sound region to raise awareness of the importance of conserving and restoring native kelp forests and eelgrass meadows and reducing stressors related to their decline.

(2) The department shall develop the plan to assess and prioritize areas for coordinated conservation and restoration actions. The plan must consist of the following elements: Assessment and prioritization; identifying coordinated actions and success measures; monitoring; and reporting.

(a) The department shall, together with partners, develop a framework to identify and prioritize native kelp forest and eelgrass meadow areas in greatest need of conservation or restoration. The framework must:

(i) Incorporate conservation of native kelp forests and eelgrass meadows. Utilize and build on existing research to map and prioritize areas of native kelp forests and eelgrass meadows throughout Puget Sound and along the coast that are at highest risk of permanent loss, or contribute significant environmental, economic, and cultural benefits to tribal nations and local communities, including salmon recovery and water quality, and where opportunities for

partnership and collaboration can accelerate progress towards the goal, and develop criteria by which an acre of kelp forests and eelgrass meadows can be considered to be conserved or restored;

(ii) Identify research necessary to analyze and assess potential ecological, environmental, and community benefits of aquaculture of native seaweed species;

(iii) Map and prioritize native kelp forest and eelgrass meadow areas throughout Puget Sound and along the coast where they were historically present, identifying priority locations for restoration, and where opportunities for partnership and collaboration exist that will accelerate progress towards the goal. This should include identification of sites where restoration may be possible and would most benefit nearshore ecosystem function, including where restoration could also support healthy kelp forests and eelgrass meadows, salmon recovery, water quality, and other ecosystem benefits, such as mitigating the negative effects of ocean acidification;

(iv) Identify potential stressors impacting the health and vitality of native kelp forests and eelgrass meadows in prioritized areas in order to specifically address them in conservation and restoration efforts.

(b) In developing coordinated actions and success measures, the department shall:

(i) Conduct an assessment and inventory of existing tools relevant to conserving and restoring native kelp forests and eelgrass meadows and reducing stressors related to their decline;

(ii) Identify new or amended tools that would support the goals of the plan created under this section; and

(iii) Identify success measures to track progress toward the conservation and restoration goal.

(3) In developing the plan, the department shall:

(a) Involve impacted communities using the community engagement plan developed under RCW 70A.02.050;

(b) Consult with federally recognized tribal nations, including consultation on the cultural and ecological importance of native kelp forests and eelgrass meadows now threatened by urbanization or other disturbances;

(c) Engage and collaborate with state and federal agencies, such as the national oceanic and atmospheric administration, the Northwest straits commission, the department of ecology, the department of fish and wildlife, the Puget Sound partnership, the recreation and conservation office, and the marine resources advisory council;

(d) Engage with representatives from other stakeholder groups that may have vested and direct interest in the outcomes of the plan including, but not limited to, shellfish growers, the boating industry, and recreational user communities.

(4)(a) By December 1, 2022, the department must submit a report in compliance with RCW 43.01.036 to the office of financial management and the appropriate committees of the legislature, to include community engagement plans and schedule for plan development. The native kelp forest and eelgrass meadow health and conservation plan must be finalized and submitted to the office of financial management and the appropriate committees of the legislature by December 1, 2023, including a map and justification of identified priority

areas based on collaboratively developed criteria, and a list of potential tools and actions for conservation or restoration of these priority areas. A monitoring plan based on the identified success measures will also be submitted.

(b) Subsequently, each biennium, the department shall continue to monitor the distributions and trends of native kelp forests and eelgrass meadows to inform adaptive management of the plan and coordinated partner actions. The department shall submit a report to the legislature that describes the native kelp forest and eelgrass meadow conservation priority areas, and monitoring approaches and findings, including success measures established in the plan. Beginning December 1, 2024, and by December 1st of each even-numbered year thereafter, the department shall provide the appropriate committees of the legislature and the office of financial management with:

(i) An updated map of distributions and trends, and summary of success measures and findings, including relevant information from the prioritization process;

(ii) An updated list summarizing potential stressors, prioritized areas, and corresponding coordinated actions and success measures. The summary must include any barriers to plan implementation and legislative or administrative recommendations to address those barriers;

(iii) An update on the number of acres of native kelp forests and eelgrass meadows conserved by region, including restoration or loss in priority areas;

(iv) An update on consultation with federally recognized tribal nations; and

(v) An update on the department's community engagement plan or plans developed under RCW 70A.02.050.

**NEW SECTION. Sec. 3.** The department of natural resources shall map areas of native and nonnative kelp forests and eelgrass meadows, together with areas in which there are both native and nonnative kelp forests and eelgrass meadows, throughout Puget Sound and along the coastline. The department of natural resources may utilize the map when establishing a native kelp forest and eelgrass meadow health and conservation plan under section 2 of this act. The map of areas of native and nonnative kelp forests and eelgrass meadows, together with areas in which there are both native and nonnative kelp forests and eelgrass meadows, must be submitted to the office of financial management and the appropriate committees of the legislature by December 1, 2023.

**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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 8, 2022.

Passed by the House March 2, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 231

[Engrossed Substitute Senate Bill 5628]

### CYBERSTALKING AND CYBER HARASSMENT

AN ACT Relating to cyber harassment, addressing concerns in the case of Rynearson v. Ferguson, and adding a crime of cyberstalking; amending RCW 9.61.260, 9A.90.030, 40.24.030, 7.77.170, 7.92.020, 7.105.010, 7.105.310, 9.94A.030, 9.94A.515, 9.94A.515, 9A.46.060, 9A.46.060,

26.50.060, and 26.50.070; reenacting and amending RCW 9.94A.030; adding new sections to chapter 9A.90 RCW; recodifying RCW 9.61.260; prescribing penalties; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 9.61.260 and 2004 c 94 s 1 are each amended to read as follows:

(1) A person is guilty of ~~((cyberstalking))~~ cyber harassment if ~~((he or she))~~ the person, with intent to harass~~((;))~~ or intimidate~~((; torment, or embarrass))~~ any other person, and under circumstances not constituting telephone harassment, makes an electronic communication to ~~((such other))~~ that person or a third party and the communication:

(a) ~~((Using))~~ (i) Uses any lewd, lascivious, indecent, or obscene words, images, or language, or ~~((suggesting))~~ suggests the commission of any lewd or lascivious act;

~~((b) Anonymously))~~ (ii) Is made anonymously or repeatedly ~~((whether or not conversation occurs))~~; ~~((or~~

~~((c) Threatening to inflict injury on the person or property of the person called or any member of his or her family or household))~~ (iii) Contains a threat to inflict bodily injury immediately or in the future on the person threatened or to any other person; or

(iv) Contains a threat to damage, immediately or in the future, the property of the person threatened or of any other person; and

(b) With respect to any offense committed under the circumstances identified in (a)(iii) or (iv) of this subsection:

(i) Would cause a reasonable person, with knowledge of the sender's history, to suffer emotional distress or to fear for the safety of the person threatened; or

(ii) Reasonably caused the threatened person to suffer emotional distress or fear for the threatened person's safety.

(2) ~~((Cyberstalking is a gross misdemeanor, except as provided in subsection (3) of this section.~~

~~(3) Cyberstalking is a class C felony if either of the following applies:~~

~~(a) The perpetrator has previously been convicted of the crime of harassment, as defined in RCW 9A.46.060, with the same victim or a member of the victim's family or household or any person specifically named in a no-contact order or no-harassment order in this or any other state; or~~

~~(b) The perpetrator engages in the behavior prohibited under subsection (1)(c) of this section by threatening to kill the person threatened or any other person.~~

~~(4))~~ (a) Except as provided in (b) of this subsection, cyber harassment is a gross misdemeanor.

(b) A person who commits cyber harassment is guilty of a class C felony if any of the following apply:

(i) The person has previously been convicted in this or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a no-contact or no-harassment order;

(ii) The person cyber harasses another person under subsection (1)(a)(iii) of this section by threatening to kill the person threatened or any other person;



(iii) The person cyber harasses a criminal justice participant or election official who is performing the participant's official duties or election official's official duties at the time the communication is made;

(iv) The person cyber harasses a criminal justice participant or election official because of an action taken or decision made by the criminal justice participant or election official during the performance of the participant's official duties or election official's official duties; or

(v) The person commits cyber harassment in violation of any protective order protecting the victim.

(3) Any criminal justice participant or election official who is a target for threats or harassment prohibited under subsection (2)(b)(iii) or (iv) of this section, and any family members residing with the participant or election official, shall be eligible for the address confidentiality program created under RCW 40.24.030.

(4) For purposes of this section, a criminal justice participant includes any:

(a) Federal, state, or municipal court judge;

(b) Federal, state, or municipal court staff;

(c) Federal, state, or local law enforcement agency employee;

(d) Federal, state, or local prosecuting attorney or deputy prosecuting attorney;

(e) Staff member of any adult corrections institution or local adult detention facility;

(f) Staff member of any juvenile corrections institution or local juvenile detention facility;

(g) Community corrections officer, probation officer, or parole officer;

(h) Member of the indeterminate sentence review board;

(i) Advocate from a crime victim/witness program; or

(j) Defense attorney.

(5) For the purposes of this section, an election official includes any staff member of the office of the secretary of state or staff member of a county auditor's office, regardless of whether the member is employed on a temporary or part-time basis, whose duties relate to voter registration or the processing of votes as provided in Title 29A RCW.

(6) The penalties provided in this section for cyber harassment do not preclude the victim from seeking any other remedy otherwise available under law.

(7) Any offense committed under this section may be deemed to have been committed either at the place from which the communication was made or at the place where the communication was received.

~~((5))~~ (8) For purposes of this section, "electronic communication" means the transmission of information by wire, radio, optical cable, electromagnetic, or other similar means. "Electronic communication" includes, but is not limited to, ((electronic mail)) email, internet-based communications, pager service, and electronic text messaging.

**Sec. 2.** RCW 9A.90.030 and 2016 c 164 s 3 are each amended to read as follows:

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

(1) "Access" means to gain entry to, instruct, communicate with, store data in, retrieve data from, or otherwise make use of any resources of electronic data, data network, or data system, including via electronic means.

(2) "Cybercrime" includes crimes of this chapter.

(3) "Data" means a digital representation of information, knowledge, facts, concepts, data software, data programs, or instructions that are being prepared or have been prepared in a formalized manner and are intended for use in a data network, data program, data services, or data system.

(4) "Data network" means any system that provides digital communications between one or more data systems or other digital input/output devices including, but not limited to, display terminals, remote systems, mobile devices, and printers.

(5) "Data program" means an ordered set of electronic data representing coded instructions or statements that when executed by a computer causes the device to process electronic data.

(6) "Data services" includes data processing, storage functions, internet services, email services, electronic message services, website access, internet-based electronic gaming services, and other similar system, network, or internet-based services.

(7) "Data system" means an electronic device or collection of electronic devices, including support devices one or more of which contain data programs, input data, and output data, and that performs functions including, but not limited to, logic, arithmetic, data storage and retrieval, communication, and control. This term does not include calculators that are not programmable and incapable of being used in conjunction with external files.

(8) "Electronic tracking device" means an electronic device that permits a person to remotely determine or monitor the position and movement of another person, vehicle, device, or other personal possession. As used in this definition, "electronic device" includes computer code or other digital instructions that once installed on a digital device, allows a person to remotely track the position of that device.

(9) "Identifying information" means information that, alone or in combination, is linked or linkable to a trusted entity that would be reasonably expected to request or provide credentials to access a targeted data system or network. It includes, but is not limited to, recognizable names, addresses, telephone numbers, logos, HTML links, email addresses, registered domain names, reserved IP addresses, user names, social media profiles, cryptographic keys, and biometric identifiers.

~~((9))~~ (10) "Malware" means any set of data instructions that are designed, without authorization and with malicious intent, to disrupt computer operations, gather sensitive information, or gain access to private computer systems. "Malware" does not include software that installs security updates, removes malware, or causes unintentional harm due to some deficiency. It includes, but is not limited to, a group of data instructions commonly called viruses or worms, that are self-replicating or self-propagating and are designed to infect other data programs or data, consume data resources, modify, destroy, record, or transmit data, or in some other fashion usurp the normal operation of the data, data system, or data network.

~~((40))~~ (11) "White hat security research" means accessing a data program, service, or system solely for purposes of good faith testing, investigation, identification, and/or correction of a security flaw or vulnerability, where such activity is carried out, and where the information derived from the activity is used, primarily to promote security or safety.

~~((44))~~ (12) "Without authorization" means to knowingly circumvent technological access barriers to a data system in order to obtain information without the express or implied permission of the owner, where such technological access measures are specifically designed to exclude or prevent unauthorized individuals from obtaining such information, but does not include white hat security research or circumventing a technological measure that does not effectively control access to a computer. The term "without the express or implied permission" does not include access in violation of a duty, agreement, or contractual obligation, such as an acceptable use policy or terms of service agreement, with an internet service provider, internet website, or employer. The term "circumvent technological access barriers" may include unauthorized elevation of privileges, such as allowing a normal user to execute code as administrator, or allowing a remote person without any privileges to run code.

NEW SECTION, Sec. 3. A new section is added to chapter 9A.90 RCW to read as follows:

(1) A person commits the crime of cyberstalking if, without lawful authority and under circumstances not amounting to a felony attempt of another crime:

(a) The person knowingly and without consent:

(i) Installs or monitors an electronic tracking device with the intent to track the location of another person; or

(ii) Causes an electronic tracking device to be installed, placed, or used with the intent to track the location of another person; and

(b)(i) The person knows or reasonably should know that knowledge of the installation or monitoring of the tracking device would cause the other person reasonable fear;

(ii) The person has notice that the other person does not want to be contacted or monitored by him or her; or

(iii) The other person has a protective order in effect protecting him or her from the person.

(2)(a) It is not a defense to the crime of cyberstalking that the person was not given actual notice that the other person did not want the person to contact or monitor him or her; and

(b) It is not a defense to the crime of cyberstalking that the person did not intend to frighten, intimidate, or harass the other person.

(3)(a) Except as provided in (b) of this subsection, a person who cyberstalks another person is guilty of a gross misdemeanor.

(b) A person who cyberstalks another person is guilty of a class C felony if any of the following applies:

(i) The person has previously been convicted in this state or any other state of any crime of harassment, as defined in RCW 9A.46.060, of the same victim or members of the victim's family or household or any person specifically named in a protective order;

(ii) There is a protective order in effect protecting the victim from contact with the person;

(iii) The person has previously been convicted of a gross misdemeanor or felony stalking offense for stalking another person;

(iv) The person has previously been convicted of a gross misdemeanor or felony cyberstalking offense for cyberstalking another person;

(v)(A) The victim is or was a law enforcement officer; judge; juror; attorney; victim advocate; legislator; community corrections officer; employee, contract staff person, or volunteer of a correctional agency; court employee, court clerk, or courthouse facilitator; or employee of the child protective, child welfare, or adult protective services division within the department of social and health services; and

(B) The person cyberstalked the victim to retaliate against the victim for an act the victim performed during the course of official duties or to influence the victim's performance of official duties; or

(vi) The victim is a current, former, or prospective witness in an adjudicative proceeding, and the person cyberstalked the victim to retaliate against the victim as a result of the victim's testimony or potential testimony.

(4) The provisions of this section do not apply to the installation, placement, or use of an electronic tracking device by any of the following:

(a) A law enforcement officer, judicial officer, probation or parole officer, or other public employee when any such person is engaged in the lawful performance of official duties and in accordance with state or federal law;

(b) The installation, placement, or use of an electronic tracking device authorized by an order of a state or federal court;

(c) A legal guardian for a disabled adult or a legally authorized individual or organization designated to provide protective services to a disabled adult when the electronic tracking device is installed, placed, or used to track the location of the disabled adult for which the person is a legal guardian or the individual or organization is designated to provide protective services;

(d) A parent or legal guardian of a minor when the electronic tracking device is installed, placed, or used to track the location of that minor unless the parent or legal guardian is subject to a court order that orders the parent or legal guardian not to assault, threaten, harass, follow, or contact that minor;

(e) An employer, school, or other organization, who owns the device on which the tracking device is installed and provides the device to a person for use in connection with the person's involvement with the employer, school, or other organization and the use of the device is limited to recovering lost or stolen items; or

(f) The owner of fleet vehicles, when tracking such vehicles. For the purposes of this section, "fleet vehicle" means any of the following:

(i) One or more motor vehicles owned by a single entity and operated by employees or agents of the entity for business or government purposes;

(ii) Motor vehicles held for lease or rental to the general public; or

(iii) Motor vehicles held for sale, or used as demonstrators, test vehicles, or loaner vehicles, by motor vehicle dealers.

NEW SECTION. **Sec. 4.** RCW 9.61.260 is recodified as a new section in chapter 9A.90 RCW.

**Sec. 5.** RCW 40.24.030 and 2019 c 278 s 3 are each amended to read as follows:

(1)(a) An adult person, a parent or guardian acting on behalf of a minor, or a guardian acting on behalf of an incapacitated person, as defined in RCW 11.88.010, ~~((and))~~ (b) any election official as described in RCW 9.61.260 (as recodified by this act) who is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act), and any family members residing with him or her, and (c) any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv) and any criminal justice participant as defined in RCW 9.61.260 (as recodified by this act) who is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act), and any family members residing with him or her, may apply to the secretary of state to have an address designated by the secretary of state serve as the person's address or the address of the minor or incapacitated person. The secretary of state shall approve an application if it is filed in the manner and on the form prescribed by the secretary of state and if it contains:

(i) A sworn statement, under penalty of perjury, by the applicant that the applicant has good reason to believe (A) that the applicant, or the minor or incapacitated person on whose behalf the application is made, is a victim of domestic violence, sexual assault, trafficking, or stalking and that the applicant fears for his or her safety or his or her children's safety, or the safety of the minor or incapacitated person on whose behalf the application is made; ~~((or))~~ (B) that the applicant, as an election official as described in RCW 9.61.260 (as recodified by this act), is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act); or (C) that the applicant, as a criminal justice participant as defined in RCW 9A.46.020, is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv), or that the applicant, as a criminal justice participant as defined in RCW 9.61.260 (as recodified by this act) is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act);

(ii) If applicable, a sworn statement, under penalty of perjury, by the applicant, that the applicant has reason to believe they are a victim of (A) domestic violence, sexual assault, or stalking perpetrated by an employee of a law enforcement agency, or; (B) threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act) or 9A.46.020(2)(b) (iii) or (iv);

(iii) A designation of the secretary of state as agent for purposes of service of process and for the purpose of receipt of mail;

(iv) The residential address and any telephone number where the applicant can be contacted by the secretary of state, which shall not be disclosed because disclosure will increase the risk of (A) domestic violence, sexual assault, trafficking, or stalking, or (B) threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act) or 9A.46.020(2)(b) (iii) or (iv);

(v) The signature of the applicant and of any individual or representative of any office designated in writing under RCW 40.24.080 who assisted in the preparation of the application, and the date on which the applicant signed the application.

(2) Applications shall be filed with the office of the secretary of state.

(3) Upon filing a properly completed application, the secretary of state shall certify the applicant as a program participant. Applicants shall be certified for four years following the date of filing unless the certification is withdrawn or invalidated before that date. The secretary of state shall by rule establish a renewal procedure.

(4)(a) During the application process, the secretary of state shall provide each applicant a form to direct the department of licensing to change the address of registration for vehicles or vessels solely or jointly registered to the applicant and the address associated with the applicant's driver's license or identicard to the applicant's address as designated by the secretary of state upon certification in the program. The directive to the department of licensing is only valid if signed by the applicant. The directive may only include information required by the department of licensing to verify the applicant's identity and ownership information for vehicles and vessels. This information is limited to the:

(i) Applicant's full legal name;

(ii) Applicant's Washington driver's license or identicard number;

(iii) Applicant's date of birth;

(iv) Vehicle identification number and license plate number for each vehicle solely or jointly registered to the applicant; and

(v) Hull identification number or vessel document number and vessel decal number for each vessel solely or jointly registered to the applicant.

(b) Upon certification of the applicants, the secretary of state shall transmit completed and signed directives to the department of licensing.

(c) Within ~~((thirty))~~ 30 days of receiving a completed and signed directive, the department of licensing shall update the applicant's address on registration and licensing records.

(d) Applicants are not required to sign the directive to the department of licensing to be certified as a program participant.

(5) A person who knowingly provides false or incorrect information upon making an application or falsely attests in an application that disclosure of the applicant's address would endanger (a) the applicant's safety or the safety of the applicant's children or the minor or incapacitated person on whose behalf the application is made, ~~((or))~~ (b) the safety of any election official as described in RCW 9.61.260 (as recodified by this act) who is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act), or (c) the safety of any criminal justice participant as defined in RCW 9A.46.020 who is a target for threats or harassment prohibited under RCW 9A.46.020(2)(b) (iii) or (iv) or of any criminal justice participant as defined in RCW 9.61.260 (as recodified by this act) who is a target for threats or harassment prohibited under RCW 9.61.260(2)(b) (iii) or (iv) (as recodified by this act), or any family members residing with him or her, shall be punished under RCW 40.16.030 or other applicable statutes.

**Sec. 6.** RCW 7.77.170 and 2013 c 119 s 18 are each amended to read as follows:

(1) There is no privilege under RCW 7.77.150 for a collaborative law communication that is:

(a) Available to the public under chapter 42.56 RCW or made during a session of a collaborative law process that is open, or is required by law to be open, to the public;

(b) A threat or statement of a plan to inflict bodily injury or commit a crime of violence;

(c) Intentionally used to plan a crime, commit or attempt to commit a crime, or conceal an ongoing crime or ongoing criminal activity; or

(d) In an agreement resulting from the collaborative law process, evidenced by a record signed by all parties to the agreement.

(2) The privileges under RCW 7.77.150 for a collaborative law communication do not apply to the extent that a communication is:

(a) Sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice arising from or related to a collaborative law process;

(b) Sought or offered to prove or disprove abuse, neglect, abandonment, or exploitation of a child or adult, unless the child protective services agency or adult protective services agency is a party to or otherwise participates in the process; or

(c) Sought or offered to prove or disprove stalking or ~~((cyberstalking))~~ cyber harassment of a party or child.

(3) There is no privilege under RCW 7.77.150 if a tribunal finds, after a hearing in camera, that the party seeking discovery or the proponent of the evidence has shown the evidence is not otherwise available, the need for the evidence substantially outweighs the interest in protecting confidentiality, and the collaborative law communication is sought or offered in:

(a) A court proceeding involving a felony or misdemeanor; or

(b) A proceeding seeking rescission or reformation of a contract arising out of the collaborative law process or in which a defense to avoid liability on the contract is asserted.

(4) If a collaborative law communication is subject to an exception under subsection (2) or (3) of this section, only the part of the communication necessary for the application of the exception may be disclosed or admitted.

(5) Disclosure or admission of evidence excepted from the privilege under subsection (2) or (3) of this section does not make the evidence or any other collaborative law communication discoverable or admissible for any other purpose.

(6) The privileges under RCW 7.77.150 do not apply if the parties agree in advance in a signed record, or if a record of a proceeding reflects agreement by the parties, that all or part of a collaborative law process is not privileged. This subsection does not apply to a collaborative law communication made by a person that did not receive actual notice of the agreement before the communication was made.

**Sec. 7.** RCW 7.92.020 and 2020 c 296 s 4 are each amended to read as follows:

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

(1) "Electronic monitoring" means the same as in RCW 9.94A.030.

(2) "Minor" means a person who is under ~~((eighteen))~~ 18 years of age.

(3) "Petitioner" means any named petitioner for the stalking protection order or any named victim of stalking conduct on whose behalf the petition is brought.

(4) "Stalking conduct" means any of the following:

(a) Any act of stalking as defined under RCW 9A.46.110;

(b) Any act of (~~cyberstalking~~) cyber harassment as defined under RCW 9.61.260 (as recodified by this act);

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, keeping under observation, or following of another that:

(i) Would cause a reasonable person to feel intimidated, frightened, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The stalker knows or reasonably should know threatens, frightens, or intimidates the person, even if the stalker did not intend to intimidate, frighten, or threaten the person.

(5) "Stalking no-contact order" means a temporary order or a final order granted under this chapter against a person charged with or arrested for stalking, which includes a remedy authorized under RCW 7.92.160.

(6) "Stalking protection order" means an ex parte temporary order or a final order granted under this chapter, which includes a remedy authorized in RCW 7.92.100.

**Sec. 8.** RCW 7.105.010 and 2021 c 215 s 2 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse," for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline, or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(b) "Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

(c) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(d) "Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but



is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

(e) "Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape, molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not the sexual conduct is consensual.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(5)(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

(i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:

(A) Protect property or liberty interests;

(B) Enforce the law; or

(C) Meet specific statutory duties or requirements;

(v) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or

(vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(6) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(7) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a) The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(8) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; unlawful harassment; or stalking of one family or household member by another family or household member.

(9) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.

(10) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(11) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.

(12) "Family or household members" means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

(13) "Financial exploitation" means the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly

should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

(14) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

(15) "Full hearing" means a hearing where the court determines whether to issue a full protection order.

(16) "Full protection order" means a protection order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full protection order" includes a protection order entered by the court by agreement of the parties to resolve the petition for a protection order without a full hearing.

(17) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(18) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of a vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(19) "Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

(20)(a) "Isolate" or "isolation" means to restrict a person's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including, but not limited to:

(i) Acts that prevent a person from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct a person from meeting with others, such as telling a prospective visitor or caller that the person is not present or does not wish contact, where the statement is contrary to the express wishes of the person.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(21) "Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

(22) "Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification

requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(23) "Minor" means a person who is under 18 years of age.

(24) "Neglect" means: (a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain the physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety including, but not limited to, conduct prohibited under RCW 9A.42.100.

(25) "Nonconsensual" means a lack of freely given consent.

(26) "Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, and contact through third parties.

(27) "Petitioner" means any named petitioner or any other person identified in the petition on whose behalf the petition is brought.

(28) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding, without undue force, a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(29) "Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

(30) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

(31) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or

(f) Any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(32) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of

another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(33) "Stalking" means any of the following:

(a) Any act of stalking as defined under RCW 9A.46.110;

(b) Any act of (~~cyberstalking~~) cyber harassment as defined under RCW 9.61.260 (as recodified by this act); or

(c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:

(i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.

(34) "Temporary protection order" means a protection order that is issued before the court has decided whether to issue a full protection order. "Temporary protection order" includes ex parte temporary protection orders, as well as temporary protection orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full protection order. An "ex parte temporary protection order" means a temporary protection order that is issued without prior notice to the respondent.

(35) "Unlawful harassment" means:

(a) A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW 9A.36.080(1)(c); or (ii) the presence of a firearm or other weapon.

(36) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

**Sec. 9.** RCW 7.105.310 and 2021 c 215 s 39 are each amended to read as follows:

(1) In issuing any type of protection order, other than an extreme risk protection order, the court shall have broad discretion to grant such relief as the court deems proper, including an order that provides relief as follows:

(a) Restrain the respondent from committing any of the following acts against the petitioner and other persons protected by the order: Domestic violence; nonconsensual sexual conduct or nonconsensual sexual penetration; sexual abuse; stalking; acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult; and unlawful harassment;

(b) Restrain the respondent from making any attempts to have contact, including nonphysical contact, with the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household, either directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(c) Exclude the respondent from the dwelling that the parties share; from the residence, workplace, or school of the petitioner; or from the day care or school of a minor child;

(d) Restrain the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location including, but not limited to, a residence, school, day care, workplace, the protected party's person, and the protected party's vehicle. The specified distance shall presumptively be at least 1,000 feet, unless the court for good cause finds that a shorter specified distance is appropriate;

(e) If the parties have children in common, make residential provisions with regard to their minor children on the same basis as is provided in chapter 26.09 RCW. However, parenting plans as specified in chapter 26.09 RCW must not be required under this chapter. The court may not delay or defer relief under this chapter on the grounds that the parties could seek a parenting plan or modification to a parenting plan in a different action. A protection order must not be denied on the grounds that the parties have an existing parenting plan in effect. A protection order may suspend the respondent's contact with the parties' children under an existing parenting plan, subject to further orders in a family law proceeding;

(f) Order the respondent to participate in a state-certified domestic violence perpetrator treatment program approved under RCW 43.20A.735 or a state-certified sex offender treatment program approved under RCW 18.155.070;

(g) Order the respondent to obtain a mental health or chemical dependency evaluation. If the court determines that a mental health evaluation is necessary, the court shall clearly document the reason for this determination and provide a specific question or questions to be answered by the mental health professional. The court shall consider the ability of the respondent to pay for an evaluation. Minors are presumed to be unable to pay. The parent or legal guardian is

responsible for costs unless the parent or legal guardian demonstrates inability to pay;

(h) In cases where the petitioner and the respondent are students who attend the same public or private elementary, middle, or high school, the court, when issuing a protection order and providing relief, shall consider, among the other facts of the case, the severity of the act, any continuing physical danger, emotional distress, or educational disruption to the petitioner, and the financial difficulty and educational disruption that would be caused by a transfer of the respondent to another school. The court may order that the respondent not attend the public or private elementary, middle, or high school attended by the petitioner. If a minor respondent is prohibited attendance at the minor's assigned public school, the school district must provide the student comparable educational services in another setting. In such a case, the district shall provide transportation at no cost to the respondent if the respondent's parent or legal guardian is unable to pay for transportation. The district shall put in place any needed supports to ensure successful transition to the new school environment. The court shall send notice of the restriction on attending the same school as the petitioner to the public or private school the respondent will attend and to the school the petitioner attends;

(i) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees or limited license legal technician fees when such fees are incurred by a person licensed and practicing in accordance with state supreme court admission and practice rule 28, the limited practice rule for limited license legal technicians. Minors are presumed to be unable to pay. The parent or legal guardian is responsible for costs unless the parent or legal guardian demonstrates inability to pay;

(j) Restrain the respondent from harassing, following, monitoring, keeping under physical or electronic surveillance, ~~((cyberstalking))~~ cyber harassment as defined in RCW 9.61.260 (as recodified by this act), and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260;

(k) Other than for respondents who are minors, require the respondent to submit to electronic monitoring. The order must specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(l) Consider the provisions of RCW 9.41.800, and order the respondent to surrender, and prohibit the respondent from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license, as required in RCW 9.41.800;

(m) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear

which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent, and may prohibit the respondent from interfering with the petitioner's efforts to obtain the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found;

(n) Order use of a vehicle;

(o) Enter an order restricting the respondent from engaging in abusive litigation as set forth in chapter 26.51 RCW or in frivolous filings against the petitioner, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies. A petitioner may request this relief in the petition or by separate motion. A petitioner may request this relief by separate motion at any time within five years of the date the protection order is entered even if the order has since expired. A stand-alone motion for an order restricting abusive litigation may be brought by a party who meets the requirements of chapter 26.51 RCW regardless of whether the party has previously sought a protection order under this chapter, provided the motion is made within five years of the date the order that made a finding of domestic violence was entered. In cases where a finding of domestic violence was entered pursuant to an order under chapter 26.09, 26.26, or 26.26A RCW, a motion for an order restricting abusive litigation may be brought under the family law case or as a stand-alone action filed under this chapter, when it is not reasonable or practical to file under the family law case;

(p) Restrain the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult;

(q) Require an accounting by the respondent of the disposition of the vulnerable adult's income or other resources;

(r) Restrain the transfer of either the respondent's or vulnerable adult's property, or both, for a specified period not exceeding 90 days;

(s) Order financial relief and restrain the transfer of jointly owned assets;

(t) Restrain the respondent from possessing or distributing intimate images, as defined in RCW 9A.86.010, depicting the petitioner including, but not limited to, requiring the respondent to: Take down and delete all intimate images and recordings of the petitioner in the respondent's possession or control; and cease any and all disclosure of those intimate images. The court may also inform the respondent that it would be appropriate to ask third parties in possession or control of the intimate images of this protection order to take down and delete the intimate images so that the order may not inadvertently be violated; or

(u) Order other relief as it deems necessary for the protection of the petitioner and other family or household members who are minors or vulnerable adults for whom the petitioner has sought protection, including orders or directives to a law enforcement officer, as allowed under this chapter.

(2) The court in granting a temporary antiharassment protection order or a civil antiharassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.



(3) The court shall not take any of the following actions in issuing a protection order.

(a) The court may not order the petitioner to obtain services including, but not limited to, drug testing, victim support services, a mental health assessment, or a psychological evaluation.

(b) The court may not order the petitioner to pay the respondent's attorneys' fees or other costs.

(c) The court shall not issue a full protection order to any party except upon notice to the respondent and the opportunity for a hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with this chapter. Except as provided in RCW 7.105.210, the court shall not issue a temporary protection order to any party unless the party has filed a petition or counter-petition for a protection order seeking relief in accordance with this chapter.

(d) Under no circumstances shall the court deny the petitioner the type of protection order sought in the petition on the grounds that the court finds that a different type of protection order would have a less severe impact on the respondent.

(4) The order shall specify the date the order expires, if any. For permanent orders, the court shall set the date to expire 99 years from the issuance date. The order shall also state whether the court issued the protection order following personal service, service by electronic means, service by mail, or service by publication, and whether the court has approved service by mail or publication of an order issued under this section.

**Sec. 10.** RCW 9.94A.030 and 2021 c 237 s 1 are each amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within ~~((eight hundred eighty))~~ 880 feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(4)(b) and 9.96.060(7)(c).

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20) "Domestic violence" has the same meaning as defined in RCW 10.99.020 and 26.50.010.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

(25) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(26) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is

confined in a private residence (~~(twenty-four)~~ 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age (~~(fourteen)~~ 14);

(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) Sexual exploitation;

(p) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(q) 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;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) 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;

(u)(i) A prior conviction for indecent liberties under RCW 9A.44.100(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))~~ 14; 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;

(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was ~~((ten))~~ 10 years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is ~~((eighteen))~~ 18 years of age or older or is less than ~~((eighteen))~~ 18 years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program or the graduated reentry program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person (~~(eighteen)~~ 18) years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions,

at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was (~~sixteen~~) 16 years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was (~~eighteen~~) 18 years of age or older when the offender committed the offense.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);



(b) (~~Cyberstalking~~) Cyber harassment, RCW 9.61.260(~~(3)(a))~~ (2)(b)(i) (as recodified by this act);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b) (i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 26.50.110(5).

(42) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.26A, 26.26B, or 26.50 RCW that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(43) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(44) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(46) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(47) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(48) "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.

(49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(50) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(51) "Stranger" means that the victim did not know the offender (~~twenty-four~~) 24 hours before the offense.

(52) "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~~) 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(53) "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.

(54) "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.

(55) "Victim of domestic violence" means an intimate partner or household member who has been subjected to the infliction of physical harm or sexual and psychological abuse by an intimate partner or household member as part of a

pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner or household member. Domestic violence includes, but is not limited to, the offenses listed in RCW 10.99.020 and 26.50.010 committed by an intimate partner or household member against a victim who is an intimate partner or household member.

(56) "Victim of sex trafficking, prostitution, or commercial sexual abuse of a minor" means a person who has been forced or coerced to perform a commercial sex act including, but not limited to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070, 9.68A.101, and the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a commercial sex act when they were less than 18 years of age including but not limited to the offenses defined in chapter 9.68A RCW.

(57) "Victim of sexual assault" means any person who is a victim of a sexual assault offense, nonconsensual sexual conduct, or nonconsensual sexual penetration and as a result suffers physical, emotional, financial, or psychological impacts. Sexual assault offenses include, but are not limited to, the offenses defined in chapter 9A.44 RCW.

(58) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(59) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(60) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(61) "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.

**Sec. 11.** RCW 9.94A.030 and 2021 c 237 s 1 and 2021 c 215 s 97 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed as part of a sentence under this chapter and served in the community subject to controls placed on the offender's movement and activities by the department.

(6) "Community protection zone" means the area within (~~eight hundred eighty~~) 880 feet of the facilities and grounds of a public or private school.

(7) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

(8) "Confinement" means total or partial confinement.

(9) "Conviction" means an adjudication of guilt pursuant to Title 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

(10) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

(11) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere, and any issued certificates of restoration of opportunity pursuant to RCW 9.97.020.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640, 9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon. However, when a defendant is charged with a recidivist offense, "criminal history" includes a vacated prior conviction for the sole purpose of establishing that such vacated prior conviction constitutes an element of the present recidivist offense as provided in RCW 9.94A.640(4)(b) and 9.96.060(7)(c).

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

(12) "Criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(13) "Criminal street gang associate or member" means any person who actively participates in any criminal street gang and who intentionally promotes, furthers, or assists in any criminal act by the criminal street gang.

(14) "Criminal street gang-related offense" means any felony or misdemeanor offense, whether in this state or elsewhere, that is committed for the benefit of, at the direction of, or in association with any criminal street gang, or is committed with the intent to promote, further, or assist in any criminal conduct by the gang, or is committed for one or more of the following reasons:

(a) To gain admission, prestige, or promotion within the gang;

(b) To increase or maintain the gang's size, membership, prestige, dominance, or control in any geographical area;

(c) To exact revenge or retribution for the gang or any member of the gang;

(d) To obstruct justice, or intimidate or eliminate any witness against the gang or any member of the gang;

(e) To directly or indirectly cause any benefit, aggrandizement, gain, profit, or other advantage for the gang, its reputation, influence, or membership; or

(f) To provide the gang with any advantage in, or any control or dominance over any criminal market sector, including, but not limited to, manufacturing, delivering, or selling any controlled substance (chapter 69.50 RCW); arson (chapter 9A.48 RCW); trafficking in stolen property (chapter 9A.82 RCW); promoting prostitution (chapter 9A.88 RCW); human trafficking (RCW 9A.40.100); promoting commercial sexual abuse of a minor (RCW 9.68A.101); or promoting pornography (chapter 9.68 RCW).

(15) "Day fine" means a fine imposed by the sentencing court that equals the difference between the offender's net daily income and the reasonable

obligations that the offender has for the support of the offender and any dependents.

(16) "Day reporting" means a program of enhanced supervision designed to monitor the offender's daily activities and compliance with sentence conditions, and in which the offender is required to report daily to a specific location designated by the department or the sentencing court.

(17) "Department" means the department of corrections.

(18) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community custody, the number of actual hours or days of community restitution work, or dollars or terms of a legal financial obligation. The fact that an offender through earned release can reduce the actual period of confinement shall not affect the classification of the sentence as a determinate sentence.

(19) "Disposable earnings" means that part of the earnings of an offender remaining after the deduction from those earnings of any amount required by law to be withheld. For the purposes of this definition, "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonuses, or otherwise, and, notwithstanding any other provision of law making the payments exempt from garnishment, attachment, or other process to satisfy a court-ordered legal financial obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050, or Title 74 RCW.

(20)(a) "Domestic violence" has the same meaning as defined in RCW 10.99.020.

(b) "Domestic violence" also means: (i) Physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, or stalking, as defined in RCW 9A.46.110, of one intimate partner by another intimate partner as defined in RCW 10.99.020; or (ii) physical harm, bodily injury, assault, or the infliction of fear of imminent physical harm, bodily injury, or assault, sexual assault, or stalking, as defined in RCW 9A.46.110, of one family or household member by another family or household member as defined in RCW 10.99.020.

(21) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense who are eligible for the option under RCW 9.94A.660.

(22) "Drug offense" means:

(a) Any felony violation of chapter 69.50 RCW except possession of a controlled substance (RCW 69.50.4013) or forged prescription for a controlled substance (RCW 69.50.403);

(b) Any offense defined as a felony under federal law that relates to the possession, manufacture, distribution, or transportation of a controlled substance; or

(c) Any out-of-state conviction for an offense that under the laws of this state would be a felony classified as a drug offense under (a) of this subsection.

(23) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

(24) "Electronic monitoring" means tracking the location of an individual through the use of technology that is capable of determining or identifying the monitored individual's presence or absence at a particular location including, but not limited to:

(a) Radio frequency signaling technology, which detects if the monitored individual is or is not at an approved location and notifies the monitoring agency of the time that the monitored individual either leaves the approved location or tampers with or removes the monitoring device; or

(b) Active or passive global positioning system technology, which detects the location of the monitored individual and notifies the monitoring agency of the monitored individual's location and which may also include electronic monitoring with victim notification technology that is capable of notifying a victim or protected party, either directly or through a monitoring agency, if the monitored individual enters within the restricted distance of a victim or protected party, or within the restricted distance of a designated location.

(25) "Escape" means:

(a) Sexually violent predator escape (RCW 9A.76.115), escape in the first degree (RCW 9A.76.110), escape in the second degree (RCW 9A.76.120), willful failure to return from furlough (RCW 72.66.060), willful failure to return from work release (RCW 72.65.070), or willful failure to be available for supervision by the department while in community custody (RCW 72.09.310); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as an escape under (a) of this subsection.

(26) "Felony traffic offense" means:

(a) Vehicular homicide (RCW 46.61.520), vehicular assault (RCW 46.61.522), eluding a police officer (RCW 46.61.024), felony hit-and-run injury-accident (RCW 46.52.020(4)), felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)); or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a felony traffic offense under (a) of this subsection.

(27) "Fine" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specific period of time.

(28) "First-time offender" means any person who has no prior convictions for a felony and is eligible for the first-time offender waiver under RCW 9.94A.650.

(29) "Home detention" is a subset of electronic monitoring and means a program of partial confinement available to offenders wherein the offender is confined in a private residence (~~(twenty-four)~~ 24 hours a day, unless an absence from the residence is approved, authorized, or otherwise permitted in the order by the court or other supervising agency that ordered home detention, and the offender is subject to electronic monitoring.

(30) "Homelessness" or "homeless" means a condition where an individual lacks a fixed, regular, and adequate nighttime residence and who has a primary nighttime residence that is:

(a) A supervised, publicly or privately operated shelter designed to provide temporary living accommodations;

(b) A public or private place not designed for, or ordinarily used as, a regular sleeping accommodation for human beings; or

(c) A private residence where the individual stays as a transient invitee.

(31) "Legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for legal financial obligations which may include restitution to the victim, statutorily imposed crime victims' compensation fees as assessed pursuant to RCW 7.68.035, court costs, county or interlocal drug funds, court-appointed attorneys' fees, and costs of defense, fines, and any other financial obligation that is assessed to the offender as a result of a felony conviction. Upon conviction for vehicular assault while under the influence of intoxicating liquor or any drug, RCW 46.61.522(1)(b), or vehicular homicide while under the influence of intoxicating liquor or any drug, RCW 46.61.520(1)(a), legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

(32) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age (~~fourteen~~) 14;

(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) Sexual exploitation;

(p) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(q) 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;

(r) Any other class B felony offense with a finding of sexual motivation;

(s) Any other felony with a deadly weapon verdict under RCW 9.94A.825;

(t) 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;



(u)(i) A prior conviction for indecent liberties under RCW 9A.44.100(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~~) 14; 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;

(v) Any out-of-state conviction for a felony offense with a finding of sexual motivation if the minimum sentence imposed was (~~ten~~) 10 years or more; provided that the out-of-state felony offense must be comparable to a felony offense under this title and Title 9A RCW and the out-of-state definition of sexual motivation must be comparable to the definition of sexual motivation contained in this section.

(33) "Nonviolent offense" means an offense which is not a violent offense.

(34) "Offender" means a person who has committed a felony established by state law and is (~~eighteen~~) 18 years of age or older or is less than (~~eighteen~~) 18 years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. In addition, for the purpose of community custody requirements under this chapter, "offender" also means a misdemeanor or gross misdemeanor probationer ordered by a superior court to probation pursuant to RCW 9.92.060, 9.95.204, or 9.95.210 and supervised by the department pursuant to RCW 9.94A.501 and 9.94A.5011. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

(35) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention, electronic monitoring, or work crew has been ordered by the court or home detention has been ordered by the department as part of the parenting program or the graduated reentry program, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, electronic monitoring, and a combination of work crew, electronic monitoring, and home detention.

(36) "Pattern of criminal street gang activity" means:

(a) The commission, attempt, conspiracy, or solicitation of, or any prior juvenile adjudication of or adult conviction of, two or more of the following criminal street gang-related offenses:

(i) Any "serious violent" felony offense as defined in this section, excluding Homicide by Abuse (RCW 9A.32.055) and Assault of a Child 1 (RCW 9A.36.120);

(ii) Any "violent" offense as defined by this section, excluding Assault of a Child 2 (RCW 9A.36.130);

(iii) Deliver or Possession with Intent to Deliver a Controlled Substance (chapter 69.50 RCW);

(iv) Any violation of the firearms and dangerous weapon act (chapter 9.41 RCW);

(v) Theft of a Firearm (RCW 9A.56.300);

(vi) Possession of a Stolen Firearm (RCW 9A.56.310);

(vii) Hate Crime (RCW 9A.36.080);

(viii) Harassment where a subsequent violation or deadly threat is made (RCW 9A.46.020(2)(b));

(ix) Criminal Gang Intimidation (RCW 9A.46.120);

(x) Any felony conviction by a person (~~eighteen~~) 18 years of age or older with a special finding of involving a juvenile in a felony offense under RCW 9.94A.833;

(xi) Residential Burglary (RCW 9A.52.025);

(xii) Burglary 2 (RCW 9A.52.030);

(xiii) Malicious Mischief 1 (RCW 9A.48.070);

(xiv) Malicious Mischief 2 (RCW 9A.48.080);

(xv) Theft of a Motor Vehicle (RCW 9A.56.065);

(xvi) Possession of a Stolen Motor Vehicle (RCW 9A.56.068);

(xvii) Taking a Motor Vehicle Without Permission 1 (RCW 9A.56.070);

(xviii) Taking a Motor Vehicle Without Permission 2 (RCW 9A.56.075);

(xix) Extortion 1 (RCW 9A.56.120);

(xx) Extortion 2 (RCW 9A.56.130);

(xxi) Intimidating a Witness (RCW 9A.72.110);

(xxii) Tampering with a Witness (RCW 9A.72.120);

(xxiii) Reckless Endangerment (RCW 9A.36.050);

(xxiv) Coercion (RCW 9A.36.070);

(xxv) Harassment (RCW 9A.46.020); or

(xxvi) Malicious Mischief 3 (RCW 9A.48.090);

(b) That at least one of the offenses listed in (a) of this subsection shall have occurred after July 1, 2008;

(c) That the most recent committed offense listed in (a) of this subsection occurred within three years of a prior offense listed in (a) of this subsection; and

(d) Of the offenses that were committed in (a) of this subsection, the offenses occurred on separate occasions or were committed by two or more persons.

(37) "Persistent offender" is an offender who:

(a)(i) Has been convicted in this state of any felony considered a most serious offense; and

(ii) Has, before the commission of the offense under (a) of this subsection, been convicted as an offender on at least two separate occasions, whether in this state or elsewhere, of felonies that under the laws of this state would be considered most serious offenses and would be included in the offender score under RCW 9.94A.525; provided that of the two or more previous convictions, at least one conviction must have occurred before the commission of any of the other most serious offenses for which the offender was previously convicted; or

(b)(i) Has been convicted of: (A) Rape in the first degree, rape of a child in the first degree, child molestation in the first degree, rape in the second degree, rape of a child in the second degree, or indecent liberties by forcible compulsion; (B) any of the following offenses with a finding of sexual motivation: Murder in the first degree, murder in the second degree, homicide by abuse, kidnapping in

the first degree, kidnapping in the second degree, assault in the first degree, assault in the second degree, assault of a child in the first degree, assault of a child in the second degree, or burglary in the first degree; or (C) an attempt to commit any crime listed in this subsection (37)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was ~~((sixteen))~~ 16 years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was ~~((eighteen))~~ 18 years of age or older when the offender committed the offense.

(38) "Predatory" means: (a) The perpetrator of the crime was a stranger to the victim, as defined in this section; (b) the perpetrator established or promoted a relationship with the victim prior to the offense and the victimization of the victim was a significant reason the perpetrator established or promoted the relationship; or (c) the perpetrator was: (i) A teacher, counselor, volunteer, or other person in authority in any public or private school and the victim was a student of the school under his or her authority or supervision. For purposes of this subsection, "school" does not include home-based instruction as defined in RCW 28A.225.010; (ii) a coach, trainer, volunteer, or other person in authority in any recreational activity and the victim was a participant in the activity under his or her authority or supervision; (iii) a pastor, elder, volunteer, or other person in authority in any church or religious organization, and the victim was a member or participant of the organization under his or her authority; or (iv) a teacher, counselor, volunteer, or other person in authority providing home-based instruction and the victim was a student receiving home-based instruction while under his or her authority or supervision. For purposes of this subsection: (A) "Home-based instruction" has the same meaning as defined in RCW 28A.225.010; and (B) "teacher, counselor, volunteer, or other person in authority" does not include the parent or legal guardian of the victim.

(39) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

(40) "Public school" has the same meaning as in RCW 28A.150.010.

(41) "Recidivist offense" means a felony offense where a prior conviction of the same offense or other specified offense is an element of the crime including, but not limited to:

(a) Assault in the fourth degree where domestic violence is pleaded and proven, RCW 9A.36.041(3);

(b) ~~((Cyberstalking))~~ Cyber harassment, RCW 9.61.260~~((3)(a))~~ (2)(b)(i) (as recodified by this act);

(c) Harassment, RCW 9A.46.020(2)(b)(i);

(d) Indecent exposure, RCW 9A.88.010(2)(c);

(e) Stalking, RCW 9A.46.110(5)(b) (i) and (iii);

(f) Telephone harassment, RCW 9.61.230(2)(a); and

(g) Violation of a no-contact or protection order, RCW 7.105.450 or former RCW 26.50.110(5).

(42) "Repetitive domestic violence offense" means any:

(a)(i) Domestic violence assault that is not a felony offense under RCW 9A.36.041;

(ii) Domestic violence violation of a no-contact order under chapter 10.99 RCW that is not a felony offense;

(iii) Domestic violence violation of a protection order under chapter 26.09, 26.26A, or 26.26B RCW or former chapter 26.50 RCW, or violation of a domestic violence protection order under chapter 7.105 RCW, that is not a felony offense;

(iv) Domestic violence harassment offense under RCW 9A.46.020 that is not a felony offense; or

(v) Domestic violence stalking offense under RCW 9A.46.110 that is not a felony offense; or

(b) Any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under the laws of this state would be classified as a repetitive domestic violence offense under (a) of this subsection.

(43) "Restitution" means a specific sum of money ordered by the sentencing court to be paid by the offender to the court over a specified period of time as payment of damages. The sum may include both public and private costs.

(44) "Risk assessment" means the application of the risk instrument recommended to the department by the Washington state institute for public policy as having the highest degree of predictive accuracy for assessing an offender's risk of reoffense.

(45) "Serious traffic offense" means:

(a) Nonfelony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502), nonfelony actual physical control while under the influence of intoxicating liquor or any drug (RCW 46.61.504), reckless driving (RCW 46.61.500), or hit-and-run an attended vehicle (RCW 46.52.020(5)); or

(b) Any federal, out-of-state, county, or municipal conviction for an offense that under the laws of this state would be classified as a serious traffic offense under (a) of this subsection.

(46) "Serious violent offense" is a subcategory of violent offense and means:

(a)(i) Murder in the first degree;

(ii) Homicide by abuse;

(iii) Murder in the second degree;

(iv) Manslaughter in the first degree;

(v) Assault in the first degree;

(vi) Kidnapping in the first degree;

(vii) Rape in the first degree;

(viii) Assault of a child in the first degree; or

(ix) An attempt, criminal solicitation, or criminal conspiracy to commit one of these felonies; or

(b) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a serious violent offense under (a) of this subsection.

(47) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.132;

(ii) A violation of RCW 9A.64.020;

(iii) A felony that is a violation of chapter 9.68A RCW other than RCW 9.68A.080;

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes; or

(v) A felony violation of RCW 9A.44.132(1) (failure to register as a sex offender) if the person has been convicted of violating RCW 9A.44.132(1) (failure to register as a sex offender) or 9A.44.130 prior to June 10, 2010, on at least one prior occasion;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a sex offense in (a) of this subsection;

(c) A felony with a finding of sexual motivation under RCW 9.94A.835 or 13.40.135; or

(d) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a sex offense under (a) of this subsection.

(48) "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.

(49) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

(50) "Statutory maximum sentence" means the maximum length of time for which an offender may be confined as punishment for a crime as prescribed in chapter 9A.20 RCW, RCW 9.92.010, the statute defining the crime, or other statute defining the maximum penalty for a crime.

(51) "Stranger" means that the victim did not know the offender (~~twenty-four~~) 24 hours before the offense.

(52) "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~~) 24 hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

(53) "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.

(54) "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.

(55) "Victim of domestic violence" means an intimate partner or household member who has been subjected to the infliction of physical harm or sexual and psychological abuse by an intimate partner or household member as part of a pattern of assaultive, coercive, and controlling behaviors directed at achieving compliance from or control over that intimate partner or household member. Domestic violence includes, but is not limited to, the offenses listed in RCW

10.99.020 and 26.50.010 committed by an intimate partner or household member against a victim who is an intimate partner or household member.

(56) "Victim of sex trafficking, prostitution, or commercial sexual abuse of a minor" means a person who has been forced or coerced to perform a commercial sex act including, but not limited to, being a victim of offenses defined in RCW 9A.40.100, 9A.88.070, 9.68A.101, and the trafficking victims protection act of 2000, 22 U.S.C. Sec. 7101 et seq.; or a person who was induced to perform a commercial sex act when they were less than 18 years of age including but not limited to the offenses defined in chapter 9.68A RCW.

(57) "Victim of sexual assault" means any person who is a victim of a sexual assault offense, nonconsensual sexual conduct, or nonconsensual sexual penetration and as a result suffers physical, emotional, financial, or psychological impacts. Sexual assault offenses include, but are not limited to, the offenses defined in chapter 9A.44 RCW.

(58) "Violent offense" means:

(a) Any of the following felonies:

(i) Any felony defined under any law as a class A felony or an attempt to commit a class A felony;

(ii) Criminal solicitation of or criminal conspiracy to commit a class A felony;

(iii) Manslaughter in the first degree;

(iv) Manslaughter in the second degree;

(v) Indecent liberties if committed by forcible compulsion;

(vi) Kidnapping in the second degree;

(vii) Arson in the second degree;

(viii) Assault in the second degree;

(ix) Assault of a child in the second degree;

(x) Extortion in the first degree;

(xi) Robbery in the second degree;

(xii) Drive-by shooting;

(xiii) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner; and

(xiv) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(b) Any conviction for a felony offense in effect at any time prior to July 1, 1976, that is comparable to a felony classified as a violent offense in (a) of this subsection; and

(c) Any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a violent offense under (a) or (b) of this subsection.

(59) "Work crew" means a program of partial confinement consisting of civic improvement tasks for the benefit of the community that complies with RCW 9.94A.725.

(60) "Work ethic camp" means an alternative incarceration program as provided in RCW 9.94A.690 designed to reduce recidivism and lower the cost of corrections by requiring offenders to complete a comprehensive array of real-

world job and vocational experiences, character-building work ethics training, life management skills development, substance abuse rehabilitation, counseling, literacy training, and basic adult education.

(61) "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.

**Sec. 12.** RCW 9.94A.515 and 2020 c 344 s 4 are each amended to read as follows:

TABLE 2	
CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL	
XVI	Aggravated Murder 1 (RCW 10.95.020)
XV	Homicide by abuse (RCW 9A.32.055)
	Malicious explosion 1 (RCW 70.74.280(1))
	Murder 1 (RCW 9A.32.030)
XIV	Murder 2 (RCW 9A.32.050)
	Trafficking 1 (RCW 9A.40.100(1))
XIII	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)
	Malicious placement of an imitation device 1 (RCW 70.74.272(1)(a))
	Promoting Commercial Sexual Abuse of a Minor (RCW 9.68A.101)
	Rape 1 (RCW 9A.44.040)
	Rape of a Child 1 (RCW 9A.44.073)
	Trafficking 2 (RCW 9A.40.100(3))
XI	Manslaughter 1 (RCW 9A.32.060)
	Rape 2 (RCW 9A.44.050)
	Rape of a Child 2 (RCW 9A.44.076)
	Vehicular Homicide, by being under the influence of intoxicating liquor or any drug (RCW 46.61.520)
	Vehicular Homicide, by the operation of any vehicle in a reckless manner (RCW 46.61.520)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- X Child Molestation 1 (RCW 9A.44.083)
  - Criminal Mistreatment 1 (RCW 9A.42.020)
  - Indecent Liberties (with forcible compulsion) (RCW 9A.44.100(1)(a))
  - Kidnapping 1 (RCW 9A.40.020)
  - Leading Organized Crime (RCW 9A.82.060(1)(a))
  - Malicious explosion 3 (RCW 70.74.280(3))
  - Sexually Violent Predator Escape (RCW 9A.76.115)
- IX Abandonment of Dependent Person 1 (RCW 9A.42.060)
  - Assault of a Child 2 (RCW 9A.36.130)
  - Explosive devices prohibited (RCW 70.74.180)
  - Hit and Run—Death (RCW 46.52.020(4)(a))
  - Homicide by Watercraft, by being under the influence of intoxicating liquor or any drug (RCW 79A.60.050)
  - Inciting Criminal Profiteering (RCW 9A.82.060(1)(b))
  - Malicious placement of an explosive 2 (RCW 70.74.270(2))
  - Robbery 1 (RCW 9A.56.200)
  - Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
  - Commercial Sexual Abuse of a Minor (RCW 9.68A.100)
  - Homicide by Watercraft, by the operation of any vessel in a reckless manner (RCW 79A.60.050)
  - Manslaughter 2 (RCW 9A.32.070)
  - Promoting Prostitution 1 (RCW 9A.88.070)
  - Theft of Ammonia (RCW 69.55.010)



CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- VII Air bag diagnostic systems (causing bodily injury or death) (RCW 46.37.660(2)(b))
- Air bag replacement requirements (causing bodily injury or death) (RCW 46.37.660(1)(b))
- Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW 9A.48.120)
- Dealing in depictions of minor engaged in sexually explicit conduct 1 (RCW 9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- False Reporting 1 (RCW 9A.84.040(2)(a))
- Homicide by Watercraft, by disregard for the safety of others (RCW 79A.60.050)
- Indecent Liberties (without forcible compulsion) (RCW 9A.44.100(1) (b) and (c))
- Introducing Contraband 1 (RCW 9A.76.140)
- Malicious placement of an explosive 3 (RCW 70.74.270(3))
- Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (causing bodily injury or death) (RCW 46.37.650(1)(b))
- Negligently Causing Death By Use of a Signal Preemption Device (RCW 46.37.675)
- Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(b))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Sending, bringing into state depictions of  
minor engaged in sexually explicit  
conduct 1 (RCW 9.68A.060(1))
- Unlawful Possession of a Firearm in the  
first degree (RCW 9.41.040(1))
- Use of a Machine Gun or Bump-fire Stock  
in Commission of a Felony (RCW  
9.41.225)
- Vehicular Homicide, by disregard for the  
safety of others (RCW 46.61.520)
- VI Bail Jumping with Murder 1 (RCW  
9A.76.170(3)(a))
- Bribery (RCW 9A.68.010)
- Incest 1 (RCW 9A.64.020(1))
- Intimidating a Judge (RCW 9A.72.160)
- Intimidating a Juror/Witness (RCW  
9A.72.110, 9A.72.130)
- Malicious placement of an imitation  
device 2 (RCW 70.74.272(1)(b))
- Possession of Depictions of a Minor  
Engaged in Sexually Explicit  
Conduct 1 (RCW 9.68A.070(1))
- Rape of a Child 3 (RCW 9A.44.079)
- Theft of a Firearm (RCW 9A.56.300)
- Theft from a Vulnerable Adult 1 (RCW  
9A.56.400(1))
- Unlawful Storage of Ammonia (RCW  
69.55.020)
- V Abandonment of Dependent Person 2  
(RCW 9A.42.070)
- Advancing money or property for  
extortionate extension of credit  
(RCW 9A.82.030)
- Air bag diagnostic systems (RCW  
46.37.660(2)(c))
- Air bag replacement requirements (RCW  
46.37.660(1)(c))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
- Perjury 1 (RCW 9A.72.020)
- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Sending, Bringing into State Depictions of  
Minor Engaged in Sexually Explicit  
Conduct 2 (RCW 9.68A.060(2))

Sexual Misconduct with a Minor 1 (RCW  
9A.44.093)

Sexually Violating Human Remains  
(RCW 9A.44.105)

Stalking (RCW 9A.46.110)

Taking Motor Vehicle Without  
Permission 1 (RCW 9A.56.070)

IV Arson 2 (RCW 9A.48.030)

Assault 2 (RCW 9A.36.021)

Assault 3 (of a Peace Officer with a  
Projectile Stun Gun) (RCW  
9A.36.031(1)(h))

Assault 4 (third domestic violence  
offense) (RCW 9A.36.041(3))

Assault by Watercraft (RCW 79A.60.060)

Bribing a Witness/Bribe Received by  
Witness (RCW 9A.72.090,  
9A.72.100)

Cheating 1 (RCW 9.46.1961)

Commercial Bribery (RCW 9A.68.060)

Counterfeiting (RCW 9.16.035(4))

Driving While Under the Influence (RCW  
46.61.502(6))

Endangerment with a Controlled  
Substance (RCW 9A.42.100)

Escape 1 (RCW 9A.76.110)

Hate Crime (RCW 9A.36.080)

Hit and Run—Injury (RCW  
46.52.020(4)(b))

Hit and Run with Vessel—Injury  
Accident (RCW 79A.60.200(3))

Identity Theft 1 (RCW 9.35.020(2))

Indecent Exposure to Person Under Age  
(~~Fourteen~~) 14 (subsequent sex  
offense) (RCW 9A.88.010)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Influencing Outcome of Sporting Event  
(RCW 9A.82.070)
- Physical Control of a Vehicle While  
Under the Influence (RCW  
46.61.504(6))
- Possession of Depictions of a Minor  
Engaged in Sexually Explicit  
Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW  
9A.82.050)
- Unlawful factoring of a credit card or  
payment card transaction (RCW  
9A.56.290(4)(b))
- Unlawful transaction of health coverage  
as a health care service contractor  
(RCW 48.44.016(3))
- Unlawful transaction of health coverage  
as a health maintenance organization  
(RCW 48.46.033(3))
- Unlawful transaction of insurance  
business (RCW 48.15.023(3))
- Unlicensed practice as an insurance  
professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering  
(RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent  
offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the  
influence of intoxicating liquor or any  
drug, or by the operation or driving of  
a vehicle in a reckless manner (RCW  
46.61.522)
- Viewing of Depictions of a Minor  
Engaged in Sexually Explicit  
Conduct 1 (RCW 9.68A.075(1))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Willful Failure to Return from Furlough  
(RCW 72.66.060)

III Animal Cruelty 1 (Sexual Conduct or  
Contact) (RCW 16.52.205(3))

Assault 3 (Except Assault 3 of a Peace  
Officer With a Projectile Stun Gun)  
(RCW 9A.36.031 except subsection  
(1)(h))

Assault of a Child 3 (RCW 9A.36.140)

Bail Jumping with class B or C Felony  
(RCW 9A.76.170(3)(c))

Burglary 2 (RCW 9A.52.030)

Communication with a Minor for Immoral  
Purposes (RCW 9.68A.090)

Criminal Gang Intimidation (RCW  
9A.46.120)

Custodial Assault (RCW 9A.36.100)

~~((Cyberstalking (subsequent conviction or  
threat of death)))~~ Cyber Harassment  
(RCW 9.61.260~~((3))~~) (2)(b) (as  
recodified by this act)

Escape 2 (RCW 9A.76.120)

Extortion 2 (RCW 9A.56.130)

False Reporting 2 (RCW  
9A.84.040(2)(b))

Harassment (RCW 9A.46.020)

Intimidating a Public Servant (RCW  
9A.76.180)

Introducing Contraband 2 (RCW  
9A.76.150)

Malicious Injury to Railroad Property  
(RCW 81.60.070)

Manufacture of Untraceable Firearm with  
Intent to Sell (RCW 9.41.190)

Manufacture or Assembly of an  
Undetectable Firearm or Untraceable  
Firearm (RCW 9.41.325)

Mortgage Fraud (RCW 19.144.080)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Negligently Causing Substantial Bodily  
Harm By Use of a Signal Preemption  
Device (RCW 46.37.674)
- Organized Retail Theft 1 (RCW  
9A.56.350(2))
- Perjury 2 (RCW 9A.72.030)
- Possession of Incendiary Device (RCW  
9.40.120)
- Possession of Machine Gun, Bump-Fire  
Stock, Undetectable Firearm, or  
Short-Barreled Shotgun or Rifle  
(RCW 9.41.190)
- Promoting Prostitution 2 (RCW  
9A.88.080)
- Retail Theft with Special Circumstances 1  
(RCW 9A.56.360(2))
- Securities Act violation (RCW 21.20.400)
- Tampering with a Witness (RCW  
9A.72.120)
- Telephone Harassment (subsequent  
conviction or threat of death) (RCW  
9.61.230(2))
- Theft of Livestock 2 (RCW 9A.56.083)
- Theft with the Intent to Resell 1 (RCW  
9A.56.340(2))
- Trafficking in Stolen Property 2 (RCW  
9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW  
77.15.410(3)(b))
- Unlawful Imprisonment (RCW  
9A.40.040)
- Unlawful Misbranding of Fish or  
Shellfish 1 (RCW 77.140.060(3))
- Unlawful possession of firearm in the  
second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or  
Wildlife 1 (RCW 77.15.120(3)(b))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Unlawful Trafficking in Fish, Shellfish, or  
Wildlife 1 (RCW 77.15.260(3)(b))

Unlawful Use of a Nondesignated Vessel  
(RCW 77.15.530(4))

Vehicular Assault, by the operation or  
driving of a vehicle with disregard for  
the safety of others (RCW 46.61.522)

Willful Failure to Return from Work  
Release (RCW 72.65.070)

II Commercial Fishing Without a License 1  
(RCW 77.15.500(3)(b))

Computer Trespass 1 (RCW 9A.90.040)

Counterfeiting (RCW 9.16.035(3))

Electronic Data Service Interference  
(RCW 9A.90.060)

Electronic Data Tampering 1 (RCW  
9A.90.080)

Electronic Data Theft (RCW 9A.90.100)

Engaging in Fish Dealing Activity  
Unlicensed 1 (RCW 77.15.620(3))

Escape from Community Custody (RCW  
72.09.310)

Failure to Register as a Sex Offender  
(second or subsequent offense)  
(RCW 9A.44.130 prior to June 10,  
2010, and RCW 9A.44.132)

Health Care False Claims (RCW  
48.80.030)

Identity Theft 2 (RCW 9.35.020(3))

Improperly Obtaining Financial  
Information (RCW 9.35.010)

Malicious Mischief 1 (RCW 9A.48.070)

Organized Retail Theft 2 (RCW  
9A.56.350(3))

Possession of Stolen Property 1 (RCW  
9A.56.150)

Possession of a Stolen Vehicle (RCW  
9A.56.068)



CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Retail Theft with Special Circumstances 2  
(RCW 9A.56.360(3))
- Scrap Processing, Recycling, or  
Supplying Without a License (second  
or subsequent offense) (RCW  
19.290.100)
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW  
9A.56.065)
- Theft of Rental, Leased, Lease-purchased,  
or Loaned Property (valued at (~~five  
thousand dollars~~) \$5,000 or more)  
(RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW  
9A.56.340(3))
- Trafficking in Insurance Claims (RCW  
48.30A.015)
- Unlawful factoring of a credit card or  
payment card transaction (RCW  
9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in  
Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW  
2.48.180)
- Unlawful Purchase or Use of a License  
(RCW 77.15.650(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or  
Wildlife 2 (RCW 77.15.260(3)(a))
- Unlicensed Practice of a Profession or  
Business (RCW 18.130.190(7))
- Voyeurism 1 (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police  
Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW  
74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a  
Mental Health Advance Directive  
(RCW 9A.60.060)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW 9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW 77.15.450(3)(b))
- Suspension of Department Privileges 1 (RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft from a Vulnerable Adult 2 (RCW 9A.56.400(2))
- Theft of Rental, Leased, Lease-purchased, or Loaned Property (valued at (~~seven hundred fifty dollars~~) \$750 or more but less than (~~five thousand dollars~~) \$5,000) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond the scope of licensure (RCW 48.17.063)
- Unlawful Fish and Shellfish Catch Accounting (RCW 77.15.630(3)(b))
- Unlawful Issuance of Checks or Drafts (RCW 9A.56.060)
- Unlawful Possession of Fictitious Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal Identification Device (RCW 9A.56.320)
- Unlawful Production of Payment Instruments (RCW 9A.56.320)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Unlawful Releasing, Planting, Possessing,  
or Placing Deleterious Exotic  
Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps  
(RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW  
9.91.144)
- Unlawful Use of Net to Take Fish 1  
(RCW 77.15.580(3)(b))
- Unlawful Use of Prohibited Aquatic  
Animal Species (RCW 77.15.253(3))
- Vehicle Prowl 1 (RCW 9A.52.095)
- Violating Commercial Fishing Area or  
Time 1 (RCW 77.15.550(3)(b))

**Sec. 13.** RCW 9.94A.515 and 2021 c 215 s 99 are each amended to read as follows:

TABLE 2

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- XVI Aggravated Murder 1 (RCW 10.95.020)
- XV Homicide by abuse (RCW 9A.32.055)
- Malicious explosion 1 (RCW  
70.74.280(1))
- Murder 1 (RCW 9A.32.030)
- XIV Murder 2 (RCW 9A.32.050)
- Trafficking 1 (RCW 9A.40.100(1))
- XIII 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)
- Malicious placement of an imitation  
device 1 (RCW 70.74.272(1)(a))
- Promoting Commercial Sexual Abuse of a  
Minor (RCW 9.68A.101)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Rape 1 (RCW 9A.44.040)

Rape of a Child 1 (RCW 9A.44.073)

Trafficking 2 (RCW 9A.40.100(3))

XI Manslaughter 1 (RCW 9A.32.060)

Rape 2 (RCW 9A.44.050)

Rape of a Child 2 (RCW 9A.44.076)

Vehicular Homicide, by being under the  
influence of intoxicating liquor or any  
drug (RCW 46.61.520)Vehicular Homicide, by the operation of  
any vehicle in a reckless manner  
(RCW 46.61.520)

X Child Molestation 1 (RCW 9A.44.083)

Criminal Mistreatment 1 (RCW  
9A.42.020)Indecent Liberties (with forcible  
compulsion) (RCW 9A.44.100(1)(a))

Kidnapping 1 (RCW 9A.40.020)

Leading Organized Crime (RCW  
9A.82.060(1)(a))Malicious explosion 3 (RCW  
70.74.280(3))Sexually Violent Predator Escape (RCW  
9A.76.115)IX Abandonment of Dependent Person 1  
(RCW 9A.42.060)

Assault of a Child 2 (RCW 9A.36.130)

Explosive devices prohibited (RCW  
70.74.180)Hit and Run—Death (RCW  
46.52.020(4)(a))Homicide by Watercraft, by being under  
the influence of intoxicating liquor or  
any drug (RCW 79A.60.050)Inciting Criminal Profiteering (RCW  
9A.82.060(1)(b))Malicious placement of an explosive 2  
(RCW 70.74.270(2))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Robbery 1 (RCW 9A.56.200)
- Sexual Exploitation (RCW 9.68A.040)
- VIII Arson 1 (RCW 9A.48.020)
- Commercial Sexual Abuse of a Minor  
(RCW 9.68A.100)
- Homicide by Watercraft, by the operation  
of any vessel in a reckless manner  
(RCW 79A.60.050)
- Manslaughter 2 (RCW 9A.32.070)
- Promoting Prostitution 1 (RCW  
9A.88.070)
- Theft of Ammonia (RCW 69.55.010)
- VII Air bag diagnostic systems (causing  
bodily injury or death) (RCW  
46.37.660(2)(b))
- Air bag replacement requirements  
(causing bodily injury or death)  
(RCW 46.37.660(1)(b))
- Burglary 1 (RCW 9A.52.020)
- Child Molestation 2 (RCW 9A.44.086)
- Civil Disorder Training (RCW  
9A.48.120)
- Dealing in depictions of minor engaged in  
sexually explicit conduct 1 (RCW  
9.68A.050(1))
- Drive-by Shooting (RCW 9A.36.045)
- False Reporting 1 (RCW  
9A.84.040(2)(a))
- Homicide by Watercraft, by disregard for  
the safety of others (RCW  
79A.60.050)
- Indecent Liberties (without forcible  
compulsion) (RCW 9A.44.100(1) (b)  
and (c))
- Introducing Contraband 1 (RCW  
9A.76.140)
- Malicious placement of an explosive 3  
(RCW 70.74.270(3))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Manufacture or import counterfeit,  
nonfunctional, damaged, or  
previously deployed air bag (causing  
bodily injury or death) (RCW  
46.37.650(1)(b))

Negligently Causing Death By Use of a  
Signal Preemption Device (RCW  
46.37.675)

Sell, install, or reinstall counterfeit,  
nonfunctional, damaged, or  
previously deployed airbag (RCW  
46.37.650(2)(b))

Sending, bringing into state depictions of  
minor engaged in sexually explicit  
conduct 1 (RCW 9.68A.060(1))

Unlawful Possession of a Firearm in the  
first degree (RCW 9.41.040(1))

Use of a Machine Gun or Bump-fire Stock  
in Commission of a Felony (RCW  
9.41.225)

Vehicular Homicide, by disregard for the  
safety of others (RCW 46.61.520)

VI Bail Jumping with Murder 1 (RCW  
9A.76.170(3)(a))

Bribery (RCW 9A.68.010)

Incest 1 (RCW 9A.64.020(1))

Intimidating a Judge (RCW 9A.72.160)

Intimidating a Juror/Witness (RCW  
9A.72.110, 9A.72.130)

Malicious placement of an imitation  
device 2 (RCW 70.74.272(1)(b))

Possession of Depictions of a Minor  
Engaged in Sexually Explicit  
Conduct 1 (RCW 9.68A.070(1))

Rape of a Child 3 (RCW 9A.44.079)

Theft of a Firearm (RCW 9A.56.300)

Theft from a Vulnerable Adult 1 (RCW  
9A.56.400(1))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Unlawful Storage of Ammonia (RCW 69.55.020)
- V Abandonment of Dependent Person 2 (RCW 9A.42.070)
- Advancing money or property for extortionate extension of credit (RCW 9A.82.030)
- Air bag diagnostic systems (RCW 46.37.660(2)(c))
- Air bag replacement requirements (RCW 46.37.660(1)(c))
- Bail Jumping with class A Felony (RCW 9A.76.170(3)(b))
- Child Molestation 3 (RCW 9A.44.089)
- Criminal Mistreatment 2 (RCW 9A.42.030)
- Custodial Sexual Misconduct 1 (RCW 9A.44.160)
- Dealing in Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.050(2))
- Domestic Violence Court Order Violation (RCW 7.105.450, 10.99.040, 10.99.050, 26.09.300, 26.10.220, 26.26B.050, 26.50.110, 26.52.070, or 74.34.145)
- Extortion 1 (RCW 9A.56.120)
- Extortionate Extension of Credit (RCW 9A.82.020)
- Extortionate Means to Collect Extensions of Credit (RCW 9A.82.040)
- Incest 2 (RCW 9A.64.020(2))
- Kidnapping 2 (RCW 9A.40.030)
- Manufacture or import counterfeit, nonfunctional, damaged, or previously deployed air bag (RCW 46.37.650(1)(c))
- Perjury 1 (RCW 9A.72.020)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Persistent prison misbehavior (RCW 9.94.070)
- Possession of a Stolen Firearm (RCW 9A.56.310)
- Rape 3 (RCW 9A.44.060)
- Rendering Criminal Assistance 1 (RCW 9A.76.070)
- Sell, install, or reinstall counterfeit, nonfunctional, damaged, or previously deployed airbag (RCW 46.37.650(2)(c))
- Sending, Bringing into State Depictions of Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.060(2))
- Sexual Misconduct with a Minor 1 (RCW 9A.44.093)
- Sexually Violating Human Remains (RCW 9A.44.105)
- Stalking (RCW 9A.46.110)
- Taking Motor Vehicle Without Permission 1 (RCW 9A.56.070)
- IV Arson 2 (RCW 9A.48.030)
- Assault 2 (RCW 9A.36.021)
- Assault 3 (of a Peace Officer with a Projectile Stun Gun) (RCW 9A.36.031(1)(h))
- Assault 4 (third domestic violence offense) (RCW 9A.36.041(3))
- Assault by Watercraft (RCW 79A.60.060)
- Bribing a Witness/Bribe Received by Witness (RCW 9A.72.090, 9A.72.100)
- Cheating 1 (RCW 9.46.1961)
- Commercial Bribery (RCW 9A.68.060)
- Counterfeiting (RCW 9.16.035(4))
- Driving While Under the Influence (RCW 46.61.502(6))



CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Endangerment with a Controlled Substance (RCW 9A.42.100)
- Escape 1 (RCW 9A.76.110)
- Hate Crime (RCW 9A.36.080)
- Hit and Run—Injury (RCW 46.52.020(4)(b))
- Hit and Run with Vessel—Injury Accident (RCW 79A.60.200(3))
- Identity Theft 1 (RCW 9.35.020(2))
- Indecent Exposure to Person Under Age ~~((Fourteen))~~ 14 (subsequent sex offense) (RCW 9A.88.010)
- Influencing Outcome of Sporting Event (RCW 9A.82.070)
- Physical Control of a Vehicle While Under the Influence (RCW 46.61.504(6))
- Possession of Depictions of a Minor Engaged in Sexually Explicit Conduct 2 (RCW 9.68A.070(2))
- Residential Burglary (RCW 9A.52.025)
- Robbery 2 (RCW 9A.56.210)
- Theft of Livestock 1 (RCW 9A.56.080)
- Threats to Bomb (RCW 9.61.160)
- Trafficking in Stolen Property 1 (RCW 9A.82.050)
- Unlawful factoring of a credit card or payment card transaction (RCW 9A.56.290(4)(b))
- Unlawful transaction of health coverage as a health care service contractor (RCW 48.44.016(3))
- Unlawful transaction of health coverage as a health maintenance organization (RCW 48.46.033(3))
- Unlawful transaction of insurance business (RCW 48.15.023(3))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Unlicensed practice as an insurance professional (RCW 48.17.063(2))
- Use of Proceeds of Criminal Profiteering (RCW 9A.82.080 (1) and (2))
- Vehicle Prowling 2 (third or subsequent offense) (RCW 9A.52.100(3))
- Vehicular Assault, by being under the influence of intoxicating liquor or any drug, or by the operation or driving of a vehicle in a reckless manner (RCW 46.61.522)
- Viewing of Depictions of a Minor Engaged in Sexually Explicit Conduct 1 (RCW 9.68A.075(1))
- Willful Failure to Return from Furlough (RCW 72.66.060)
- III Animal Cruelty 1 (Sexual Conduct or Contact) (RCW 16.52.205(3))
  - Assault 3 (Except Assault 3 of a Peace Officer With a Projectile Stun Gun) (RCW 9A.36.031 except subsection (1)(h))
  - Assault of a Child 3 (RCW 9A.36.140)
  - Bail Jumping with class B or C Felony (RCW 9A.76.170(3)(c))
  - Burglary 2 (RCW 9A.52.030)
  - Communication with a Minor for Immoral Purposes (RCW 9.68A.090)
  - Criminal Gang Intimidation (RCW 9A.46.120)
  - Custodial Assault (RCW 9A.36.100)
  - ~~((Cyberstalking (subsequent conviction or threat of death)))~~ Cyber Harassment (RCW 9.61.260(~~((3)))~~) (2)(b) (as recodified by this act)
  - Escape 2 (RCW 9A.76.120)
  - Extortion 2 (RCW 9A.56.130)
  - False Reporting 2 (RCW 9A.84.040(2)(b))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

Harassment (RCW 9A.46.020)  
Intimidating a Public Servant (RCW  
9A.76.180)  
Introducing Contraband 2 (RCW  
9A.76.150)  
Malicious Injury to Railroad Property  
(RCW 81.60.070)  
Manufacture of Untraceable Firearm with  
Intent to Sell (RCW 9.41.190)  
Manufacture or Assembly of an  
Undetectable Firearm or Untraceable  
Firearm (RCW 9.41.325)  
Mortgage Fraud (RCW 19.144.080)  
Negligently Causing Substantial Bodily  
Harm By Use of a Signal Preemption  
Device (RCW 46.37.674)  
Organized Retail Theft 1 (RCW  
9A.56.350(2))  
Perjury 2 (RCW 9A.72.030)  
Possession of Incendiary Device (RCW  
9.40.120)  
Possession of Machine Gun, Bump-Fire  
Stock, Undetectable Firearm, or  
Short-Barreled Shotgun or Rifle  
(RCW 9.41.190)  
Promoting Prostitution 2 (RCW  
9A.88.080)  
Retail Theft with Special Circumstances 1  
(RCW 9A.56.360(2))  
Securities Act violation (RCW 21.20.400)  
Tampering with a Witness (RCW  
9A.72.120)  
Telephone Harassment (subsequent  
conviction or threat of death) (RCW  
9.61.230(2))  
Theft of Livestock 2 (RCW 9A.56.083)  
Theft with the Intent to Resell 1 (RCW  
9A.56.340(2))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Trafficking in Stolen Property 2 (RCW 9A.82.055)
- Unlawful Hunting of Big Game 1 (RCW 77.15.410(3)(b))
- Unlawful Imprisonment (RCW 9A.40.040)
- Unlawful Misbranding of Fish or Shellfish 1 (RCW 77.140.060(3))
- Unlawful possession of firearm in the second degree (RCW 9.41.040(2))
- Unlawful Taking of Endangered Fish or Wildlife 1 (RCW 77.15.120(3)(b))
- Unlawful Trafficking in Fish, Shellfish, or Wildlife 1 (RCW 77.15.260(3)(b))
- Unlawful Use of a Nondesignated Vessel (RCW 77.15.530(4))
- Vehicular Assault, by the operation or driving of a vehicle with disregard for the safety of others (RCW 46.61.522)
- Willful Failure to Return from Work Release (RCW 72.65.070)
- II Commercial Fishing Without a License 1 (RCW 77.15.500(3)(b))
  - Computer Trespass 1 (RCW 9A.90.040)
  - Counterfeiting (RCW 9.16.035(3))
  - Electronic Data Service Interference (RCW 9A.90.060)
  - Electronic Data Tampering 1 (RCW 9A.90.080)
  - Electronic Data Theft (RCW 9A.90.100)
  - Engaging in Fish Dealing Activity Unlicensed 1 (RCW 77.15.620(3))
  - Escape from Community Custody (RCW 72.09.310)
  - Failure to Register as a Sex Offender (second or subsequent offense) (RCW 9A.44.130 prior to June 10, 2010, and RCW 9A.44.132)

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Health Care False Claims (RCW  
48.80.030)
- Identity Theft 2 (RCW 9.35.020(3))
- Improperly Obtaining Financial  
Information (RCW 9.35.010)
- Malicious Mischief 1 (RCW 9A.48.070)
- Organized Retail Theft 2 (RCW  
9A.56.350(3))
- Possession of Stolen Property 1 (RCW  
9A.56.150)
- Possession of a Stolen Vehicle (RCW  
9A.56.068)
- Retail Theft with Special Circumstances 2  
(RCW 9A.56.360(3))
- Scrap Processing, Recycling, or  
Supplying Without a License (second  
or subsequent offense) (RCW  
19.290.100)
- Theft 1 (RCW 9A.56.030)
- Theft of a Motor Vehicle (RCW  
9A.56.065)
- Theft of Rental, Leased, Lease-purchased,  
or Loaned Property (valued at (~~five-~~  
~~thousand dollars~~) \$5,000 or more)  
(RCW 9A.56.096(5)(a))
- Theft with the Intent to Resell 2 (RCW  
9A.56.340(3))
- Trafficking in Insurance Claims (RCW  
48.30A.015)
- Unlawful factoring of a credit card or  
payment card transaction (RCW  
9A.56.290(4)(a))
- Unlawful Participation of Non-Indians in  
Indian Fishery (RCW 77.15.570(2))
- Unlawful Practice of Law (RCW  
2.48.180)
- Unlawful Purchase or Use of a License  
(RCW 77.15.650(3)(b))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Unlawful Trafficking in Fish, Shellfish, or  
Wildlife 2 (RCW 77.15.260(3)(a))
- Unlicensed Practice of a Profession or  
Business (RCW 18.130.190(7))
- Voyeurism 1 (RCW 9A.44.115)
- I Attempting to Elude a Pursuing Police  
Vehicle (RCW 46.61.024)
- False Verification for Welfare (RCW  
74.08.055)
- Forgery (RCW 9A.60.020)
- Fraudulent Creation or Revocation of a  
Mental Health Advance Directive  
(RCW 9A.60.060)
- Malicious Mischief 2 (RCW 9A.48.080)
- Mineral Trespass (RCW 78.44.330)
- Possession of Stolen Property 2 (RCW  
9A.56.160)
- Reckless Burning 1 (RCW 9A.48.040)
- Spotlighting Big Game 1 (RCW  
77.15.450(3)(b))
- Suspension of Department Privileges 1  
(RCW 77.15.670(3)(b))
- Taking Motor Vehicle Without  
Permission 2 (RCW 9A.56.075)
- Theft 2 (RCW 9A.56.040)
- Theft from a Vulnerable Adult 2 (RCW  
9A.56.400(2))
- Theft of Rental, Leased, Lease-purchased,  
or Loaned Property (valued at (~~seven  
hundred fifty dollars~~) \$750 or more  
but less than (~~five thousand dollars~~)  
\$5,000) (RCW 9A.56.096(5)(b))
- Transaction of insurance business beyond  
the scope of licensure (RCW  
48.17.063)
- Unlawful Fish and Shellfish Catch  
Accounting (RCW 77.15.630(3)(b))

CRIMES INCLUDED WITHIN EACH  
SERIOUSNESS LEVEL

- Unlawful Issuance of Checks or Drafts  
(RCW 9A.56.060)
- Unlawful Possession of Fictitious  
Identification (RCW 9A.56.320)
- Unlawful Possession of Instruments of  
Financial Fraud (RCW 9A.56.320)
- Unlawful Possession of Payment  
Instruments (RCW 9A.56.320)
- Unlawful Possession of a Personal  
Identification Device (RCW  
9A.56.320)
- Unlawful Production of Payment  
Instruments (RCW 9A.56.320)
- Unlawful Releasing, Planting, Possessing,  
or Placing Deleterious Exotic  
Wildlife (RCW 77.15.250(2)(b))
- Unlawful Trafficking in Food Stamps  
(RCW 9.91.142)
- Unlawful Use of Food Stamps (RCW  
9.91.144)
- Unlawful Use of Net to Take Fish 1  
(RCW 77.15.580(3)(b))
- Unlawful Use of Prohibited Aquatic  
Animal Species (RCW 77.15.253(3))
- Vehicle Prowl 1 (RCW 9A.52.095)
- Violating Commercial Fishing Area or  
Time 1 (RCW 77.15.550(3)(b))

**Sec. 14.** RCW 9A.46.060 and 2019 c 271 s 8 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Hate crime (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);

- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);
- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);
- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089);
- (33) Stalking (RCW 9A.46.110);
- (34) (~~Cyberstalking~~) Cyber harassment (RCW 9.61.260 (as recodified by this act));
- (35) Residential burglary (RCW 9A.52.025);
- (36) Violation of a temporary, permanent, or final protective order issued pursuant to chapter 7.90, 9A.46, 10.14, 10.99, 26.09, or 26.50 RCW;
- (37) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and
- (38) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

**Sec. 15.** RCW 9A.46.060 and 2021 c 215 s 109 are each amended to read as follows:

As used in this chapter, "harassment" may include but is not limited to any of the following crimes:

- (1) Harassment (RCW 9A.46.020);
- (2) Hate crime (RCW 9A.36.080);
- (3) Telephone harassment (RCW 9.61.230);
- (4) Assault in the first degree (RCW 9A.36.011);
- (5) Assault of a child in the first degree (RCW 9A.36.120);
- (6) Assault in the second degree (RCW 9A.36.021);
- (7) Assault of a child in the second degree (RCW 9A.36.130);
- (8) Assault in the fourth degree (RCW 9A.36.041);
- (9) Reckless endangerment (RCW 9A.36.050);
- (10) Extortion in the first degree (RCW 9A.56.120);
- (11) Extortion in the second degree (RCW 9A.56.130);
- (12) Coercion (RCW 9A.36.070);
- (13) Burglary in the first degree (RCW 9A.52.020);



- (14) Burglary in the second degree (RCW 9A.52.030);
- (15) Criminal trespass in the first degree (RCW 9A.52.070);
- (16) Criminal trespass in the second degree (RCW 9A.52.080);
- (17) Malicious mischief in the first degree (RCW 9A.48.070);
- (18) Malicious mischief in the second degree (RCW 9A.48.080);
- (19) Malicious mischief in the third degree (RCW 9A.48.090);
- (20) Kidnapping in the first degree (RCW 9A.40.020);
- (21) Kidnapping in the second degree (RCW 9A.40.030);
- (22) Unlawful imprisonment (RCW 9A.40.040);
- (23) Rape in the first degree (RCW 9A.44.040);
- (24) Rape in the second degree (RCW 9A.44.050);
- (25) Rape in the third degree (RCW 9A.44.060);
- (26) Indecent liberties (RCW 9A.44.100);
- (27) Rape of a child in the first degree (RCW 9A.44.073);
- (28) Rape of a child in the second degree (RCW 9A.44.076);
- (29) Rape of a child in the third degree (RCW 9A.44.079);
- (30) Child molestation in the first degree (RCW 9A.44.083);
- (31) Child molestation in the second degree (RCW 9A.44.086);
- (32) Child molestation in the third degree (RCW 9A.44.089);
- (33) Stalking (RCW 9A.46.110);
- (34) ~~((Cyberstalking))~~ Cyber harassment (RCW 9.61.260 (as recodified by this act));
- (35) Residential burglary (RCW 9A.52.025);
- (36) Violation of a temporary, permanent, or final protective order issued pursuant to chapter 9A.44, 9A.46, 10.99, or 26.09 RCW or any of the former chapters 7.90, 10.14, and 26.50 RCW, or violation of a domestic violence protection order, sexual assault protection order, or antiharassment protection order issued under chapter 7.105 RCW;
- (37) Unlawful discharge of a laser in the first degree (RCW 9A.49.020); and
- (38) Unlawful discharge of a laser in the second degree (RCW 9A.49.030).

**Sec. 16.** RCW 26.50.060 and 2020 c 311 s 9 are each amended to read as follows:

- (1) Upon notice and after hearing, the court may provide relief as follows:
  - (a) Restrain the respondent from committing acts of domestic violence;
  - (b) Exclude the respondent from the dwelling that the parties share, from the residence, workplace, or school of the petitioner, or from the day care or school of a child;
  - (c) Prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;
  - (d) On the same basis as is provided in chapter 26.09 RCW, the court shall make residential provision with regard to minor children of the parties. However, parenting plans as specified in chapter 26.09 RCW shall not be required under this chapter;
  - (e) Order the respondent to participate in a domestic violence perpetrator treatment program approved under RCW 26.50.150;
  - (f) Order other relief as it deems necessary for the protection of the petitioner and other family or household members sought to be protected, including orders or directives to a peace officer, as allowed under this chapter;

(g) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees or limited license legal technician fees when such fees are incurred by a person licensed and practicing in accordance with the state supreme court's admission to practice rule 28, the limited practice rule for limited license legal technicians;

(h) Restrain the respondent from having any contact with the victim of domestic violence or the victim's children or members of the victim's household;

(i) Restrain the respondent from harassing, following, keeping under physical or electronic surveillance, (~~cyberstalking~~) cyber harassment as defined in RCW 9.61.260 (as recodified by this act), and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260;

(j) Require the respondent to submit to electronic monitoring. The order shall specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

(k) Consider the provisions of RCW 9.41.800;

(l) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent and may prohibit the respondent from interfering with the petitioner's efforts to remove the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found;

(m) Order use of a vehicle; and

(n) Enter an order restricting the respondent from engaging in abusive litigation as set forth in chapter 26.51 RCW. A petitioner may request this relief in the petition or by separate motion. A petitioner may request this relief by separate motion at any time within five years of the date the order for protection is entered even if the order has since expired. A stand-alone motion for an order restricting abusive litigation may be brought by a party who meets the requirements of chapter 26.51 RCW regardless of whether the party has previously sought an order for protection under this chapter, provided the motion is made within five years of the date the order that made a finding of domestic violence was entered. In cases where a finding of domestic violence was entered pursuant to an order under chapter 26.09, 26.26, or 26.26A RCW, a motion for an order restricting abusive litigation may be brought under the family law case or as a stand-alone action filed under this chapter, when it is not reasonable or practical to file under the family law case.

(2) If a protection order restrains the respondent from contacting the respondent's minor children the restraint shall be for a fixed period not to exceed one year. This limitation is not applicable to orders for protection issued under chapter 26.09, 26.10, 26.26A, or 26.26B RCW. With regard to other relief, if the petitioner has petitioned for relief on his or her own behalf or on behalf of the petitioner's family or household members or minor children, and the court finds that the respondent is likely to resume acts of domestic violence against the petitioner or the petitioner's family or household members or minor children when the order expires, the court may either grant relief for a fixed period or enter a permanent order of protection.

If the petitioner has petitioned for relief on behalf of the respondent's minor children, the court shall advise the petitioner that if the petitioner wants to continue protection for a period beyond one year the petitioner may either petition for renewal pursuant to the provisions of this chapter or may seek relief pursuant to the provisions of chapter 26.09, 26.26A, or 26.26B RCW.

(3) If the court grants an order for a fixed time period, the petitioner may apply for renewal of the order by filing a petition for renewal at any time within the three months before the order expires. The petition for renewal shall state the reasons why the petitioner seeks to renew the protection order. Upon receipt of the petition for renewal the court shall order a hearing which shall be not later than ~~((fourteen))~~ 14 days from the date of the order. Except as provided in RCW 26.50.085, personal service shall be made on the respondent not less than five days before the hearing. If timely service cannot be made the court shall set a new hearing date and shall either require additional attempts at obtaining personal service or permit service by publication as provided in RCW 26.50.085 or by mail as provided in RCW 26.50.123. If the court permits service by publication or mail, the court shall set the new hearing date not later than ~~((twenty-four))~~ 24 days from the date of the order. If the order expires because timely service cannot be made the court shall grant an ex parte order of protection as provided in RCW 26.50.070. The court shall grant the petition for renewal unless the respondent proves by a preponderance of the evidence that the respondent will not resume acts of domestic violence against the petitioner or the petitioner's children or family or household members when the order expires. The court may renew the protection order for another fixed time period or may enter a permanent order as provided in this section. The court may award court costs, service fees, and reasonable attorneys' fees as provided in subsection (1)(g) of this section.

(4) In providing relief under this chapter, the court may realign the designation of the parties as "petitioner" and "respondent" where the court finds that the original petitioner is the abuser and the original respondent is the victim of domestic violence and may issue an ex parte temporary order for protection in accordance with RCW 26.50.070 on behalf of the victim until the victim is able to prepare a petition for an order for protection in accordance with RCW 26.50.030.

(5) Except as provided in subsection (4) of this section, no order for protection shall grant relief to any party except upon notice to the respondent and hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with RCW 26.50.050.

(6) The court order shall specify the date the order expires if any. The court order shall also state whether the court issued the protection order following personal service, service by publication, or service by mail and whether the court has approved service by publication or mail of an order issued under this section.

(7) If the court declines to issue an order for protection or declines to renew an order for protection, the court shall state in writing on the order the particular reasons for the court's denial.

**Sec. 17.** RCW 26.50.070 and 2019 c 245 s 14 are each amended to read as follows:

(1) Where an application under this section alleges that irreparable injury could result from domestic violence if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary order for protection, pending a full hearing, and grant relief as the court deems proper, including an order:

(a) Restraining any party from committing acts of domestic violence;

(b) Restraining any party from going onto the grounds of or entering the dwelling that the parties share, from the residence, workplace, or school of the other, or from the day care or school of a child until further order of the court;

(c) Prohibiting any party from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(d) Restraining any party from interfering with the other's custody of the minor children or from removing the children from the jurisdiction of the court;

(e) Restraining any party from having any contact with the victim of domestic violence or the victim's children or members of the victim's household; and

(f) Restraining the respondent from harassing, following, keeping under physical or electronic surveillance, ~~((cyberstalking))~~ cyber harassment as defined in RCW 9.61.260 (as recodified by this act), and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of a victim of domestic violence, the victim's children, or members of the victim's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260.

(2) In issuing the order, the court shall consider the provisions of RCW 9.41.800, and shall order the respondent to surrender, and prohibit the respondent from possessing, all firearms, dangerous weapons, and any concealed pistol license as required in RCW 9.41.800.

(3) Irreparable injury under this section includes but is not limited to situations in which the respondent has recently threatened petitioner with bodily injury or has engaged in acts of domestic violence against the petitioner.

(4) The court shall hold an ex parte hearing in person or by telephone on the day the petition is filed or on the following judicial day.

(5) An ex parte temporary order for protection shall be effective for a fixed period not to exceed ~~((fourteen))~~ 14 days or ~~((twenty-four))~~ 24 days if the court has permitted service by publication under RCW 26.50.085 or by mail under RCW 26.50.123. The ex parte temporary order may be reissued. A full hearing, as provided in this chapter, shall be set for not later than ~~((fourteen))~~ 14 days from the issuance of the ex parte temporary order or not later than ~~((twenty-four))~~ 24 days if service by publication or by mail is permitted. Except as

provided in RCW 26.50.050, 26.50.085, and 26.50.123, the respondent shall be personally served with a copy of the ex parte temporary order along with a copy of the petition and notice of the date set for the hearing.

(6) Any order issued under this section shall contain the date and time of issuance and the expiration date and shall be entered into a statewide judicial information system by the clerk of the court within one judicial day after issuance.

(7) If the court declines to issue an ex parte temporary order for protection the court shall state the particular reasons for the court's denial. The court's denial of a motion for an ex parte temporary order for protection shall be filed with the court.

NEW SECTION. **Sec. 18.** Sections 7, 10, 12, 14, 16, and 17 of this act expire July 1, 2022.

NEW SECTION. **Sec. 19.** Sections 8, 9, 11, 13, and 15 of this act take effect July 1, 2022.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 232

[Substitute Senate Bill 5644]

### BEHAVIORAL HEALTH CO-RESPONSE SERVICES—BEST PRACTICES

AN ACT Relating to providing quality behavioral health co-response services; adding a new section to chapter 71.24 RCW; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds that behavioral health co-response has experienced a surge in popularity in Washington state in the past five years. The legislature recognizes the importance of training for those involved in co-responder programs to promote high standards within programs and to enhance the skills of those already working in this field. The purpose of this act is to develop best practice recommendations and a model training curriculum relevant to first responders and behavioral health professionals working on co-response teams, to create ongoing learning opportunities for emerging and established co-response programs, and to develop the workforce to fill future co-responder hiring needs.

NEW SECTION. **Sec. 2.** A new section is added to chapter 71.24 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the University of Washington shall, in consultation and collaboration with the co-responder outreach alliance and other stakeholders as appropriate in the field of co-response:

(a) Establish regular opportunities for police, fire, emergency medical services, peer counselors, and behavioral health personnel working in co-response to convene for activities such as training, exchanging information and

best practices around the state and nationally, and providing the University of Washington with assistance with activities described in this section;

(b) Subject to the availability of amounts appropriated for this specific purpose, administer a small budget to help defray costs for training and professional development, which may include expenses related to attending or hosting site visits with experienced co-response teams;

(c) Develop an assessment to be provided to the governor and legislature by June 30, 2023, describing and analyzing the following:

(i) Existing capacity and shortfalls across the state in co-response teams and the co-response workforce;

(ii) Current alignment of co-response teams with cities, counties, behavioral health administrative services organizations, and call centers; distribution among police, fire, and EMS-based co-response models; and desired alignment;

(iii) Current funding strategies for co-response teams and identification of federal funding opportunities;

(iv) Current data systems utilized and an assessment of their effectiveness for use by co-responders, program planners, and policymakers;

(v) Current training practices and identification of future state training practices;

(vi) Alignment with designated crisis responder activities;

(vii) Recommendations concerning best practices to prepare co-responders to achieve objectives and meet future state crisis system needs, including those of the 988 system;

(viii) Recommendations to align co-responder activities with efforts to reform ways in which persons experiencing a behavioral health crisis interact with the criminal justice system; and

(ix) Assessment of training and educational needs for current and future co-responder workforce;

(d) Beginning in calendar year 2023, begin development of model training curricula for individuals participating in co-response teams; and

(e) Beginning in calendar year 2023, host an annual statewide conference that draws state and national co-responders.

(2) Stakeholders in the field of co-response may include, but are not limited to, the Washington association of designated crisis responders; state associations representing police, fire, and emergency medical services personnel; the Washington council on behavioral health; the state enhanced 911 system; 988 crisis call centers; and the peer workforce alliance.

Passed by the Senate March 8, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 233

[Second Substitute Senate Bill 5649]

### PAID FAMILY AND MEDICAL LEAVE ACT—MODIFICATION

AN ACT Relating to modifying the Washington state paid family and medical leave act; amending RCW 50A.05.010, 50A.05.090, 50A.15.020, 50A.25.020, 50A.15.040, 50A.05.050,

44.44.040, and 50A.25.070; adding new sections to chapter 50A.05 RCW; creating new sections; providing expiration dates; and declaring an emergency.

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

**Sec. 1.** RCW 50A.05.010 and 2021 c 232 s 2 are each amended to read as follows:

Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

(1)(a) "Casual labor" means work that:

(i) Is performed infrequently and irregularly; and

(ii) If performed for an employer, does not promote or advance the employer's customary trade or business.

(b) For purposes of casual labor:

(i) "Infrequently" means work performed twelve or fewer times per calendar quarter; and

(ii) "Irregularly" means work performed not on a consistent cadence.

(2) "Child" includes a biological, adopted, or foster child, a stepchild, a child's spouse, or a child to whom the employee stands in loco parentis, is a legal guardian, or is a de facto parent, regardless of age or dependency status.

(3) "Commissioner" means the commissioner of the department or the commissioner's designee.

(4) "Department" means the employment security department.

(5)(a) "Employee" means an individual who is in the employment of an employer.

(b) "Employee" does not include employees of the United States of America.

(6) "Employee's average weekly wage" means the quotient derived by dividing the employee's total wages during the two quarters of the employee's qualifying period in which total wages were highest by twenty-six. If the result is not a multiple of one dollar, the department must round the result to the next lower multiple of one dollar.

(7)(a) "Employer" means: (i) Any individual or type of organization, including any partnership, association, trust, estate, joint stock company, insurance company, limited liability company, or corporation, whether domestic or foreign, or the receiver, trustee in bankruptcy, trustee, or the legal representative of a deceased person, having any person in employment or, having become an employer, has not ceased to be an employer as provided in this title; (ii) the state, state institutions, and state agencies; and (iii) any unit of local government including, but not limited to, a county, city, town, municipal corporation, quasi-municipal corporation, or political subdivision.

(b) "Employer" does not include the United States of America.

(8)(a) "Employment" means personal service, of whatever nature, unlimited by the relationship of master and servant as known to the common law or any other legal relationship performed for wages or under any contract calling for the performance of personal services, written or oral, express or implied. The term "employment" includes an individual's entire service performed within or without or both within and without this state, if:

(i) The service is localized in this state; or

(ii) The service is not localized in any state, but some of the service is performed in this state; and

(A) The base of operations of the employee is in the state, or if there is no base of operations, then the place from which such service is directed or controlled is in this state; or

(B) The base of operations or place from which such service is directed or controlled is not in any state in which some part of the service is performed, but the individual's residence is in this state.

(b) "Employment" does not include:

(i) Self-employed individuals;

(ii) Casual labor;

(iii) Services for remuneration when it is shown to the satisfaction of the commissioner that:

(A)(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service; or

(B) As a separate alternative:

(I) Such individual has been and will continue to be free from control or direction over the performance of such service, both under his or her contract of service and in fact; and

(II) Such service is either outside the usual course of business for which such service is performed, or that such service is performed outside of all the places of business of the enterprises for which such service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed; and

(III) Such individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or such individual has a principal place of business for the work the individual is conducting that is eligible for a business deduction for federal income tax purposes; and

(IV) On the effective date of the contract of service, such individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting; and

(V) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, such individual has established an account with the department of revenue, and other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington; and

(VI) On the effective date of the contract of service, such individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business which the individual is conducting; or



(iv) Services that require registration under chapter 18.27 RCW or licensing under chapter 19.28 RCW rendered by an individual when:

(A) The individual has been and will continue to be free from control or direction over the performance of the service, both under the contract of service and in fact;

(B) The service is either outside the usual course of business for which the service is performed, or the service is performed outside of all the places of business of the enterprise for which the service is performed, or the individual is responsible, both under the contract and in fact, for the costs of the principal place of business from which the service is performed;

(C) The individual is customarily engaged in an independently established trade, occupation, profession, or business, of the same nature as that involved in the contract of service, or the individual has a principal place of business for the business the individual is conducting that is eligible for a business deduction for federal income tax purposes, other than that furnished by the employer for which the business has contracted to furnish services;

(D) On the effective date of the contract of service, the individual is responsible for filing at the next applicable filing period, both under the contract of service and in fact, a schedule of expenses with the internal revenue service for the type of business the individual is conducting;

(E) On the effective date of the contract of service, or within a reasonable period after the effective date of the contract, the individual has an active and valid certificate of registration with the department of revenue, and an active and valid account with any other state agencies as required by the particular case, for the business the individual is conducting for the payment of all state taxes normally paid by employers and businesses and has registered for and received a unified business identifier number from the state of Washington;

(F) On the effective date of the contract of service, the individual is maintaining a separate set of books or records that reflect all items of income and expenses of the business that the individual is conducting; and

(G) On the effective date of the contract of service, the individual has a valid contractor registration pursuant to chapter 18.27 RCW or an electrical contractor license pursuant to chapter 19.28 RCW.

(9) "Employment benefits" means all benefits provided or made available to employees by an employer, including group life insurance, health insurance, disability insurance, sick leave, annual leave, educational benefits, and pensions.

(10) "Family leave" means any leave taken by an employee from work:

(a) To participate in providing care, including physical or psychological care, for a family member of the employee made necessary by a serious health condition of the family member;

(b) To bond with the employee's child during the first twelve months after the child's birth, or the first twelve months after the placement of a child under the age of eighteen with the employee; ~~((☞))~~

(c) Because of any qualifying exigency as permitted under the federal family and medical leave act, 29 U.S.C. Sec. 2612(a)(1)(E) and 29 C.F.R. Sec. 825.126(b)(1) through (9), as they existed on October 19, 2017, for family members as defined in subsection (11) of this section; or

(d) During the seven calendar days following the death of the family member for whom the employee:

(i) Would have qualified for medical leave under subsection (15) of this section for the birth of their child; or

(ii) Would have qualified for family leave under (b) of this subsection.

(11) "Family member" means a child, grandchild, grandparent, parent, sibling, or spouse of an employee, and also includes any individual who regularly resides in the employee's home or where the relationship creates an expectation that the employee care for the person, and that individual depends on the employee for care. "Family member" includes any individual who regularly resides in the employee's home, except that it does not include an individual who simply resides in the same home with no expectation that the employee care for the individual.

(12) "Grandchild" means a child of the employee's child.

(13) "Grandparent" means a parent of the employee's parent.

(14) "Health care provider" means: (a) A person licensed as a physician under chapter 18.71 RCW or an osteopathic physician and surgeon under chapter 18.57 RCW; (b) a person licensed as an advanced registered nurse practitioner under chapter 18.79 RCW; or (c) any other person determined by the commissioner to be capable of providing health care services.

(15) "Medical leave" means any leave taken by an employee from work made necessary by the employee's own serious health condition.

(16) "Paid time off" includes vacation leave, personal leave, medical leave, sick leave, compensatory leave, or any other paid leave offered by an employer under the employer's established policy.

(17) "Parent" means the biological, adoptive, de facto, or foster parent, stepparent, or legal guardian of an employee or the employee's spouse, or an individual who stood in loco parentis to an employee when the employee was a child.

(18) "Period of incapacity" means an inability to work, attend school, or perform other regular daily activities because of a serious health condition, treatment of that condition or recovery from it, or subsequent treatment in connection with such inpatient care.

(19) "Postnatal" means the first six weeks after birth.

(20) "Premium" or "premiums" means the payments required by RCW 50A.10.030 and paid to the department for deposit in the family and medical leave insurance account under RCW 50A.05.070.

~~((20))~~ (21) "Qualifying period" means the first four of the last five completed calendar quarters or, if eligibility is not established, the last four completed calendar quarters immediately preceding the application for leave.

~~((21))~~ (22)(a) "Remuneration" means all compensation paid for personal services including commissions and bonuses and the cash value of all compensation paid in any medium other than cash.

(b) Previously accrued compensation, other than severance pay or payments received pursuant to plant closure agreements, when assigned to a specific period of time by virtue of a collective bargaining agreement, individual employment contract, customary trade practice, or request of the individual compensated, is considered remuneration for the period to which it is assigned. Assignment clearly occurs when the compensation serves to make the individual eligible for all regular fringe benefits for the period to which the compensation is assigned.

(c) Remuneration also includes settlements or other proceeds received by an individual as a result of a negotiated settlement for termination of an individual written employment contract prior to its expiration date. The proceeds are deemed assigned in the same intervals and in the same amount for each interval as compensation was allocated under the contract.

(d) Remuneration does not include:

(i) The payment of tips;

(ii) Supplemental benefit payments made by an employer to an employee in addition to any paid family or medical leave benefits received by the employee; or

(iii) Payments to members of the armed forces of the United States, including the organized militia of the state of Washington, for the performance of duty for periods not exceeding seventy-two hours at a time.

~~((22))~~ (23)(a) "Serious health condition" means an illness, injury, impairment, or physical or mental condition that involves:

(i) Inpatient care in a hospital, hospice, or residential medical care facility, including any period of incapacity; or

(ii) Continuing treatment by a health care provider. A serious health condition involving continuing treatment by a health care provider includes any one or more of the following:

(A) A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves:

(I) Treatment two or more times, within thirty days of the first day of incapacity, unless extenuating circumstances exist, by a health care provider, by a nurse or physician's assistant under direct supervision of a health care provider, or by a provider of health care services, such as a physical therapist, under orders of, or on referral by, a health care provider; or

(II) Treatment by a health care provider on at least one occasion which results in a regimen of continuing treatment under the supervision of the health care provider;

(B) Any period of incapacity due to pregnancy, or for prenatal care;

(C) Any period of incapacity or treatment for such incapacity due to a chronic serious health condition. A chronic serious health condition is one which:

(I) Requires periodic visits, defined as at least twice a year, for treatment by a health care provider, or by a nurse under direct supervision of a health care provider;

(II) Continues over an extended period of time, including recurring episodes of a single underlying condition; and

(III) May cause episodic rather than a continuing period of incapacity, including asthma, diabetes, and epilepsy;

(D) A period of incapacity which is permanent or long term due to a condition for which treatment may not be effective. The employee or family member must be under the continuing supervision of, but need not be receiving active treatment by, a health care provider, including Alzheimer's, a severe stroke, or the terminal stages of a disease; or

(E) Any period of absence to receive multiple treatments, including any period of recovery from the treatments, by a health care provider or by a

provider of health care services under orders of, or on referral by, a health care provider, either for: (I) Restorative surgery after an accident or other injury; or (II) a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days in the absence of medical intervention or treatment, such as cancer, severe arthritis, or kidney disease.

(b) The requirement in (a)(i) and (ii) of this subsection for treatment by a health care provider means an in-person visit to a health care provider. The first, or only, in-person treatment visit must take place within seven days of the first day of incapacity.

(c) Whether additional treatment visits or a regimen of continuing treatment is necessary within the thirty-day period shall be determined by the health care provider.

(d) The term extenuating circumstances in (a)(ii)(A)(I) of this subsection means circumstances beyond the employee's control that prevent the follow-up visit from occurring as planned by the health care provider. Whether a given set of circumstances are extenuating depends on the facts. For example, extenuating circumstances exist if a health care provider determines that a second in-person visit is needed within the thirty-day period, but the health care provider does not have any available appointments during that time period.

(e) Treatment for purposes of (a) of this subsection includes, but is not limited to, examinations to determine if a serious health condition exists and evaluations of the condition. Treatment does not include routine physical examinations, eye examinations, or dental examinations. Under (a)(ii)(A)(II) of this subsection, a regimen of continuing treatment includes, but is not limited to, a course of prescription medication, such as an antibiotic, or therapy requiring special equipment to resolve or alleviate the health condition, such as oxygen. A regimen of continuing treatment that includes taking over-the-counter medications, such as aspirin, antihistamines, or salves, or bed rest, drinking fluids, exercise, and other similar activities that can be initiated without a visit to a health care provider, is not, by itself, sufficient to constitute a regimen of continuing treatment for purposes of this title.

(f) Conditions for which cosmetic treatments are administered, such as most treatments for acne or plastic surgery, are not serious health conditions unless inpatient hospital care is required or unless complications develop. Ordinarily, unless complications arise, the common cold, the flu, ear aches, upset stomach, minor ulcers, headaches other than migraines, routine dental or orthodontia problems, and periodontal disease are examples of conditions that are not serious health conditions and do not qualify for leave under this title. Restorative dental or plastic surgery after an injury or removal of cancerous growths are serious health conditions provided all the other conditions of this section are met. Mental illness resulting from stress or allergies may be serious health conditions, but only if all the conditions of this section are met.

(g)(i) Substance abuse may be a serious health condition if the conditions of this section are met. However, leave may only be taken for treatment for substance abuse by a health care provider or by a licensed substance abuse treatment provider. Absence because of the employee's use of the substance, rather than for treatment, does not qualify for leave under this title.

(ii) Treatment for substance abuse does not prevent an employer from taking employment action against an employee. The employer may not take action

against the employee because the employee has exercised his or her right to take medical leave for treatment. However, if the employer has an established policy, applied in a nondiscriminatory manner that has been communicated to all employees, that provides under certain circumstances an employee may be terminated for substance abuse, pursuant to that policy the employee may be terminated whether or not the employee is presently taking medical leave. An employee may also take family leave to care for a covered family member who is receiving treatment for substance abuse. The employer may not take action against an employee who is providing care for a covered family member receiving treatment for substance abuse.

(h) Absences attributable to incapacity under (a)(ii)(B) or (C) of this subsection qualify for leave under this title even though the employee or the family member does not receive treatment from a health care provider during the absence, and even if the absence does not last more than three consecutive, full calendar days. For example, an employee with asthma may be unable to report for work due to the onset of an asthma attack or because the employee's health care provider has advised the employee to stay home when the pollen count exceeds a certain level. An employee who is pregnant may be unable to report to work because of severe morning sickness.

~~((23))~~ (24) "Service is localized in this state" has the same meaning as described in RCW 50.04.120.

~~((24))~~ (25) "Spouse" means a husband or wife, as the case may be, or state registered domestic partner.

~~((25))~~ (26) "State average weekly wage" means the most recent average weekly wage calculated under RCW 50.04.355 and available on January 1st of each year.

~~((26))~~ (27) "Supplemental benefit payments" means payments made by an employer to an employee as salary continuation or as paid time off. Such payments must be in addition to any paid family or medical leave benefits the employee is receiving.

~~((27))~~ (28) "Typical workweek hours" means:

(a) For an hourly employee, the average number of hours worked per week by an employee within the qualifying period; and

(b) Forty hours for a salaried employee, regardless of the number of hours the salaried employee typically works.

~~((28))~~ (29) "Wage" or "wages" means:

(a) For the purpose of premium assessment, the remuneration paid by an employer to an employee. The maximum wages subject to a premium assessment are those wages as set by the commissioner under RCW 50A.10.030;

(b) For the purpose of payment of benefits, the remuneration paid by one or more employers to an employee for employment during the employee's qualifying period. At the request of an employee, wages may be calculated on the basis of remuneration payable. The department shall notify each employee that wages are calculated on the basis of remuneration paid, but at the employee's request a redetermination may be performed and based on remuneration payable; and

(c) For the purpose of a self-employed person electing coverage under RCW 50A.10.010, the meaning is defined by rule.

**Sec. 2.** RCW 50A.05.090 and 2019 c 13 s 37 are each amended to read as follows:

(1) Nothing in this title requires any party to a collective bargaining agreement in existence on October 19, 2017, to reopen negotiations of the agreement or to apply any of the rights and responsibilities under this title unless and until the existing agreement is reopened or renegotiated by the parties or expires.

(2) This section expires December 31, 2023.

**Sec. 3.** RCW 50A.15.020 and 2020 c 125 s 4 are each amended to read as follows:

(1) Beginning January 1, 2020, family and medical leave are available and benefits are payable to a qualified employee under this section.

(a) Following a waiting period consisting of the first seven consecutive calendar days, benefits are payable when family or medical leave is required. However, no waiting period is required for leave for the birth or placement of a child, or for leave because of any qualifying exigency as defined under RCW 50A.05.010(10)(c). The waiting period begins the previous Sunday of the week when an otherwise eligible employee takes leave for the minimum claim duration under subsection (2)(c) of this section. Eligible employees may satisfy the waiting period requirement while simultaneously receiving paid time off for any part of the waiting period.

(b) Benefits may continue during the continuance of the need for family or medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title.

(2) The weekly benefit shall be prorated by the percentage of hours on leave compared to the number of hours provided as the typical workweek hours as defined in RCW 50A.05.010.

(a) The benefits in this section, if not a multiple of one dollar, shall be reduced to the next lower multiple of one dollar.

(b) Hours on leave claimed for benefits under this title, if not a multiple of one hour, shall be reduced to the next lower multiple of one hour.

(c) The minimum claim duration payment is for eight consecutive hours of leave.

(3)(a) The maximum duration of paid family leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks.

(b) The maximum duration of paid medical leave may not exceed twelve times the typical workweek hours during a period of fifty-two consecutive calendar weeks. This leave may be extended an additional two times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(c) An employee is not entitled to paid family and medical leave benefits under this title that exceeds a combined total of sixteen times the typical workweek hours. The combined total of family and medical leave may be extended to eighteen times the typical workweek hours if the employee experiences a serious health condition with a pregnancy that results in incapacity.

(4)(a) Any paid leave benefits under this chapter used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B) must

be medical leave, subject to the maximum and minimum weekly benefits, duration, and other conditions and limitations established in this title, unless the employee chooses to use family leave during the postnatal period.

(b) Certification of a serious health condition is not required for paid leave benefits used in the postnatal period by an employee eligible for benefits under RCW 50A.05.010(23)(a)(ii)(B).

(5) The weekly benefit for family and medical leave shall be determined as follows: If the employee's average weekly wage is: (a) Equal to or less than one-half of the state average weekly wage, then the benefit amount is equal to ninety percent of the employee's average weekly wage; or (b) greater than one-half of the state average weekly wage, then the benefit amount is the sum of: (i) Ninety percent of one-half of the state average weekly wage; and (ii) fifty percent of the difference of the employee's average weekly wage and one-half of the state average weekly wage.

~~((5))~~ (6)(a) The maximum weekly benefit for family and medical leave that occurs on or after January 1, 2020, shall be one thousand dollars. By September 30, 2020, and by each subsequent September 30th, the commissioner shall adjust the maximum weekly benefit amount to ninety percent of the state average weekly wage. The adjusted maximum weekly benefit amount takes effect on the following January 1st.

(b) The minimum weekly benefit shall not be less than one hundred dollars per week except that if the employee's average weekly wage at the time of family or medical leave is less than one hundred dollars per week, the weekly benefit shall be the employee's full wage.

**Sec. 4.** RCW 50A.25.020 and 2019 c 13 s 71 are each amended to read as follows:

(1) Any information or records concerning an individual or employer obtained by the department pursuant to the administration of this title shall be private and confidential, except as otherwise provided in this chapter or RCW 50A.05.040.

(2) This chapter does not create a rule of evidence.

(3) The department must publish, on its website, a current list of all employers that have approved voluntary plans under chapter 50A.30 RCW.

**NEW SECTION. Sec. 5.** A new section is added to chapter 50A.05 RCW to read as follows:

(1) The office of actuarial services is established within the department.

(2) The head of the office must be qualified by education and experience in the field of actuarial science.

**Sec. 6.** RCW 50A.15.040 and 2019 c 13 s 6 are each amended to read as follows:

(1) Family and medical leave insurance benefits are payable to an employee during a period in which the employee is unable to perform his or her regular or customary work because he or she is on family and medical leave if the employee:

(a) Files an application for benefits as required by rules adopted by the commissioner;

(b) Has met the eligibility requirements of RCW 50A.15.010 or the elective coverage requirements under RCW 50A.10.010;

(c) Consents to the disclosure of information or records deemed private and confidential under state law. Initial disclosure of this information and these records by another state agency to the department is solely for purposes related to the administration of this title. Further disclosure of this information or these records is subject to chapter 50A.25 RCW((;)) and RCW 50A.05.020(3)((;)) and ((RCW)) 50A.20.030;

(d) Provides his or her social security number;

(e) Provides a document authorizing the family member's or employee's health care provider, as applicable, to disclose the family member's or employee's health care information in the form of the certification of a serious health condition;

(f) Provides the employer from whom family and medical leave is to be taken with written notice of the employee's intention to take family leave in the same manner as an employee is required to provide notice in RCW 50A.15.030 and, in the employee's initial application for benefits, attests that written notice has been provided, unless notice has been waived by the employer under RCW 50A.15.030(3); and

(g) Provides documentation of a military exigency, if requested by the employer.

(2) An employee who is not in employment for an employer at the time of filing an application for benefits is exempt from subsection (1)(f) and (g) of this section.

(3) Beginning July 1, 2022, and until the 12 months after the end of the state of emergency declared by the governor due to COVID-19, the department must ask the employee applicant whether their family or medical leave is related to the COVID-19 pandemic. Initial disclosure of this information is solely for purposes related to the administration of this title, including monitoring potential impacts on the solvency and stability of the family and medical leave insurance account created in RCW 50A.05.070. Further disclosure of this information or these records is subject to chapter 50A.25 RCW and RCW 50A.05.020(3) and 50A.20.030.

**Sec. 7.** RCW 50A.05.050 and 2017 3rd sp.s. c 5 s 86 are each amended to read as follows:

(1) Beginning December 1, 2020, and annually thereafter, the department shall report to the legislature on the entire program, including:

((+)) (a) Projected and actual program participation;

((2)) (b) Premium rates;

((3)) (c) Fund balances;

((4)) (d) Benefits paid;

((5)) (e) Demographic information on program participants, including income, gender, race, ethnicity, geographic distribution by county and legislative district, and employment sector;

((6)) (f) Costs of providing benefits;

((7)) (g) Elective coverage participation;

((8)) (h) Voluntary plan participation;

((9)) (i) Outreach efforts; and

((+0)) (j) Small business assistance.

(2)(a) Beginning January 1, 2023, the office of actuarial services created in section 5 of this act must annually report, by November 1st, to the advisory



committee in RCW 50A.05.030 on the experience and financial condition of the family and medical leave insurance account, and the lowest future premium rates necessary to maintain solvency of the family and medical leave insurance account in the next four years while limiting fluctuation in premium rates.

(b) For calendar years 2023 through 2028, the annual reports in (a) of this subsection must be submitted to the appropriate committees of the legislature in compliance with RCW 43.01.036.

(3) Beginning October 1, 2023, the department must report quarterly to the advisory committee in RCW 50A.05.030 on premium collections, benefit payments, the family and medical leave insurance account balance, and other program expenditures.

**NEW SECTION. Sec. 8.** A new section is added to chapter 50A.05 RCW to read as follows:

(1) The office of financial management must enter into a contract with a public or private entity for actuarial services to provide a report to the appropriate committees of the legislature by October 1, 2022, on the following:

(a) The experience and financial condition of the family and medical leave insurance account created in RCW 50A.05.070;

(b) Any recommendations for options to modify the provisions of chapter 50A.10 RCW to maintain the long-term stability and solvency of the family and medical leave insurance account; and

(c) A comparison of the provisions of RCW 50A.10.030 with similar provisions in those states with both paid medical leave insurance and paid family leave insurance programs.

(2) The contract is exempt from the competitive procurement requirements in chapter 39.26 RCW.

(3) The report in this section must comply with RCW 43.01.036.

(4) This section expires December 31, 2023.

**Sec. 9.** RCW 44.44.040 and 2019 c 363 s 22 are each amended to read as follows:

The office of the state actuary shall have the following powers and duties:

(1) Perform all actuarial services for the department of retirement systems, including all studies required by law.

(2) Advise the legislature and the governor regarding pension benefit provisions, and funding policies and investment policies of the state investment board.

(3) Consult with the legislature and the governor concerning determination of actuarial assumptions used by the department of retirement systems.

(4) Prepare a report, to be known as the actuarial fiscal note, on each pension bill introduced in the legislature which briefly explains the financial impact of the bill. The actuarial fiscal note shall include: (a) The statutorily required contribution for the biennium and the following twenty-five years; (b) the biennial cost of the increased benefits if these exceed the required contribution; and (c) any change in the present value of the unfunded accrued benefits. An actuarial fiscal note shall also be prepared for all amendments which are offered in committee or on the floor of the house of representatives or the senate to any pension bill. However, a majority of the members present may

suspend the requirement for an actuarial fiscal note for amendments offered on the floor of the house of representatives or the senate.

(5) Provide such actuarial services to the legislature as may be requested from time to time.

(6) Provide staff and assistance to the committee established under RCW 41.04.276.

(7) Provide actuarial assistance to the law enforcement officers' and firefighters' plan 2 retirement board as provided in chapter 2, Laws of 2003. Reimbursement for services shall be made to the state actuary under RCW 39.34.130 and section 5(5), chapter 2, Laws of 2003.

(8) Provide actuarial assistance to the committee on advanced tuition payment pursuant to chapter 28B.95 RCW, including recommending a tuition unit price to the committee on advanced tuition payment to be used in the ensuing enrollment period. Reimbursement for services shall be made to the state actuary under RCW 39.34.130.

(9) Provide actuarial assistance to the long-term services and supports trust commission pursuant to chapter 50B.04 RCW. Reimbursement for services shall be made to the state actuary under RCW 39.34.130.

(10) Provide actuarial assistance, as requested by the employment security department or the office of financial management, to the employment security department related to the family and medical leave program in Title 50A RCW.

**Sec. 10.** RCW 50A.25.070 and 2020 c 125 s 8 are each amended to read as follows:

(1) The department may enter into data-sharing contracts and may disclose records and information deemed confidential to state or local government agencies under this chapter only if permitted under subsection (2) of this section and RCW 50A.25.090. A state or local government agency must need the records or information for an official purpose and must also provide:

(a) An application in writing to the department for the records or information containing a statement of the official purposes for which the state or local government agency needs the information or records and specifically identify the records or information sought from the department; and

(b) A written verification of the need for the specific information from the director, commissioner, chief executive, or other official of the requesting state or local government agency either on the application or on a separate document.

(2) The department may disclose information or records deemed confidential under this chapter to the following state or local government agencies:

(a) To the department of social and health services to identify child support obligations as defined in RCW 50A.15.080;

(b) To the department of revenue to determine potential tax liability or employer compliance with registration and licensing requirements;

(c) To the department of labor and industries to compare records or information to detect improper or fraudulent claims;

(d) To the office of financial management for the purpose of conducting periodic salary or fringe benefit studies pursuant to law or for the actuarial services created under this act;

(e) To the office of the state treasurer and any financial or banking institutions deemed necessary by the office of the state treasurer and the department for the proper administration of funds;

(f) To the office of the attorney general for purposes of legal representation;

(g) To a county clerk for the purpose of RCW 9.94A.760 if requested by the county clerk's office;

(h) To the office of administrative hearings for the purpose of administering the administrative appeal process;

(i) To the department of enterprise services for the purpose of agency administration and operations; ~~((and))~~

(j) To the consolidated technology services agency for the purpose of enterprise technology support;

(k) To the office of the state actuary for the purpose of performing actuarial services to assess the financial stability and solvency of the family and medical leave program, and specifically the family and medical leave insurance account created in RCW 50A.05.070; and

(l) To the joint legislative audit and review committee, in accordance with RCW 44.28.110, for the purpose of conducting performance audits.

NEW SECTION. Sec. 11. (1)(a) A legislative task force on paid family and medical leave insurance premiums is established, with members as provided in this subsection.

(i) The president of the senate must appoint two members from each of the two largest caucuses of the senate.

(ii) The speaker of the house of representatives must appoint two members from each of the two largest caucuses of the house of representatives.

(iii) The voting members of the advisory committee in RCW 50A.05.030.

(iv) The governor shall appoint two members, one representing the governor's office and one representing the employment security department.

(b) The task force must choose its cochairs from among its legislative membership described in (a)(i) and (ii) of this subsection.

(2) The task force must review the reports submitted under RCW 50A.05.050 and make recommendations for any legislative modifications to the provisions of chapter 50A.10 RCW to ensure the lowest future premium rates necessary to maintain solvency of the family and medical leave insurance account created in RCW 50A.05.070 in the next four years while limiting fluctuation in family and medical leave insurance premium rates.

(3) Staff support for the task force must be provided by the senate committee services and the house of representatives office of program research.

(4) Legislative members of the task force are reimbursed for travel expenses in accordance with RCW 44.04.120. Nonlegislative members are not entitled to be reimbursed for travel expenses if they are elected officials or are participating on behalf of an employer, governmental entity, or other organization. Any reimbursement for other nonlegislative members is subject to chapter 43.03 RCW.

(5) The expenses of the committee must be paid jointly by the senate and the house of representatives. Task force expenditures are subject to approval by the senate facilities and operations committee and the house of representatives executive rules committee, or their successor committees.

(6) The task force shall issue a final report on its findings and recommendations to the governor and the appropriate committees of the legislature by December 30, 2022.

(7) This section expires January 4, 2023.

**NEW SECTION. Sec. 12.** (1) By October 1, 2024, the joint legislative audit and review committee, in consultation with the employment security department and the advisory committee in RCW 50A.05.030, must conduct a performance audit analyzing the implementation of the paid family and medical leave insurance program. The analysis must include, at a minimum, the following components:

(a) Evaluate the extent to which the department makes fair and timely decisions, and communicates with employers and workers in a timely, responsive, and accurate manner;

(b) Determine if current organization and service delivery models are the most efficient available;

(c) Determine whether current initiatives improve service delivery, meet the needs of current and future workers, and are measurable;

(d) Evaluate whether the department prepares financial information for the account under RCW 50A.05.070 in accordance with generally accepted accounting principles;

(e) Evaluate the solvency of the account under RCW 50A.05.070 taking into account insurance risks and standard accounting principles; and

(f) Make recommendations regarding administrative changes that should be made to improve efficiency while maintaining quality service to help address system costs and identify any needed legislative changes to implement these recommendations.

(2) The joint legislative audit and review committee may contract with an outside consulting firm with expertise in insurance or social insurance and insurance principles.

(3) The joint legislative audit and review committee must submit a final report on their findings to the appropriate committees of the legislature by October 1, 2024, and must submit a progress report by October 1, 2023.

(4) This section expires December 31, 2025.

**NEW SECTION. Sec. 13.** Section 8 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.

**NEW SECTION. Sec. 14.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 234

[Senate Bill 5657]

## LONG-TERM JUVENILE INSTITUTIONS—COMPUTER SCIENCE INSTRUCTION

AN ACT Relating to computer science instruction in state long-term juvenile institutions; adding a new section to chapter 28A.190 RCW; and creating new sections.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the benefit of computer science and computational thinking in education, not only with respect to educational development, but also in cultivating the skills needed to compete and excel in our state's career landscape. The legislature also recognizes the heightened importance of providing access to computer science education to youth in secure facilities, where access to innovative and engaging learning experiences can: (1) Build in-demand skills to prepare students for future employment; (2) help students transition back to their communities following incarceration; and (3) prevent recidivism. However, the legislature understands that state long-term juvenile institutions have unique environmental and facility limitations that affect the ability to deliver some components of computer science instruction in a secure manner. Therefore, the legislature intends to require school districts that operate institutional education programs in state long-term juvenile institutions to provide access to computer science courses, while allowing the flexibility to adjust curriculum and instructional activities when necessary.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28A.190 RCW to read as follows:

(1) Subject to the availability and sufficiency of amounts appropriated for this specific purpose in addition to the amounts appropriated through the institutional education funding formulas specified in the omnibus appropriations act, and subject to staffing availability, each school district operating an institutional education program for youth in state long-term juvenile institutions must provide an opportunity to access an elective computer science course in accordance with RCW 28A.230.300(1).

(2) If, due to facility or technology security limitations, a school district cannot provide a computer science course that is fully aligned with all state computer science learning standards, the school district must adapt the course curriculum and instructional activities to align with as many state computer science learning standards as possible.

(3) Each school district operating an institutional education program for youth in state long-term juvenile institutions must annually report the following information to the office of the superintendent of public instruction:

(a) Data indicating the number of students who enrolled in a computer science course in the prior school year, disaggregated by gender, race, ethnicity, and age;

(b) A brief description of each computer science course and whether the course is fully aligned to state computer science learning standards; and

(c) A brief description of any facility or technology security limitations that prevent the school district from offering a course fully aligned with state computer science learning standards, and the actions the district is taking to address those limitations.

**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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 235

[Senate Bill 5687]

### TRAFFIC SAFETY—VARIOUS PROVISIONS

AN ACT Relating to certain traffic safety improvements; amending RCW 46.61.415 and 46.61.405; and reenacting and amending RCW 46.61.250.

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

**Sec. 1.** RCW 46.61.415 and 2013 c 264 s 1 are each amended to read as follows:

(1) Whenever local authorities in their respective jurisdictions determine on the basis of an engineering and traffic investigation that the maximum speed permitted under RCW 46.61.400 or 46.61.440 is greater or less than is reasonable and safe under the conditions found to exist upon a highway or part of a highway, the local authority may determine and declare a reasonable and safe maximum limit thereon which

(a) Decreases the limit at intersections; or

(b) Increases the limit but not to more than ~~((sixty))~~ 60 miles per hour; or

(c) Decreases the limit but not to less than ~~((twenty))~~ 20 miles per hour.

(2) Local authorities in their respective jurisdictions shall determine by an engineering and traffic investigation the proper maximum speed for all arterial streets and shall declare a reasonable and safe maximum limit thereon which may be greater or less than the maximum speed permitted under RCW 46.61.400(2) but shall not exceed ~~((sixty))~~ 60 miles per hour.

(3)(a) ~~((Cities and towns))~~ Local authorities in their respective jurisdictions may establish a maximum speed limit of ~~((twenty))~~ 20 miles per hour on a nonarterial highway~~(;)~~ or part of a nonarterial highway~~((; that is within a residencee district or business district))~~.

(b) A speed limit established under this subsection by a ~~((city or town))~~ local authority does not need to be determined on the basis of an engineering and traffic investigation if the ~~((city or town))~~ local authority has developed procedures regarding establishing a maximum speed limit under this subsection. Any speed limit established under this subsection may be canceled within one year of its establishment, and the previous speed limit reestablished, without an engineering and traffic investigation. This subsection does not otherwise affect the requirement that ~~((cities and towns))~~ local authorities conduct an engineering and traffic investigation to determine whether to increase speed limits.

(c) When establishing speed limits under this subsection, ~~((cities and towns))~~ local authorities shall consult the manual on uniform traffic control devices as adopted by the Washington state department of transportation.

(4) The secretary of transportation is authorized to establish speed limits on county roads and city and town streets as shall be necessary to conform with any federal requirements which are a prescribed condition for the allocation of federal funds to the state.

(5) Any altered limit established as hereinbefore authorized shall be effective when appropriate signs giving notice thereof are erected. Such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon such signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective when posted upon appropriate fixed or variable signs.

(6) Any alteration of maximum limits on state highways within incorporated cities or towns by local authorities shall not be effective until such alteration has been approved by the secretary of transportation.

**Sec. 2.** RCW 46.61.405 and 1987 c 397 s 3 are each amended to read as follows:

(1) Whenever the secretary of transportation shall determine upon the basis of an engineering and traffic investigation that any maximum speed hereinbefore set forth is greater than is reasonable or safe with respect to a state highway under the conditions found to exist at any intersection or upon any other part of the state highway system or at state ferry terminals, or that a general reduction of any maximum speed set forth in RCW 46.61.400 is necessary in order to comply with a national maximum speed limit, the secretary may determine and declare a reasonable and safe lower maximum limit or a lower maximum limit which will comply with a national maximum speed limit, for any state highway, the entire state highway system, or any portion thereof, which shall be effective when appropriate signs giving notice thereof are erected. The secretary may also fix and regulate the speed of vehicles on any state highway within the maximum speed limit allowed by this chapter for special occasions including, but not limited to, local parades and other special events. Any such maximum speed limit may be declared to be effective at all times or at such times as are indicated upon the said signs; and differing limits may be established for different times of day, different types of vehicles, varying weather conditions, and other factors bearing on safe speeds, which shall be effective (a) ~~((1))~~ when posted upon appropriate fixed or variable signs or (b) ~~((2))~~ if a maximum limit is established for auto stages which is lower than the limit for automobiles, the auto stage speed limit shall become effective ~~((thirty))~~ 30 days after written notice thereof is mailed in the manner provided in ~~((subsection (4) of))~~ RCW 46.61.410~~(4)~~, as now or hereafter amended.

(2) The secretary of transportation may establish a maximum speed limit of 20 miles per hour on a nonarterial state highway, or part of a nonarterial state highway, without a determination made on the basis of an engineering and traffic investigation, subject to the conditions described in RCW 46.61.415(3).

**Sec. 3.** RCW 46.61.250 and 2019 c 403 s 9 and 2019 c 214 s 14 are each reenacted and amended to read as follows:

(1) Where sidewalks are provided and are accessible, it is unlawful for any pedestrian to walk or otherwise move along and upon an adjacent roadway. Where sidewalks are provided but wheelchair access is not available, persons

with disabilities who require such access may walk or otherwise move along and upon an adjacent roadway until they reach an access point in the sidewalk.

(2) Where sidewalks are not provided or are inaccessible, a pedestrian walking or otherwise moving along and upon a highway, and any personal delivery device moving along and upon a highway, shall:

(a) When shoulders are provided and are accessible, walk or move on the shoulder of the roadway as far as is practicable from the edge of the roadway, facing traffic when a shoulder is available in this direction; or

(b) When shoulders are not provided or are inaccessible, walk or move as near as is practicable to the outside edge of the roadway facing traffic, and when practicable, move clear of the roadway upon meeting an oncoming vehicle.

(3) A pedestrian traveling to the nearest emergency reporting device on a one-way roadway of a controlled access highway is not required to travel facing traffic as otherwise required by subsection (2) of this section.

(4) When walking or otherwise moving along and upon an adjacent roadway, a pedestrian shall exercise due care to avoid colliding with any vehicle upon the roadway.

(5) Subsections (1) and (2) of this section do not apply when the roadway is duly closed to vehicular traffic by placement of official traffic control devices for the sole purposes of pedestrian and bicyclist use of the roadway.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 236

[Engrossed Second Substitute Senate Bill 5702]

### DONOR HUMAN MILK

AN ACT Relating to requiring coverage for donor human milk; amending RCW 48.43.715 and 41.05.017; adding a new section to chapter 48.43 RCW; adding a new section to chapter 74.09 RCW; and adding a new section to chapter 43.70 RCW.

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

NEW SECTION. Sec. 1. A new section is added to chapter 48.43 RCW to read as follows:

(1) For group health plans other than small group health plans issued or renewed on or after January 1, 2023, a health carrier shall provide coverage for medically necessary donor human milk for inpatient use when ordered by a licensed health care provider with prescriptive authority or an international board certified lactation consultant certified by the international board of lactation consultant examiners for an infant who is medically or physically unable to receive maternal human milk or participate in chest feeding or whose parent is medically or physically unable to produce maternal human milk in sufficient quantities or caloric density or participate in chest feeding, if the infant meets at least one of the following criteria:

- (a) An infant birth weight of below 2,500 grams;
- (b) An infant gestational age equal to or less than 34 weeks;
- (c) Infant hypoglycemia;



(d) A high risk for development of necrotizing enterocolitis, bronchopulmonary dysplasia, or retinopathy of prematurity;

(e) A congenital or acquired gastrointestinal condition with long-term feeding or malabsorption complications;

(f) Congenital heart disease requiring surgery in the first year of life;

(g) An organ or bone marrow transplant;

(h) Sepsis;

(i) Congenital hypotonias associated with feeding difficulty or malabsorption;

(j) Renal disease requiring dialysis in the first year of life;

(k) Craniofacial anomalies;

(l) An immunologic deficiency;

(m) Neonatal abstinence syndrome;

(n) Any other serious congenital or acquired condition for which the use of pasteurized donor human milk and donor human milk derived products is medically necessary and supports the treatment and recovery of the child; or

(o) Any baby still inpatient within 72 hours of birth without sufficient human milk available.

(2) Donor human milk covered under this section must be obtained from a milk bank that meets minimum standards adopted by the department of health pursuant to section 5 of this act.

(3) For purposes of this section:

(a) "Donor human milk" means human milk that has been contributed to a milk bank by one or more donors.

(b) "Milk bank" means an organization that engages in the procurement, processing, storage, distribution, or use of human milk contributed by donors.

(4) The commissioner may adopt any rules necessary to implement this section.

**Sec. 2.** RCW 48.43.715 and 2019 c 33 s 9 are each amended to read as follows:

(1) The commissioner, in consultation with the board and the health care authority, shall, by rule, select the largest small group plan in the state by enrollment as the benchmark plan for the individual and small group market for purposes of establishing the essential health benefits in Washington state.

(2) If the essential health benefits benchmark plan for the individual and small group market does not include all of the ten essential health benefits categories, the commissioner, in consultation with the board and the health care authority, shall, by rule, supplement the benchmark plan benefits as needed.

(3) All individual and small group health plans must cover the ten essential health benefits categories, other than a health plan offered through the federal basic health program, a grandfathered health plan, or medicaid. Such a health plan may not be offered in the state unless the commissioner finds that it is substantially equal to the benchmark plan. When making this determination, the commissioner:

(a) Must ensure that the plan covers the ten essential health benefits categories;

(b) May consider whether the health plan has a benefit design that would create a risk of biased selection based on health status and whether the health

plan contains meaningful scope and level of benefits in each of the ten essential health benefits categories;

(c) Notwithstanding (a) and (b) of this subsection, for benefit years beginning January 1, 2015, must establish by rule the review and approval requirements and procedures for pediatric oral services when offered in stand-alone dental plans in the nongrandfathered individual and small group markets outside of the exchange; and

(d) Must allow health carriers to also offer pediatric oral services within the health benefit plan in the nongrandfathered individual and small group markets outside of the exchange.

(4) Beginning December 15, 2012, and every year thereafter, the commissioner shall submit to the legislature a list of state-mandated health benefits, the enforcement of which will result in federally imposed costs to the state related to the plans sold through the exchange because the benefits are not included in the essential health benefits designated under federal law. The list must include the anticipated costs to the state of each state-mandated health benefit on the list and any statutory changes needed if funds are not appropriated to defray the state costs for the listed mandate. The commissioner may enforce a mandate on the list for the entire market only if funds are appropriated in an omnibus appropriations act specifically to pay the state portion of the identified costs.

(5) Upon authorization by the legislature to modify the state's essential health benefits benchmark plan under 45 C.F.R. Sec. 156.111, the commissioner shall include coverage for donor human milk in the updated plan.

**Sec. 3.** RCW 41.05.017 and 2021 c 280 s 2 are each amended to read as follows:

Each health plan that provides medical insurance offered under this chapter, including plans created by insuring entities, plans not subject to the provisions of Title 48 RCW, and plans created under RCW 41.05.140, are subject to the provisions of RCW 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 48.43.537, 48.43.545, 48.43.550, 70.02.110, 70.02.900, 48.43.190, 48.43.083, 48.43.0128, section 1 of this act, and chapter 48.49 RCW.

**NEW SECTION.** **Sec. 4.** A new section is added to chapter 74.09 RCW to read as follows:

(1) The authority shall provide coverage under this chapter for medically necessary donor human milk for inpatient use when ordered by a licensed health care provider with prescriptive authority or an international board certified lactation consultant certified by the international board of lactation consultant examiners for an infant who is medically or physically unable to receive maternal human milk or participate in chest feeding or whose parent is medically or physically unable to produce maternal human milk in sufficient quantities or caloric density or participate in chest feeding, if the infant meets at least one of the following criteria:

- (a) An infant birth weight of below 2,500 grams;
- (b) An infant gestational age equal to or less than 34 weeks;
- (c) Infant hypoglycemia;
- (d) A high risk for development of necrotizing enterocolitis, bronchopulmonary dysplasia, or retinopathy of prematurity;

(e) A congenital or acquired gastrointestinal condition with long-term feeding or malabsorption complications;

(f) Congenital heart disease requiring surgery in the first year of life;

(g) An organ or bone marrow transplant;

(h) Sepsis;

(i) Congenital hypotonias associated with feeding difficulty or malabsorption;

(j) Renal disease requiring dialysis in the first year of life;

(k) Craniofacial anomalies;

(l) An immunologic deficiency;

(m) Neonatal abstinence syndrome;

(n) Any other serious congenital or acquired condition for which the use of pasteurized donor human milk and donor human milk derived products is medically necessary and supports the treatment and recovery of the child; or

(o) Any baby still inpatient within 72 hours of birth without sufficient human milk available.

(2) Donor human milk covered under this section must be obtained from a milk bank that meets minimum standards adopted by the department of health pursuant to section 5 of this act.

(3) The authority may require an enrollee to obtain expedited prior authorization to receive coverage for donor human milk as required under this section.

(4) In administering this program, the authority must seek any available federal financial participation under the medical assistance program, as codified at Title XIX of the federal social security act, the state children's health insurance program, as codified at Title XXI of the federal social security act, and any other federal funding sources that are now available or may become available.

(5) For purposes of this section:

(a) "Donor human milk" means human milk that has been contributed to a milk bank by one or more donors.

(b) "Milk bank" means an organization that engages in the procurement, processing, storage, distribution, or use of human milk contributed by donors.

**NEW SECTION. Sec. 5.** A new section is added to chapter 43.70 RCW to read as follows:

The department shall adopt standards for ensuring milk bank safety. The standards adopted by the department must, at a minimum, consider the clinical, evidence-based guidelines established by a national accrediting organization. The standards must address donor screening, milk handling and processing, and recordkeeping. The department shall also review and consider requiring additional testing standards, including but not limited to testing for the presence of viruses, bacteria, and prescription and nonprescription drugs in donated milk.

Passed by the Senate March 7, 2022.

Passed by the House March 2, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 237

[Senate Bill 5715]

## BROADBAND AND BROADBAND SERVICE—DEFINITIONS

AN ACT Relating to modifying the definition of broadband or broadband service; amending RCW 43.330.530; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes the statewide broadband office's objective of scalability while appreciating that a digital economy will continue to drive higher and higher speeds. Therefore, the legislature intends to move towards adequate connectivity in terms of the needs of economic development, education, and telehealth services.

**Sec. 2.** RCW 43.330.530 and 2019 c 365 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 43.330.532 through 43.330.538 unless the context clearly requires otherwise.

(1) "Board" means the public works board established in RCW 43.155.030.

(2) "Broadband" or "broadband service" means any service providing advanced telecommunications capability and internet access with transmission speeds that, at a minimum, provide ~~((twenty-five))~~ 100 megabits per second download and ~~((three))~~ 20 megabits per second upload.

(3) "Broadband infrastructure" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunications services to end users.

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

(5) "Last mile infrastructure" means broadband infrastructure that serves as the final connection from a broadband service provider's network to the end-use customer's on-premises telecommunications equipment.

(6) "Local government" includes cities, towns, counties, municipal corporations, public port districts, public utility districts, quasi-municipal corporations, special purpose districts, and multiparty entities comprised of public entity members.

(7) "Middle mile infrastructure" means broadband infrastructure that links a broadband service provider's core network infrastructure to last mile infrastructure.

(8) "Office" means the governor's statewide broadband office established in RCW 43.330.532.

(9) "Tribe" means any federally recognized Indian tribe whose traditional lands and territories included parts of Washington.

(10) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service, as defined by the office ~~((except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload))~~.

Passed by the Senate February 15, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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**CHAPTER 238**

[Second Substitute Senate Bill 5720]

**FINANCIAL LITERACY EDUCATION—SCHOOLS**

AN ACT Relating to student financial literacy education; amending RCW 28A.300.460; adding new sections to chapter 28A.300 RCW; creating a new section; and providing an expiration date.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the financial education public-private partnership shall establish a grant program to provide assistance to school districts for the purpose of integrating financial literacy education into professional development for certificated staff.

(2) Grants provided under this section shall be made available for the 2023-24, 2024-25, and 2025-26 school years, and shall be funded at the amount of \$7.50 per enrolled student in the school district, as determined by the annual average full-time equivalent student enrollment reported to the office of the superintendent of public instruction. A school district that receives a grant under this section may only receive a grant for one school year and is prohibited from receiving a grant in subsequent grant cycles.

(3) For a school district to qualify for a grant under this section, the grant proposal must provide that the grantee integrate financial literacy education into at least seven hours of its current in-person professional development schedule over the course of the entire school year for which the school district receives the grant.

(4) Additional activities permitted for the use of these grants include, but are not limited to:

(a) Coordinating teachers from across a school district to develop new instructional strategies and to share successful strategies;

(b) Sharing successful practices across a group of school districts; and

(c) Facilitating coordination between educational service districts and school districts to provide training.

(5) The office of the superintendent of public instruction, in coordination with the financial education public-private partnership, may adopt rules for the effective implementation of this section.

(6) This section expires August 1, 2026.

**Sec. 2.** RCW 28A.300.460 and 2015 c 211 s 2 are each amended to read as follows:

(1) The task of the financial education public-private partnership is to seek out and determine the best methods of equipping students with the knowledge and skills they need, before they become self-supporting, in order for them to make critical decisions regarding their personal finances. The components of personal financial education shall include the achievement of skills and knowledge necessary to make informed judgments and effective decisions regarding earning, spending, and the management of money and credit.

(2) In carrying out its task, and to the extent funds are available, the partnership shall:

(a) Communicate to school districts the financial education standards adopted under RCW 28A.300.462, other important financial education skills and content knowledge, and strategies for expanding the provision and increasing the quality of financial education instruction;

(b) Review on an ongoing basis financial education curriculum that is available to school districts, including instructional materials and programs, online instructional materials and resources, and school-wide programs that include the important financial skills and content knowledge;

(c) Develop evaluation standards and a procedure for endorsing financial education curriculum that the partnership determines should be recommended for use in school districts;

(d) Work with the office of the superintendent of public instruction to integrate financial education skills and content knowledge into the state learning standards;

(e) Monitor and provide guidance for professional development for educators regarding financial education, including ways that teachers at different grade levels may integrate financial skills and content knowledge into mathematics, social studies, and other course content areas;

(f) Work with the office of the superintendent of public instruction and the professional educator standards board to create professional development in financial education;

(g) Develop academic guidelines and standards-based protocols for use by classroom volunteers who participate in delivering financial education to students in the public schools; ~~((and))~~

(h) Provide an annual report beginning December 1, 2009, as provided in RCW 28A.300.464, to the governor, the superintendent of public instruction, and the committees of the legislature with oversight over K-12 education and higher education; and

(i) Administer grant programs including, but not limited to, the program established in section 1 of this act or related programs established in the omnibus operating appropriations act.

(3) In addition to the duties in subsection (2) of this section and subject to the availability of amounts appropriated for this specific purpose, the partnership may perform other tasks in support of financial literacy, including, but not limited to:

(a) Hiring support staff;

(b) Contracting with educational service districts;

(c) Facilitating the creation and implementation of professional development for certificated educational staff relating to financial literacy and education, in particular the professional development utilized as part of the grant program created in section 1 of this act;

(d) Working to facilitate, and confirm receipt of, specific outreach for financial literacy training to foster students and homeless youth, students receiving special education services, and tribal communities; and

(e) Coordinating with providers in the early childhood education and assistance program established under chapter 43.216 RCW for the purpose of providing a curriculum on financial literacy that can be shared with the parents

or legal guardians of participants in the early childhood education and assistance program.

(4) The partnership may seek federal and private funds to support the school districts in providing access to the materials listed pursuant to RCW 28A.300.468(1), as well as related professional development opportunities for certificated staff.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.300 RCW to read as follows:

(1) Each school district, by March 1, 2023, shall adopt one or more goals for expanding financial education instruction to students in their district. Examples of goals that school districts may adopt include:

(a) Increasing the number of financial education courses available to students in grades nine through 12;

(b) Increasing the number of grades, schools, or both that provide students with instruction in, or access to instruction in, financial education; and

(c) Expanding the amount financial education professional development training available to certificated staff.

(2) The financial education public-private partnership, by September 1, 2022, shall develop a nonexhaustive menu of model goals that school districts may consider when complying with this section. The model goals must be published on the website of the office of the superintendent of public instruction by September 10, 2022.

(3) Subsection (1) of this section governs school operation and management under RCW 28A.710.040 and 28A.715.020, and applies to charter schools established under chapter 28A.710 RCW and state-tribal education compact schools established under chapter 28A.715 RCW to the same extent as it applies to school districts.

**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, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 239

[Substitute Senate Bill 5741]

### PATCHES PAL SPECIAL LICENSE PLATE

AN ACT Relating to creating Patches pal special license plates; reenacting and amending RCW 46.17.220, 46.18.200, and 46.68.420; adding a new section to chapter 46.04 RCW; and providing an effective date.

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

**Sec. 1.** RCW 46.17.220 and 2020 c 129 s 1 and 2020 c 93 s 2 are each reenacted and amended to read as follows:

In addition to all fees and taxes required to be paid upon application for a vehicle registration in chapter 46.16A RCW, the holder of a special license plate shall pay the appropriate special license plate fee as listed in this section.

PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
(1) 4-H	\$ 40.00	\$ 30.00	RCW 46.68.420
(2) Amateur radio license	\$ 5.00	N/A	RCW 46.68.070
(3) Armed forces	\$ 40.00	\$ 30.00	RCW 46.68.425
(4) Breast cancer awareness	\$ 40.00	\$ 30.00	RCW 46.68.425
(5) Collector vehicle	\$ 35.00	N/A	RCW 46.68.030
(6) Collegiate	\$ 40.00	\$ 30.00	RCW 46.68.430
(7) Endangered wildlife	\$ 40.00	\$ 30.00	RCW 46.68.425
(8) Fred Hutch	\$ 40.00	\$ 30.00	RCW 46.68.420
(9) Gonzaga University alumni association	\$ 40.00	\$ 30.00	RCW 46.68.420
(10) Helping kids speak	\$ 40.00	\$ 30.00	RCW 46.68.420
(11) Horseless carriage	\$ 35.00	N/A	RCW 46.68.030
(12) Keep kids safe	\$ 45.00	\$ 30.00	RCW 46.68.425
(13) Law enforcement memorial	\$ 40.00	\$ 30.00	RCW 46.68.420
(14) Military affiliate radio system	\$ 5.00	N/A	RCW 46.68.070
(15) Music matters	\$ 40.00	\$ 30.00	RCW 46.68.420
(16) <u>Patches pal. or alternative name as designated by the department under section 4 of this act</u>	<u>\$ 40.00</u>	<u>\$ 30.00</u>	<u>RCW 46.68.420</u>
(17) Professional firefighters and paramedics	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((17))</del> (18) Purple Heart	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((18))</del> (19) Ride share	\$ 25.00	N/A	RCW 46.68.030
<del>((19))</del> (20) San Juan Islands	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((20))</del> (21) Seattle Mariners	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((21))</del> (22) Seattle NHL hockey	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((22))</del> (23) Seattle Seahawks	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((23))</del> (24) Seattle Sounders FC	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((24))</del> (25) Seattle Storm	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((25))</del> (26) Seattle University	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((26))</del> (27) Share the road	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((27))</del> (28) Ski & ride Washington	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((28))</del> (29) Square dancer	\$ 40.00	N/A	RCW 46.68.070
<del>((29))</del> (30) State flower	\$ 40.00	\$ 30.00	RCW 46.68.420



PLATE TYPE	INITIAL FEE	RENEWAL FEE	DISTRIBUTED UNDER
<del>((30))</del> (31) Volunteer firefighters	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((31))</del> (32) Washington apples	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((32))</del> (33) Washington farmers and ranchers	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((33))</del> (34) Washington lighthouses	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((34))</del> (35) Washington state aviation	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((35))</del> (36) Washington state parks	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((36))</del> (37) Washington state wrestling	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((37))</del> (38) Washington tennis	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((38))</del> (39) Washington's fish collection	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((39))</del> (40) Washington's national parks	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((40))</del> (41) Washington's wildlife collection	\$ 40.00	\$ 30.00	RCW 46.68.425
<del>((41))</del> (42) We love our pets	\$ 40.00	\$ 30.00	RCW 46.68.420
<del>((42))</del> (43) Wild on Washington	\$ 40.00	\$ 30.00	RCW 46.68.425

**Sec. 2.** RCW 46.18.200 and 2020 c 129 s 2 and 2020 c 93 s 1 are each reenacted and amended to read as follows:

(1) Special license plate series reviewed and approved by the department:

(a) May be issued in lieu of standard issue or personalized license plates for vehicles required to display one and two license plates unless otherwise specified;

(b) Must be issued under terms and conditions established by the department;

(c) Must not be issued for vehicles registered under chapter 46.87 RCW; and

(d) Must display a symbol or artwork approved by the department.

(2) The department approves and shall issue the following special license plates, subject to subsection (5) of this section:

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
4-H	Displays the "4-H" logo.

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Armed forces collection	Recognizes the contribution of veterans, active duty military personnel, reservists, and members of the national guard, and includes six separate designs, each containing a symbol representing a different branch of the armed forces to include army, navy, air force, marine corps, coast guard, and national guard.
Breast cancer awareness	Displays a pink ribbon symbolizing breast cancer awareness.
Endangered wildlife	Displays a symbol or artwork symbolizing endangered wildlife in Washington state.
Fred Hutch	Displays the Fred Hutch logo.
Gonzaga University alumni association	Recognizes the Gonzaga University alumni association.
Helping kids speak	Recognizes an organization that supports programs that provide no-cost speech pathology programs to children.
Keep kids safe	Recognizes efforts to prevent child abuse and neglect.
Law enforcement memorial	Honors law enforcement officers in Washington killed in the line of duty.
Music matters	Displays the "Music Matters" logo.
<u>Patches pal, or alternative name as designated by the department under section 4 of this act</u>	<u>Displays the likenesses of the J.P. Patches and Gertrude characters from the J.P. Patches show, or characters otherwise identified in accordance with section 4 of this act.</u>
Professional firefighters and paramedics	Recognizes professional firefighters and paramedics who are members of the Washington state council of firefighters.
San Juan Islands	Displays a symbol or artwork recognizing the San Juan Islands.
Seattle Mariners	Displays the "Seattle Mariners" logo.
Seattle NHL hockey	Displays the logo of the Seattle NHL hockey team.
Seattle Seahawks	Displays the "Seattle Seahawks" logo.
Seattle Sounders FC	Displays the "Seattle Sounders FC" logo.
Seattle Storm	Displays the "Seattle Storm" logo.

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
Seattle University	Recognizes Seattle University.
Share the road	Recognizes an organization that promotes bicycle safety and awareness education.
Ski & ride Washington	Recognizes the Washington snowsports industry.
State flower	Recognizes the Washington state flower.
Volunteer firefighters	Recognizes volunteer firefighters.
Washington apples	Displays the Washington apple logo that recognizes the state's apple industry, the growers and shippers who produce and pack the world famous apples, and the tree fruit community.
Washington farmers and ranchers	Recognizes farmers and ranchers in Washington state.
Washington lighthouses	Recognizes an organization that supports selected Washington state lighthouses and provides environmental education programs.
Washington state aviation	Displays a Stearman biplane in the foreground with an image of Mount Rainier in the background.
Washington state parks	Recognizes Washington state parks as premier destinations of uncommon quality that preserve significant natural, cultural, historical, and recreational resources.
Washington state wrestling	Promotes and supports college wrestling in the state of Washington.
Washington tennis	Builds awareness and year-round opportunities for tennis in Washington state. Displays a symbol or artwork recognizing tennis in Washington state.
Washington's fish collection	Recognizes Washington's fish.
Washington's national park fund	Builds awareness of Washington's national parks and supports priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks.
Washington's wildlife collection	Recognizes Washington's wildlife.

LICENSE PLATE	DESCRIPTION, SYMBOL, OR ARTWORK
We love our pets	Recognizes an organization that assists local member agencies of the federation of animal welfare and control agencies to promote and perform spay/neuter surgery on Washington state pets to reduce pet overpopulation.
Wild on Washington	Symbolizes wildlife viewing in Washington state.

(3) Applicants for initial and renewal professional firefighters and paramedics special license plates must show proof of eligibility by providing a certificate of current membership from the Washington state council of firefighters.

(4) Applicants for initial volunteer firefighters special license plates must (a) have been a volunteer firefighter for at least ten years or be a volunteer firefighter for one or more years and (b) have documentation of service from the district of the appropriate fire service. If the volunteer firefighter leaves firefighting service before ten years of service have been completed, the volunteer firefighter shall surrender the license plates to the department on the registration renewal date. If the volunteer firefighter stays in service for at least ten years and then leaves, the license plate may be retained by the former volunteer firefighter and as long as the license plate is retained for use the person will continue to pay the future registration renewals. A qualifying volunteer firefighter may have no more than one set of license plates per vehicle, and a maximum of two sets per applicant, for their personal vehicles. If the volunteer firefighter is convicted of a violation of RCW 46.61.502 or a felony, the license plates must be surrendered upon conviction.

(5) The department shall not issue the Seattle NHL hockey special license plate until the department receives signature sheets satisfying the requirements identified in RCW 46.18.110(2)(f).

**Sec. 3.** RCW 46.68.420 and 2020 c 129 s 3 and 2020 c 93 s 3 are each reenacted and amended to read as follows:

(1) The department shall:

(a) Collect special license plate fees established under RCW 46.17.220;

(b) Deduct an amount not to exceed twelve dollars for initial issue and two dollars for renewal issue for administration and collection expenses incurred by it; and

(c) Remit the remaining proceeds to the custody of the state treasurer with a proper identifying detailed report.

(2) The state treasurer shall credit the proceeds to the motor vehicle fund until the department determines that the state has been reimbursed for the cost of implementing the special license plate. Upon determination by the department that the state has been reimbursed, the state treasurer shall credit the remaining special license plate fee amounts for each special license plate to the following appropriate account as created in this section in the custody of the state treasurer:

ACCOUNT	CONDITIONS FOR USE OF FUNDS
4-H programs Fred Hutch	Support Washington 4-H programs Support cancer research at the Fred Hutchinson cancer research center
Gonzaga University alumni association	Scholarship funds to needy and qualified students attending or planning to attend Gonzaga University
Helping kids speak	Provide free diagnostic and therapeutic services to families of children who suffer from a delay in language or speech development
Law enforcement memorial	Provide support and assistance to survivors and families of law enforcement officers in Washington killed in the line of duty and to organize, finance, fund, construct, utilize, and maintain a memorial on the state capitol grounds to honor those fallen officers
Lighthouse environmental programs	Support selected Washington state lighthouses that are accessible to the public and staffed by volunteers; provide environmental education programs; provide grants for other Washington lighthouses to assist in funding infrastructure preservation and restoration; encourage and support interpretive programs by lighthouse docents
Music matters awareness	Promote music education in schools throughout Washington
<u>Patches pal, or alternative name as designated by the department under section 4 of this act</u>	<u>Provide funds to the Seattle children's hospital strong against cancer program</u>
San Juan Islands programs	Provide funds to the Madrona institute

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Seattle Mariners	Provide funds to the sports mentoring program and to support the Washington world fellows program in the following manner: (a) Seventy-five percent to the office of the lieutenant governor solely to administer the sports mentoring program established under RCW 43.15.100, to encourage youth who have economic needs or face adversities to experience spectator sports or get involved in youth sports, and (b) up to twenty-five percent to the office of the lieutenant governor solely to administer the Washington world fellows program, an equity focused program
Seattle NHL hockey	Provide funds to the NHL Seattle foundation and to support the boundless Washington program in the following manner: (a) Fifty percent to the NHL Seattle foundation, or its successor organization, to help marginalized youth succeed in life through increased access to sports and other opportunities; (b) twenty-five percent to the office of the lieutenant governor solely to administer the boundless Washington program to facilitate opportunities for young people with physical and sensory disabilities to enjoy and experience the outdoors; and (c) twenty-five percent to the NHL Seattle foundation, or its successor organization, for providing financial support to allow youth to participate in hockey

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Seattle Seahawks	Provide funds to InvestED and to support the Washington world fellows program in the following manner: (a) Seventy-five percent, to InvestED, to encourage secondary students who have economic needs to stay in school, return to school, or get involved within their learning community; and (b) twenty-five percent to the office of the lieutenant governor solely to administer the Washington world fellows program, including the provision of fellowships
Seattle Sounders FC	Provide funds to Washington state mentors and the <del>((association of))</del> Washington <del>((generals))</del> <u>state leadership board</u> created in RCW 43.15.030 in the following manner: (a) Seventy percent and the remaining proceeds, if any, to Washington state mentors, to increase the number of mentors in the state by offering mentoring grants throughout Washington state that foster positive youth development and academic success, with up to twenty percent of these proceeds authorized for program administration costs; and (b) up to thirty percent, not to exceed forty-thousand dollars annually as adjusted for inflation by the office of financial management, to the association of Washington generals, to develop Washington state educational, veterans, international relations, and civics projects and to recognize the outstanding public service of individuals or groups in the state of Washington

ACCOUNT	CONDITIONS FOR USE OF FUNDS
Seattle Storm	Provide funds to the Washington state legislative youth advisory council and the <del>((association of))</del> Washington <del>((generals))</del> <u>state leadership board</u> created in RCW 43.15.030 in the following manner: Twenty-five thousand dollars per year of the net proceeds to the legislative youth advisory council, or its successor organization; and the remaining net proceeds on an annual basis, to the association of Washington generals for the purpose of providing grants to support and enhance athletic, recreational, and other opportunities for women and girls, and especially those with disabilities
Seattle University	Fund scholarships for students attending or planning to attend Seattle University
Share the road	Promote bicycle safety and awareness education in communities throughout Washington
Ski & ride Washington	Promote winter snowsports, such as skiing and snowboarding, and related programs, such as ski and ride safety programs, underprivileged youth ski and ride programs, and active, healthy lifestyle programs
State flower	Support Meerkerk Rhododendron Gardens and provide for grants to other qualified nonprofit organizations' efforts to preserve rhododendrons
Volunteer firefighters	Receive and disseminate funds for purposes on behalf of volunteer firefighters, their families, and others deemed in need
Washington apples	Provide scholarship funding to the tree fruit industry's official charity, the Washington apple education foundation, which provides financial support, professional employment preparedness training, and mentorship to students with ties to the apple industry pursuing a higher education



ACCOUNT	CONDITIONS FOR USE OF FUNDS
Washington farmers and ranchers	Provide funds to the Washington FFA Foundation for educational programs in Washington state
Washington state aviation	Provide funds to the department of transportation to support infrastructure improvements at public use airports in Washington state
Washington state council of firefighters benevolent fund	Receive and disseminate funds for charitable purposes on behalf of members of the Washington state council of firefighters, their families, and others deemed in need
Washington state wrestling	Provide funds to the Washington state wrestling foundation to fund new and existing college wrestling programs
Washington tennis	Provide funds to cities to assist in the construction and maintenance of a public tennis facility with at least four indoor tennis courts. A city is eligible for construction funds if the city does not already have a public or private facility with at least four indoor tennis courts. Funds for construction must first be made available to the most populous eligible city, according to the most recent census, for a time period not to exceed five years after January 1, 2017. After the five-year time period, the funds for construction must be made available to the next most populous eligible city. Funds for the maintenance of a public tennis facility with at least four indoor tennis courts must first be made available to the first eligible city that utilizes funds for construction provided by chapter 16, Laws of 2016
Washington's national park fund	Build awareness of Washington's national parks and support priority park programs and projects in Washington's national parks, such as enhancing visitor experience, promoting volunteerism, engaging communities, and providing educational opportunities related to Washington's national parks

ACCOUNT

CONDITIONS FOR USE OF FUNDS

We love our pets

Support and enable the Washington federation of animal welfare and control agencies to promote and perform spay/neuter surgery of Washington state pets in order to reduce pet population

(3) Except as otherwise provided in this section, only the director or the director's designee may authorize expenditures from the accounts described in subsection (2) of this section. The accounts are subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(4) Except as otherwise provided in this section, funds in the special license plate accounts described in subsection (2) of this section must be disbursed subject to the conditions described in subsection (2) of this section and under contract between the department and qualified nonprofit organizations that provide the services described in subsection (2) of this section.

(5) Funds from the Seattle Seahawks account may be provided to the lieutenant governor solely for the purpose of administering the Washington world fellows program. Of the amounts received by the lieutenant governor's office under this subsection, at least ninety percent must be provided as fellowships under the program.

(6) Beginning January 1, 2019, funds from the Seattle Mariners account may be provided to the office of lieutenant governor solely for the purpose of administering the sports mentoring program. Of the amounts received by the office of lieutenant governor, at least ninety percent must be applied towards services directly provided to youth participants.

(7) For the purposes of this section, a "qualified nonprofit organization" means a not-for-profit corporation operating in Washington that has received a determination of tax exempt status under 26 U.S.C. Sec. 501(c)(3). The qualified nonprofit organization must meet all the requirements under RCW 46.18.100(1).

**NEW SECTION. Sec. 4.** A new section is added to chapter 46.04 RCW to read as follows:

(1) "Patches pal license plates" means special license plates issued under RCW 46.18.200 that display the likenesses of the J.P. Patches and Gertrude characters from the J.P. Patches show, or children's characters that are changed in accordance with subsection (2) of this section.

(2) Beginning October 1, 2031, and each decade thereafter, the Seattle children's hospital may consult with the department regarding the design of the Patches pal license plate to determine whether the current design is the best design to support the Seattle children's hospital strong against cancer program in the following 10-year time period. Following this consultation, if Seattle children's hospital determines that another group of appropriate children's characters would better support the program due to public interest at the time, Seattle children's hospital may request a redesign of the Patches pal license plate with these new characters and a new corresponding plate name. The costs associated with this consultation and redesign may be paid from the proceeds

from the special license plate sales or else shall be covered by Seattle children's hospital as the sponsoring organization.

NEW SECTION, Sec. 5. This act takes effect October 1, 2022.

Passed by the Senate March 9, 2022.

Passed by the House March 8, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 240

[Substitute Senate Bill 5753]

### HEALTH PROFESSIONS BOARDS AND COMMISSIONS—MODIFICATION

AN ACT Relating to enhancing the capacity of health profession boards, commissions, and advisory committees; amending RCW 18.32.0351, 18.32.0355, 18.52.040, 18.52.050, 18.74.020, 18.74.027, 18.92.021, 18.92.040, 18.108.020, 18.83.035, 18.83.045, 18.83.051, 18.64.001, 18.64.003, 18.64.005, 18.64.310, 18.59.120, 18.30.050, 18.30.060, 18.36A.150, 18.54.030, 18.54.060, 18.54.130, 18.35.150, 18.57.003, 18.57.003, 18.22.014, 18.200.060, 18.25.0165, 18.79.070, 18.79.140, and 18.71.015; adding a new section to chapter 18.64 RCW; adding a new section to chapter 18.59 RCW; providing an effective date; and providing an expiration date.

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

**Sec. 1.** RCW 18.32.0351 and 2007 c 269 s 16 are each amended to read as follows:

The Washington state dental quality assurance commission is established, consisting of ~~((sixteen))~~ seventeen members each appointed by the governor to a four-year term. No member may serve more than two consecutive full terms. ~~((~~the~~ appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, members of the previous boards and committees regulating these professions be appointed to the commission.))~~ Members of the commission hold office until their successors are appointed. ~~((The governor may appoint members of the initial commission to staggered terms of from one to four years. Thereafter, all))~~ All members shall be appointed to full four-year terms. Twelve members of the commission must be dentists, two members must be expanded function dental auxiliaries licensed under chapter 18.260 RCW, and ~~((two))~~ three members must be public members.

**Sec. 2.** RCW 18.32.0355 and 1994 sp.s. c 9 s 206 are each amended to read as follows:

Members must be ~~((citizens of the United States and))~~ residents of this state. Dentist members must be licensed dentists in the active practice of dentistry for a period of five years before appointment. Of the twelve dentists appointed to the commission, at least four must reside and engage in the active practice of dentistry east of the summit of the Cascade mountain range. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

**Sec. 3.** RCW 18.52.040 and 2011 c 336 s 488 are each amended to read as follows:

(1) The state board of nursing home administrators shall consist of ~~((nine))~~ ~~eleven~~ members appointed by the governor. ~~((Four))~~ Six members shall be persons licensed under this chapter who have at least four years actual experience in the administration of a licensed nursing home in this state ~~((immediately preceding appointment to the board and who are not employed by the state or federal government))~~. At least one, but not more than two, of the six administrator members shall be an administrator of an assisted living facility or a continuing care retirement community.

~~((Four))~~ (2) Three members shall be representatives of ~~((the health care professions))~~ one or more of the following:

(a) Licensed health care professionals providing medical or nursing services in nursing homes who are privately or self-employed; ~~((or shall be persons employed by))~~

(b) Faculty or administrators of educational institutions who have special knowledge ~~((or expertise in the field of health care administration, health care education or long-term care or both, or care of the aged and chronically ill.~~

One member)) of health care education, long-term care, or care of the aged or elderly; or

(c) Persons currently employed in areas related to the long-term care field including, but not limited to, pharmacy, home health, adult family homes, or therapy services.

(3) Two members shall be ~~((a))~~ members of the health care consuming public who are residents of ~~((a))~~ nursing homes or ~~((a))~~ family members of ~~((a resident))~~ nursing home residents or ~~((a))~~ persons eligible for medicare. No member who is a nonadministrator representative shall have any direct or family financial interest in nursing homes while serving as a member of the board. The governor shall consult with and seek the recommendations of the appropriate statewide business and professional organizations and societies primarily concerned with long-term health care facilities in the course of considering his or her appointments to the board. ~~((Board members currently serving shall continue to serve until the expiration of their appointments.))~~

**Sec. 4.** RCW 18.52.050 and 1992 c 53 s 5 are each amended to read as follows:

Members of the board shall be ~~((citizens of the United States and))~~ residents of this state. All administrator members of the board shall be holders of licenses under this chapter. The terms of all members shall be five years. Any board member may be removed for just cause including a finding of fact of unprofessional conduct or impaired practice. The governor may appoint a new member to fill any vacancy on the board for the remainder of the unexpired term. No board member may serve more than two consecutive full terms~~((, whether full or partial))~~. Board members shall serve until their successors are appointed. Board members shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.265 and shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW. The board may elect annually a chair and vice chair to direct the meetings of the board. The board shall meet at least four times each year and may hold additional meetings as called by the secretary or the chair. A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority

of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 5.** RCW 18.74.020 and 2007 c 98 s 2 are each amended to read as follows:

The state board of physical therapy is hereby created. The board shall consist of ~~((six))~~ seven members who shall be appointed by the governor. ~~((Of the initial appointments, two shall be appointed for a term of two years, two for a term of three years, and one for a term of four years. Thereafter, all appointments shall be for terms of four years. Four))~~ Five members of the board shall be physical therapists licensed under this chapter and residing in this state, shall have not less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. One member shall be a physical therapist assistant licensed under this chapter and residing in this state, shall not have less than five years' experience in the practice of physical therapy, and shall be actively engaged in practice within two years of appointment. The ~~((sixth))~~ seventh member shall be appointed from the public at large, shall have an interest in the rights of consumers of health services, and shall not be or have been a member of any other licensing board, a licensee of any health occupation board, an employee of any health facility nor derive his or her primary livelihood from the provision of health services at any level of responsibility. In the event that a member of the board for any reason cannot complete his or her term of office, another appointment shall be made by the governor in accordance with the procedure stated in this section to fill the remainder of the term. No member may serve for more than two ~~((successive))~~ consecutive full four-year terms.

The secretary of health shall furnish such secretarial, clerical, and other assistance as the board may require. Each member of the board shall, in addition to travel expenses in accordance with RCW 43.03.050 and 43.03.060, be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.265. The board is designated as a class five group for purposes of chapter 43.03 RCW.

**Sec. 6.** RCW 18.74.027 and 1983 c 116 s 5 are each amended to read as follows:

The board shall elect from its members a chairperson and vice chairperson-secretary, who shall serve for one year and until their successors are elected. The board shall meet at least once a year and upon the call of the chairperson at such times and places as the chairperson designates. ~~((Three members constitute a quorum of the full board for the transaction of any business.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure. Meetings of the board shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

**Sec. 7.** RCW 18.92.021 and 2007 c 235 s 3 are each amended to read as follows:

(1) There is created a Washington state veterinary board of governors ~~((consisting))~~ reflecting the diverse practice of animal medicine, including large animal, small animal, and specialty practice, as well as diverse types of employment and practice ownership including sole proprietorships, partnerships,

and corporations. The board shall consist of ~~((seven))~~ nine members, ~~((five))~~ six of whom shall be licensed veterinarians, one of whom shall be a licensed veterinary technician ~~((trained in both large and small animal medicine)),~~ one of whom shall be a licensed veterinarian or a licensed veterinary technician, and one of whom shall be a ~~((lay))~~ member of the public.

(2)(a) The licensed members shall be appointed by the governor. At the time of their appointment the licensed members of the board must be actual residents of the state in active practice as licensed practitioners of veterinary medicine, surgery, and dentistry, or employed as a licensed veterinary technician, as applicable~~((, and must be citizens of the United States)).~~ Not more than ~~((one))~~ two licensed veterinary members shall be from the same congressional district. The board shall not be deemed to be unlawfully constituted and a member of the board shall not be deemed ineligible to serve the remainder of the member's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts.

(b) The terms of the ~~((first licensed))~~ members ~~((of the board))~~ shall be ~~((as follows: One member for five, four, three, two, and one years respectively. Thereafter the terms shall be for))~~ five years and until their successors are appointed and qualified.

(c) ~~((The lay member shall be appointed by the governor for a five year term and until the lay member's successor is appointed.~~

~~((4))~~ A member may be appointed to serve ~~((a second term, if that term does not run consecutively))~~ two consecutive full terms.

~~((e))~~ (d) Vacancies ~~((in))~~ on the board shall be filled by the governor, the appointee to hold office for the remainder of the unexpired term.

(3) ~~((The licensed veterinary technician member is a nonvoting member with respect to board decisions related to the discipline of a veterinarian involving standard of care.~~

~~((4))~~ Officers of the board shall be a chair and a ~~((secretary-treasurer))~~ vice chair to be chosen by the members of the board from among its members.

~~((5))~~ Four members of the board shall constitute a quorum at meetings of the board.

(4) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 8.** RCW 18.92.040 and 1991 c 3 s 240 are each amended to read as follows:

Each member of the board shall be compensated in accordance with RCW ~~((43.70.250))~~ 43.03.265 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW. No expense may be incurred by members of the board except in connection with board meetings without prior approval of the secretary.

**Sec. 9.** RCW 18.108.020 and 1991 c 3 s 253 are each amended to read as follows:

The Washington state board of massage is ~~((hereby))~~ created. The board shall consist of ~~((four))~~ seven members who shall be appointed by the governor for a term of four years each. ~~((Members))~~ All members shall be residents of this

~~state ((and shall have not less than three years experience in the practice of massage immediately preceding their appointment and shall be licensed under this chapter and actively engaged in the practice of massage during their incumbency).~~

~~In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of four years. The consumer member of the board shall be an individual who does not derive his or her livelihood by providing health care services or massage therapy and is not a licensed health professional. The consumer member shall not be an employee of the state nor a present or former member of another licensing board)). Five members shall be massage therapists licensed under this chapter with at least three years' experience in the practice of massage immediately preceding their appointment and shall at all times during their terms remain licensed massage therapists.~~

~~One member shall be a consumer whose occupation does not include the administration of health activities or the provision of health services and who has no material financial interest in the provision of health care services.~~

~~One member shall be a massage educator or massage school owner with at least three years' experience in the teaching or administration of direct student learning of the practice of massage. The educator or school owner member is not required to be a licensed massage therapist. The member shall recuse themselves from any board deliberations or decision making involving the school or educational program with which the member is professionally affiliated.~~

~~In the event that a member cannot complete ((his or her)) their term of office, another appointment shall be made by the governor in accordance with the procedures stated in this section to fill the remainder of the term. No member may serve more than two successive full terms ((whether full or partial)). The governor may remove any member of the board for neglect of duty, incompetence, or unprofessional or disorderly conduct as determined under chapter 18.130 RCW.~~

~~Each member of the board shall be compensated in accordance with RCW ((43.03.240)) 43.03.265. The board is designated as a class five group for purposes of chapter 43.03 RCW. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060.~~

~~The board may annually elect a chairperson to direct the meetings of the board. The board shall meet as called by the chairperson or the secretary. ((Three members of the board shall constitute a quorum of the board.)) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.~~

**Sec. 10.** RCW 18.83.035 and 1989 c 226 s 1 are each amended to read as follows:

There is created the examining board of psychology which shall examine the qualifications of applicants for licensing. The board shall consist of ~~((seven))~~ nine psychologists and two public members, all appointed by the governor. The public members shall not be and have never been psychologists or in training to be psychologists; they may not have any household member who is a psychologist or in training to be a psychologist; they may not participate or ever

have participated in a commercial or professional field related to psychology, nor have a household member who has so participated; and they may not have had within two years before appointment a substantial financial interest in a person regulated by the board. Each psychologist member of the board shall ~~((be a citizen of the United States who has))~~ have actively practiced psychology in the state of Washington for at least three years immediately preceding appointment and who is licensed under this chapter. Board members shall be appointed for a term of five years, except that the terms of the existing appointees shall be adjusted by the governor so that no more than two members' terms expire each year with all subsequent appointments for a five-year term. Upon the death, resignation, or removal of a member, the governor shall appoint a successor to serve for the unexpired term. The board shall elect one of its members to serve as chairperson.

**Sec. 11.** RCW 18.83.045 and 1991 c 3 s 195 are each amended to read as follows:

The board shall meet at least once each year and at such other times as the board deems appropriate to properly discharge its duties. All meetings shall be held in Olympia, Washington, or such other places as may be designated by the secretary. Five members of the board shall constitute a quorum, except that oral examinations may be conducted with only three psychologist members. A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 12.** RCW 18.83.051 and 1984 c 287 s 48 are each amended to read as follows:

Each member of the board shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.265 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the board in accordance with RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW.

**Sec. 13.** RCW 18.64.001 and 2013 c 19 s 3 are each amended to read as follows:

There shall be a state pharmacy quality assurance commission consisting of fifteen members, to be appointed by the governor by and with the advice and consent of the senate. Ten of the members shall be designated as pharmacist members, four of the members shall be designated a public member, and one member shall be a pharmacy technician.

Each pharmacist member shall be a ~~((citizen of the United States and a))~~ resident of this state, and at the time of his or her appointment shall have been a duly registered pharmacist under the laws of this state for a period of at least five consecutive years immediately preceding his or her appointment and shall at all times during his or her incumbency continue to be a duly licensed pharmacist: PROVIDED, That subject to the availability of qualified candidates the governor shall appoint pharmacist members representative of the areas of practice and geographically representative of the state of Washington.



The public member shall be a (~~citizen of the United States and a~~) resident of this state. The public member shall be appointed from the public at large, but shall not be affiliated with any aspect of pharmacy.

Members of the commission shall hold office for a term of four years, and the terms shall be staggered so that the terms of office of not more than two members will expire simultaneously on the third Monday in January of each year.

No person who has been appointed to and served for two four year terms shall be eligible for appointment to the commission.

Each member shall qualify by taking the usual oath of a state officer, which shall be filed with the secretary of state, and each member shall hold office for the term of his or her appointment and until his or her successor is appointed and qualified.

In case of the resignation or disqualification of a member, or a vacancy occurring from any cause, the governor shall appoint a successor for the unexpired term.

**Sec. 14.** RCW 18.64.003 and 2013 c 19 s 4 are each amended to read as follows:

Members of the commission shall meet at such places and times as it shall determine and as often as necessary to discharge the duties imposed upon it. The commission shall elect a chairperson and a vice chairperson from among its members. A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business. The affirmative vote of a majority of a quorum of the commission is required to carry a motion or resolution, to adopt a rule, or to pass a measure. The commission is designated as a class five group for purposes of chapter 43.03 RCW. Each member shall be compensated in accordance with RCW (~~(43.03.240)~~) 43.03.265 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060.

**Sec. 15.** RCW 18.64.005 and 2013 c 19 s 5 are each amended to read as follows:

The commission shall:

(1) Regulate the practice of pharmacy and enforce all laws placed under its jurisdiction;

(2) Prepare or determine the nature of, and supervise the grading of, examinations for applicants for pharmacists' licenses;

(3) Establish the qualifications for licensure of pharmacists or pharmacy interns;

(4) Conduct hearings for the revocation or suspension of licenses, permits, registrations, certificates, or any other authority to practice granted by the commission, which hearings may also be conducted by an administrative law judge appointed under chapter 34.12 RCW or a presiding officer designated by the commission. The commission may authorize the secretary, or their designee, to serve as the presiding officer for any disciplinary proceedings of the commission authorized under this chapter. The presiding officer shall not vote on or make any final decision in cases pertaining to standards of practice or where clinical expertise is necessary. All functions performed by the presiding officer shall be subject to chapter 34.05 RCW;

(5) Issue subpoenas and administer oaths in connection with any hearing, or disciplinary proceeding held under this chapter or any other chapter assigned to the commission;

(6) Assist the regularly constituted enforcement agencies of this state in enforcing all laws pertaining to drugs, controlled substances, and the practice of pharmacy, or any other laws or rules under its jurisdiction;

(7) Promulgate rules for the dispensing, distribution, wholesaling, and manufacturing of drugs and devices and the practice of pharmacy for the protection and promotion of the public health, safety, and welfare. Violation of any such rules shall constitute grounds for refusal, suspension, or revocation of licenses or any other authority to practice issued by the commission;

(8) Adopt rules establishing and governing continuing education requirements for pharmacists and other licensees applying for renewal of licenses under this chapter;

(9) Be immune, collectively and individually, from suit in any action, civil or criminal, based upon any disciplinary proceedings or other official acts performed as members of the commission. Such immunity shall apply to employees of the department when acting in the course of disciplinary proceedings;

(10) Suggest strategies for preventing, reducing, and eliminating drug misuse, diversion, and abuse, including professional and public education, and treatment of persons misusing and abusing drugs;

(11) Conduct or encourage educational programs to be conducted to prevent the misuse, diversion, and abuse of drugs for health care practitioners and licensed or certified health care facilities;

(12) Monitor trends of drug misuse, diversion, and abuse and make periodic reports to disciplinary boards of licensed health care practitioners and education, treatment, and appropriate law enforcement agencies regarding these trends;

(13) Enter into written agreements with all other state and federal agencies with any responsibility for controlling drug misuse, diversion, or abuse and with health maintenance organizations, health care service contractors, and health care providers to assist and promote coordination of agencies responsible for ensuring compliance with controlled substances laws and to monitor observance of these laws and cooperation between these agencies. The department of social and health services, the department of labor and industries, and any other state agency including licensure disciplinary boards, shall refer all apparent instances of over-prescribing by practitioners and all apparent instances of legend drug overuse to the department. The department shall also encourage such referral by health maintenance organizations, health service contractors, and health care providers.

**Sec. 16.** RCW 18.64.310 and 2013 c 19 s 21 are each amended to read as follows:

The department shall:

(1) Establish reasonable license and examination fees and fees for services to other agencies in accordance with RCW 43.70.250 and 43.70.280. In cases where there are unanticipated demands for services, the department may request payment for services directly from the agencies for whom the services are performed, to the extent that revenues or other funds are available. Drug-related investigations regarding licensed health care practitioners shall be funded by an

appropriation to the department from the health professions account. The payment may be made on either an advance or a reimbursable basis as approved by the director of financial management;

(2) Employ, with confirmation by the commission, an executive officer, who shall be exempt from the provisions of chapter 41.06 RCW and who shall ~~((be a pharmacist licensed in Washington, and))~~ employ inspectors, investigators, chemists, and other persons as necessary to assist it for any purpose which it may deem necessary;

(3) Investigate and prosecute, at the direction of the commission, including use of subpoena powers, violations of law or regulations under its jurisdiction or the jurisdiction of the commission;

(4) Make, at the direction of the commission, inspections and investigations of pharmacies and other places, including dispensing machines, in which drugs or devices are stored, held, compounded, dispensed, sold, or administered to the ultimate consumer, to take and analyze any drugs or devices and to seize and condemn any drugs or devices which are adulterated, misbranded, stored, held, dispensed, distributed, administered, or compounded in violation of or contrary to law. The written operating agreement between the department and the commission, as required by RCW 43.70.240 shall include provisions for the department to involve the commission in carrying out its duties required by this section.

**NEW SECTION. Sec. 17.** A new section is added to chapter 18.64 RCW to read as follows:

The commission may appoint members of panels of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission including, but not limited to, licensing, disciplinary, and adjudicative actions.

**NEW SECTION. Sec. 18.** A new section is added to chapter 18.59 RCW to read as follows:

Each member of the board shall be compensated in accordance with RCW 43.03.265. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW.

**Sec. 19.** RCW 18.59.120 and 2011 c 336 s 492 are each amended to read as follows:

(1) There is established a board of occupational therapy practice. The board shall consist of five members appointed by the governor, who may consider the persons who are recommended for appointment by occupational therapy associations of the state. The members of the board shall be residents of the state. Four of the members shall have been engaged in rendering services to the public, teaching, or research in occupational therapy for at least five years immediately preceding their appointment. Three of these four board members shall be occupational therapists who shall at all times be holders of licenses for the practice of occupational therapy in the state, ~~((except for the initial members of the board,))~~ all of whom shall fulfill the requirements for licensure under this chapter. At least one member of the board shall be an occupational therapy

assistant licensed to assist in the practice of occupational therapy, except for the initial member appointed to this position, who shall fulfill the requirements for licensure as a occupational therapy assistant under this chapter. The remaining member of the board shall be a member of the public with an interest in the rights of consumers of health services.

(2) (~~The governor shall, within sixty days after June 7, 1984, appoint one member for a term of one year, two members for a term of two years, and two members for a term of three years.~~) Appointments (~~made thereafter~~) shall be for three-year terms, but no person shall be appointed to serve more than two consecutive full terms. Terms shall begin on the first day of the calendar year and end on the last day of the calendar year or until successors are appointed, except for the initial appointed members, who shall serve through the last calendar day of the year in which they are appointed before commencing the terms prescribed by this section. The governor shall make appointments for vacancies in unexpired terms within ninety days after the vacancies occur.

(3) The board shall meet during the first month of each calendar year to select a chair and for other purposes. At least one additional meeting shall be held before the end of each calendar year. Further meetings may be convened at the call of the chair or the written request of any two board members. (~~A majority of members of the board constitutes a quorum for all purposes.~~) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure. All meetings of the board shall be open to the public, except that the board may hold closed sessions to prepare, approve, grade, or administer examinations or, upon request of an applicant who fails an examination, to prepare a response indicating the reasons for the applicant's failure.

(~~(4) Members of the board shall receive compensation in the amount of fifty dollars for each day's attendance at proper meetings of the committee.~~)

**Sec. 20.** RCW 18.30.050 and 2002 c 160 s 4 are each amended to read as follows:

(1) The Washington state board of denturists is created. The board shall consist of seven members appointed by the secretary as follows:

(a) Four members of the board must be denturists licensed under this chapter, except initial appointees, who must have five years' experience in the field of denturism or a related field.

(b) Two members shall be selected from persons who are not affiliated with any health care profession or facility, at least one of whom must be over sixty-five years of age representing the elderly.

(c) One member must be a dentist licensed in the state of Washington.

(2) The members of the board shall serve for terms of three years. (~~The terms of the initial members shall be staggered, with the members appointed under subsection (1)(a) of this section serving two year and three year terms initially and the members appointed under subsection (1)(b) and (c) of this section serving one year, two year, and three year terms initially. Vacancies shall be filled in the same manner as the original appointments are made.~~) Appointments to fill vacancies shall be for the remainder of the unexpired term of the vacant position.

(3) No appointee may serve more than two consecutive terms.

(4) Members of the board shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. Each member of the board shall be compensated in accordance with RCW 43.03.265. The board is designated as a class five group for purposes of chapter 43.03 RCW.

(5) A member of the board may be removed for just cause by the secretary.

**Sec. 21.** RCW 18.30.060 and 1995 c 1 s 7 are each amended to read as follows:

(1) The board shall elect a chairperson of the board annually. The same person may not hold the office of chairperson for more than three years in succession.

(2) ~~((A majority of the board constitutes a quorum for all purposes, and a majority vote of the members voting governs the decisions of the board.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 22.** RCW 18.36A.150 and 2011 c 41 s 1 are each amended to read as follows:

(1) There is created the board of naturopathy consisting of seven members appointed by the governor to four-year terms. Five members of the board shall be persons licensed under this chapter and two shall be members of the public. No member may serve more than two consecutive full terms. Members hold office until their successors are appointed. ~~((The governor may appoint the initial members of the board to staggered terms from one to four years. Thereafter, all))~~ All members shall be appointed to full four-year terms.

(2) The public members of the board may not be a member of any other health care licensing board or commission, have a fiduciary obligation to a facility rendering services regulated under this chapter, or have a material or financial interest in the rendering of services regulated under this chapter.

(3) The board shall elect officers each year. The board shall meet at least twice each year and may hold additional meetings as called by the chair. Meetings of the board are open to the public, except that the board may hold executive sessions to the extent permitted by chapter 42.30 RCW. The department shall provide secretarial, clerical, and other assistance as required by the board.

(4) Each member of the board shall be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.265. Members shall be reimbursed for travel expenses incurred in the actual performance of their duties, as provided in RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW.

(5) A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

(6) The board may appoint members to panels of at least three members. A quorum for transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the board.

(7) The board may adopt such rules as are consistent with this chapter as may be deemed necessary and proper to carry out the purposes of this chapter.

(8) The governor may remove a member of the board for neglect of duty, misconduct, or malfeasance or misfeasance in office. Whenever the governor is satisfied that a member of the board has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, he or she shall file with the secretary of state a statement of the cause for and the order of removal from office, and the secretary shall immediately send a certified copy of the order of removal and statement of causes by certified mail to the last known post office address of the member. If a vacancy occurs on the board, the governor shall appoint a replacement to fill the remainder of the unexpired term.

**Sec. 23.** RCW 18.54.030 and 2011 c 336 s 489 are each amended to read as follows:

The initial composition of the optometry board includes the three members of the examining committee for optometry plus two more optometrists to be appointed by the governor.

The governor must make all appointments to the optometry board. Only optometrists who are ~~((citizens of the United States,))~~ residents of this state, having been licensed to practice and practicing optometry in this state for a period of at least four years immediately preceding the effective date of appointment, and who have no connection ~~((with any school or college embracing the teaching of optometry or))~~ with any optical supply business may be appointed.

~~((The governor may set the terms of office of the initial board at his or her discretion, to establish the following perpetual succession: The terms of the initial board include one position for one year, two for two years, and two for three years; and upon the expiration of the terms of the initial board, all))~~ All appointments are for three years.

In addition to the members specified in this section, the governor shall appoint a consumer member of the board, who shall serve for a term of three years.

In the event that a vacancy occurs on the board in the middle of an appointee's term, the governor must appoint a successor for the unexpired portion of the term only.

**Sec. 24.** RCW 18.54.060 and 1963 c 25 s 6 are each amended to read as follows:

~~((Three members constitute a quorum for the transaction of business of the board))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 25.** RCW 18.54.130 and 1984 c 287 s 41 are each amended to read as follows:

Members of the board are entitled to receive their travel expenses in accordance with RCW 43.03.050 and 43.03.060. Each member of the board will also be compensated in accordance with RCW ~~((43.03.240))~~ 43.03.265. The board is designated as a class five group for purposes of chapter 43.03 RCW.

**Sec. 26.** RCW 18.35.150 and 2014 c 189 s 12 are each amended to read as follows:

(1) There is created hereby the board of hearing and speech to govern the three separate professions: Hearing aid specialist, audiology, and speech-language pathology. The board shall consist of eleven members to be appointed by the governor.

(2) Members of the board shall be residents of this state. Three members shall represent the public and shall have an interest in the rights of consumers of health services, and shall not be or have been a member of, or married to a member of, another licensing board, a licensee of a health occupation board, an employee of a health facility, nor derive his or her primary livelihood from the provision of health services at any level of responsibility. Two members shall be hearing aid specialists who are licensed under this chapter, have at least five years of experience in the practice of hearing instrument fitting and dispensing, and must be actively engaged in fitting and dispensing within two years of appointment. Two members of the board shall be audiologists licensed under this chapter who have at least five years of experience in the practice of audiology and must be actively engaged in practice within two years of appointment. Two members of the board shall be speech-language pathologists licensed under this chapter who have at least five years of experience in the practice of speech-language pathology and must be actively engaged in practice within two years of appointment. One advisory nonvoting member shall be a speech-language pathology assistant certified in Washington. One advisory nonvoting member shall be a medical physician licensed in the state of Washington.

(3) The term of office of a member is three years. ~~((Of the initial appointments, one hearing aid specialist, one speech language pathologist, one audiologist, and one consumer shall be appointed for a term of two years, and one hearing aid specialist, one speech language pathologist, one audiologist, and two consumers shall be appointed for a term of three years. Thereafter, all appointments shall be made for expired terms.))~~ No member shall be appointed to serve more than two consecutive terms. A member shall continue to serve until a successor has been appointed. The governor shall either reappoint the member or appoint a successor to assume the member's duties at the expiration of his or her predecessor's term. A vacancy in the office of a member shall be filled by appointment for the unexpired term.

(4) The chair shall rotate annually among the hearing aid specialists, speech-language pathologists, audiologists, and public members serving on the board. In the absence of the chair, the board shall appoint an interim chair. In event of a tie vote, the issue shall be brought to a second vote and the chair shall refrain from voting.

(5) The board shall meet at least once each year, at a place, day and hour determined by the board, unless otherwise directed by a majority of board members. The board shall also meet at such other times and places as are requested by the department or by three members of the board. ~~((A quorum is a majority of the board. A hearing aid specialist, speech language pathologist, and audiologist must be represented.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure. Meetings of the board

shall be open and public, except the board may hold executive sessions to the extent permitted by chapter 42.30 RCW.

(6) Members of the board shall be compensated in accordance with RCW ((43.03.240)) 43.03.265 and shall be reimbursed for their travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board is designated as a class five group for purposes of chapter 43.03 RCW.

(7) The governor may remove a member of the board for cause at the recommendation of a majority of the board.

**Sec. 27.** RCW 18.57.003 and 2017 c 101 s 1 are each amended to read as follows:

There is hereby created an agency of the state of Washington, consisting of eleven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

On expiration of the term of any member, the governor shall appoint for a period of five years a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be ~~((a citizen of the United States and must be))~~ an actual resident of this state. Two members must be consumers who have neither a financial nor a fiduciary relationship to a health care delivery system, one member must have been in active practice as a licensed osteopathic physician assistant in this state for at least five years immediately preceding appointment, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall elect a chairperson ~~((, a secretary,))~~ and a vice chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

~~((An affirmative vote of a simple majority of the members present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

Each member of the board shall be compensated in accordance with RCW 43.03.265 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board is a class five group for purposes of chapter 43.03 RCW.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state.



**Sec. 28.** RCW 18.57.003 and 2020 c 80 s 14 are each amended to read as follows:

There is hereby created an agency of the state of Washington, consisting of eleven individuals appointed by the governor to be known as the Washington state board of osteopathic medicine and surgery.

On expiration of the term of any member, the governor shall appoint for a period of five years a qualified individual to take the place of such member. Each member shall hold office until the expiration of the term for which such member is appointed or until a successor shall have been appointed and shall have qualified. Initial appointments shall be made and vacancies in the membership of the board shall be filled for the unexpired term by appointment by the governor.

Each member of the board shall be (~~a citizen of the United States and must be~~) an actual resident of this state. Two members must be consumers who have neither a financial nor a fiduciary relationship to a health care delivery system, and every other member must have been in active practice as a licensed osteopathic physician and surgeon in this state for at least five years immediately preceding appointment.

The board shall elect a chairperson(~~(, a secretary,)~~) and a vice chairperson from its members. Meetings of the board shall be held at least four times a year and at such place as the board shall determine and at such other times and places as the board deems necessary.

~~((An affirmative vote of a simple majority of the members present at a meeting or hearing shall be required for the board to take any official action. The board may not take any action without a quorum of the board members present. A simple majority of the board members currently serving constitutes a quorum of the board.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

Each member of the board shall be compensated in accordance with RCW 43.03.265 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060. The board is a class five group for purposes of chapter 43.03 RCW.

Any member of the board may be removed by the governor for neglect of duty, misconduct, malfeasance or misfeasance in office, or upon written request of two-thirds of the physicians licensed under this chapter and in active practice in this state.

**Sec. 29.** RCW 18.22.014 and 2020 c 248 s 2 are each amended to read as follows:

The board shall meet at the places and times it determines and as often as necessary to discharge its duties. The board shall elect a chairperson(~~(,)~~) and a vice chairperson(~~(, and secretary,)~~) from among its members. Members must be compensated in accordance with RCW 43.03.265 in addition to travel expenses provided by RCW 43.03.050 and 43.03.060. The board is a class five group for purposes of chapter 43.03 RCW. ~~((A simple majority of the board members currently serving constitutes a quorum of the board.))~~ A majority of the board members appointed and serving constitutes a quorum for the transaction of board business. The affirmative vote of a majority of a quorum of the board is required to carry a motion or resolution, to adopt a rule, or to pass a measure.

**Sec. 30.** RCW 18.200.060 and 1997 c 285 s 7 are each amended to read as follows:

(1) The secretary has the authority to appoint an advisory committee to further the purposes of this chapter. The secretary may consider the persons who are recommended for appointment by the orthotic and prosthetic associations of the state. The committee is composed of five members, one member initially appointed for a term of one year, two for a term of two years, and two for a term of three years. Subsequent appointments are for terms of three years. No person may serve as a member of the committee for more than two consecutive terms. Members of the advisory committee must be residents of this state (~~and citizens of the United States~~). The committee is composed of three individuals licensed in the category designated and engaged in rendering services to the public. Two members must at all times be holders of licenses for the practice of either prosthetics or orthotics, or both, in this state, except for the initial members of the advisory committee, all of whom must fulfill the requirements for licensure under this chapter. One member must be a practicing orthotist. One member must be a practicing prosthetist. One member must be licensed by the state as a physician licensed under chapter 18.57 or 18.71 RCW, specializing in orthopedic medicine or surgery or physiatry. Two members must represent the public at large and be unaffiliated directly or indirectly with the profession being credentialed but, to the extent possible, be consumers of orthotic and prosthetic services. The two members appointed to the advisory committee representing the public at large must have an interest in the rights of consumers of health services and must not be or have been a licensee of a health occupation committee or an employee of a health facility, nor derive his or her primary livelihood from the provision of health services at any level of responsibility.

(2) The secretary may remove any member of the advisory committee for cause as specified by rule. In the case of a vacancy, the secretary shall appoint a person to serve for the remainder of the unexpired term.

(3) The advisory committee may provide advice on matters specifically identified and requested by the secretary, such as applications for licenses.

(4) The advisory committee may be requested by the secretary to approve an examination required for licensure under this chapter.

(5) The advisory committee may be requested by the secretary to review and monitor the exemptions to requirements of certain orthoses and prostheses in this chapter and recommend to the secretary any statutory changes that may be needed to properly protect the public.

(6) The advisory committee, at the request of the secretary, may recommend rules in accordance with the administrative procedure act, chapter 34.05 RCW, relating to standards for appropriateness of orthotic and prosthetic care.

(7) The advisory committee shall meet at the times and places designated by the secretary and hold meetings during the year as necessary to provide advice to the secretary. The committee may elect a chair and a vice chair. A majority of the members currently serving constitute a quorum.

(8) Each member of an advisory committee shall be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060. In addition, members of the committees shall be compensated in accordance with RCW 43.03.240 when engaged in the authorized business of their committees.

(9) The secretary, members of advisory committees, or individuals acting on their behalf are immune from suit in any action, civil or criminal, based on any credentialing or disciplinary proceedings or other official acts performed in the course of their duties.

**Sec. 31.** RCW 18.25.0165 and 1994 sp.s. c 9 s 106 are each amended to read as follows:

Members must be (~~(citizens of the United States and~~) residents of this state. Members must be licensed chiropractors for a period of five years before appointment. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

**Sec. 32.** RCW 18.79.070 and 2005 c 17 s 1 are each amended to read as follows:

(1) The state nursing care quality assurance commission is established, consisting of fifteen members to be appointed by the governor to four-year terms. The governor shall consider nursing members who are recommended for appointment by the appropriate professional associations in the state. No person may serve as a member of the commission for more than two consecutive full terms.

(2) There must be seven registered nurse members, two advanced registered nurse practitioner members, three licensed practical nurse members, and three public members on the commission. Each member of the commission must be a (~~(citizen of the United States and a~~) resident of this state.

(3)(a) Registered nurse members of the commission must:

- (i) Be licensed as registered nurses under this chapter; and
- (ii) Have had at least three years' experience in the active practice of nursing and have been engaged in that practice within two years of appointment.

(b) In addition:

- (i) At least one member must be on the faculty at a four-year university nursing program;
- (ii) At least one member must be on the faculty at a two-year community college nursing program;
- (iii) At least two members must be staff nurses providing direct patient care; and

(iv) At least one member must be a nurse manager or a nurse executive.

(4) Advanced registered nurse practitioner members of the commission must:

- (a) Be licensed as advanced registered nurse practitioners under this chapter; and
- (b) Have had at least three years' experience in the active practice of advanced registered nursing and have been engaged in that practice within two years of appointment.

(5) Licensed practical nurse members of the commission must:

- (a) Be licensed as licensed practical nurses under this chapter; and

(b) Have had at least three years' actual experience as a licensed practical nurse and have been engaged in practice as a practical nurse within two years of appointment.

(6) Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the governor appoint the existing members of the board of nursing and the board of practical nursing repealed under chapter 9, Laws of 1994 sp. sess. The governor may appoint initial members of the commission to staggered terms of from one to four years. Thereafter, all members shall be appointed to full four-year terms. Members of the commission hold office until their successors are appointed.

When the secretary appoints pro tem members, reasonable efforts shall be made to ensure that at least one pro tem member is a registered nurse who is currently practicing and, in addition to meeting other minimum qualifications, has graduated from an associate or baccalaureate nursing program within three years of appointment.

**Sec. 33.** RCW 18.79.140 and 1994 sp.s. c 9 s 414 are each amended to read as follows:

The executive director must be a graduate of ~~((an approved nursing education program and of))~~ a college or university, with a masters' degree ~~((and currently licensed as a registered nurse under this chapter; have a minimum of eight years' experience in nursing in any combination of administration and nursing education; and have been actively engaged in the practice of registered nursing or nursing education within two years immediately before the time of appointment))~~.

**Sec. 34.** RCW 18.71.015 and 2019 c 55 s 4 are each amended to read as follows:

The Washington medical commission is established, consisting of thirteen individuals licensed to practice medicine in the state of Washington under this chapter, two individuals who are licensed in the state of Washington as physician assistants under chapter 18.71A RCW, and six individuals who are members of the public. At least two of the public members shall not be from the health care industry. Each congressional district now existing or hereafter created in the state must be represented by at least one physician member of the commission. The terms of office of members of the commission are not affected by changes in congressional district boundaries. Public members of the commission may not be a member of any other health care licensing board or commission, or have a fiduciary obligation to a facility rendering health services regulated by the commission, or have a material or financial interest in the rendering of health services regulated by the commission.

The members of the commission shall be appointed by the governor ~~((Members of the initial commission may be appointed to staggered terms of one to four years))~~, and ~~((thereafter))~~ all terms of appointment shall be for four years. The governor shall consider such physician and physician assistant members

who are recommended for appointment by the appropriate professional associations in the state. (~~In appointing the initial members of the commission, it is the intent of the legislature that, to the extent possible, the existing members of the board of medical examiners and medical disciplinary board repealed under section 336, chapter 9, Laws of 1994 sp. sess. be appointed to the commission.~~) No member may serve more than two consecutive full terms. Each member shall hold office until a successor is appointed.

Each member of the commission must be (~~a citizen of the United States, must be~~) an actual resident of this state, and, if a physician or physician assistant, must have been licensed to practice medicine in this state for at least five years.

The commission shall meet as soon as practicable after appointment and elect officers each year. Meetings shall be held at least four times a year and at such place as the commission determines and at such other times and places as the commission deems necessary. A majority of the commission members appointed and serving constitutes a quorum for the transaction of commission business.

The affirmative vote of a majority of a quorum of the commission is required to carry any motion or resolution, to adopt any rule, or to pass any measure. The commission may appoint panels consisting of at least three members. A quorum for the transaction of any business by a panel is a minimum of three members. A majority vote of a quorum of the panel is required to transact business delegated to it by the commission.

Each member of the commission shall be compensated in accordance with RCW 43.03.265 and in addition thereto shall be reimbursed for travel expenses incurred in carrying out the duties of the commission in accordance with RCW 43.03.050 and 43.03.060. Any such expenses shall be paid from funds appropriated to the department of health.

Whenever the governor is satisfied that a member of a commission has been guilty of neglect of duty, misconduct, or malfeasance or misfeasance in office, the governor shall file with the secretary of state a statement of the causes for and the order of removal from office, and the secretary shall forthwith send a certified copy of the statement of causes and order of removal to the last known post office address of the member.

Vacancies in the membership of the commission shall be filled for the unexpired term by appointment by the governor.

The members of the commission are immune from suit in an action, civil or criminal, based on its disciplinary proceedings or other official acts performed in good faith as members of the commission.

Whenever the workload of the commission requires, the commission may request that the secretary appoint pro tempore members of the commission. When serving, pro tempore members of the commission have all of the powers, duties, and immunities, and are entitled to all of the emoluments, including travel expenses, of regularly appointed members of the commission.

NEW SECTION. Sec. 35. Section 27 of this act expires July 1, 2022.

NEW SECTION. Sec. 36. Section 28 of this act takes effect July 1, 2022.

Passed by the Senate March 7, 2022.

Passed by the House March 1, 2022.

Approved by the Governor March 30, 2022.  
Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 241

[Engrossed Second Substitute Senate Bill 5755]

### UNDERDEVELOPED URBAN LAND REDEVELOPMENT—SALES AND USE TAX INCENTIVE PROGRAM

AN ACT Relating to authorizing certain cities to establish a limited sales and use tax incentive program to encourage redevelopment of underdeveloped lands in urban areas; adding a new chapter to Title 82 RCW; creating a new section; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** The legislature finds that:

(1) Many cities in Washington are actively planning for growth under the growth management act, chapter 36.70A RCW;

(2) The construction industry provides living wage jobs for families across Washington;

(3) In the current economic climate, the creation of additional affordable housing units is essential to the economic health of our cities and our state;

(4) It is critical that Washington state promote its cities and its property owners that will provide affordable housing;

(5) A meaningful, fair, and predictable economic incentive should be created to stimulate the redevelopment of underdeveloped property in targeted urban areas through a limited sales and use tax deferral program as provided by this chapter;

(6) This limited tax deferral will help the owners of underdeveloped property achieve the highest and best use of land and enable cities to more fully realize their planning goals; and

(7) Data regarding the number of additional affordable units created due to the limited tax deferral will be evaluated to determine if this tool could be used to increase affordable housing in other areas of the state.

**NEW SECTION. Sec. 2.** It is the purpose of this chapter to encourage the redevelopment of underdeveloped land in targeted urban areas, thereby increasing affordable housing, employment opportunities, and helping accomplish the other planning goals of Washington cities. The legislative authorities of cities to which this chapter applies may authorize a sales and use tax deferral for an investment project within the city if the legislative authority of the city finds that there are significant areas of underdeveloped land and a lack of affordable housing in areas proximate to the land. If a conditional recipient maintains the property for qualifying purposes for at least 10 years, deferred sales and use taxes need not be repaid.

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

(1) "Affordable homeownership housing" means housing intended for owner occupancy to low or moderate-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(2) "Affordable rental housing" means housing for very low or low-income households whose monthly housing costs, including utilities other than telephone, do not exceed 30 percent of the household's monthly income.

(3) "Applicant" means an owner of underdeveloped property.

(4) "City" means a city with a population of at least 135,000 and not more than 250,000 at the time the city initially establishes the program under this section.

(5) "Conditional recipient" means an owner of underdeveloped land granted a conditional certificate of program approval under this chapter, which includes any successor owner of the property.

(6) "County median price" means the most recently published quarterly data of median home prices by the Washington center for real estate research.

(7) "Eligible investment project" means an investment project that is located in a city and receiving a conditional certificate of program approval.

(8) "Fair market rent" means the estimates of 40th percentile gross rents for standard quality units within counties as published by the federal department of housing and urban development.

(9) "Governing authority" means the local legislative authority of a city having jurisdiction over the property for which a deferral may be granted under this chapter.

(10) "Household" means a single person, family, or unrelated persons living together.

(11)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the investment project is a phased project, "initiation of construction" applies separately to each phase.

(12) "Investment project" means an investment in multifamily housing, including labor, services, and materials incorporated in the planning, installation, and construction of the project. "Investment project" includes investment in related facilities such as playgrounds and sidewalks as well as facilities used for business use for mixed-use development.

(13) "Low-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 50 percent but is at or below 80 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

(14) "Moderate-income household" means a single person, family, or unrelated persons living together whose adjusted income is more than 80 percent but is at or below 115 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

(15) "Multifamily housing" means a building or a group of buildings having two or more dwelling units not designed or used as transient accommodations and not including hotels and motels. Multifamily units may result from new construction or rehabilitation or conversion of vacant, underutilized, or substandard buildings to multifamily housing.

(16) "Owner" means the property owner of record.

(17) "Underdeveloped property" means land used as a surface parking lot for parking of motor vehicles off the street or highway, that is open to public use with or without charge, as of the effective date of this section.

(18) "Very low-income household" means a single person, family, or unrelated persons living together whose adjusted income is at or below 50 percent of the median family income adjusted for family size, for the county, city, or metropolitan statistical area, where the project is located, as reported by the United States department of housing and urban development.

**NEW SECTION. Sec. 4.** (1) For the purpose of creating a sales and use tax deferral program under this chapter, the governing authority must adopt a resolution of intention to create a sales and use tax deferral program as generally described in the resolution. The resolution must state the time and place of a hearing to be held by the governing authority to consider the creation of the tax deferral program and may include such other information pertaining to the creation of the deferral program as the governing authority determines to be appropriate to apprise the public of the action intended. However, the resolution must provide information pertaining to:

- (a) The application process;
- (b) The approval process;
- (c) The appeals process for applications denied approval; and
- (d) Additional requirements, conditions, and obligations that must be followed postapproval of an application.

(2) The governing authority must give notice of a hearing held under this chapter by publication of the notice once each week for two consecutive weeks, not less than seven days, nor more than 30 days before the date of the hearing in a paper having a general circulation in the city. The notice must state the time, date, place, and purpose of the hearing.

(3) Following the hearing or a continuance of the hearing, the governing authority may authorize the creation of the program.

**NEW SECTION. Sec. 5.** An owner of underdeveloped property seeking a sales and use tax deferral under this chapter on an investment project must complete the following procedures:

(1) The owner must apply to the city on forms adopted by the governing authority. The application must contain the following:

(a) Information setting forth the grounds supporting the requested deferral including information indicated on the application form or in the guidelines;

(b) A description of the investment project and site plan, and other information requested;

(c) A statement of the expected number of affordable housing units to be created;



(d) A statement that the applicant is aware of the potential tax liability involved if the investment project ceases to be used for eligible uses under this chapter;

(e) A statement that the applicant is aware that the investment project must be completed within three years from the date of approval of the application;

(f) A statement that the applicant is aware that the governing authority or the city official authorized by the governing authority may extend the deadline for completion of construction or rehabilitation for a period not to exceed 24 consecutive months; and

(g) A statement that the applicant would not have built in this location but for the availability of the tax deferral under this chapter;

(2) The applicant must verify the application by oath or affirmation; and

(3) The application must be accompanied by the application fee, if any, required under this chapter. The duly authorized administrative official or committee of the city may permit the applicant to revise an application before final action by the duly authorized administrative official or committee of the city.

**NEW SECTION. Sec. 6.** The duly authorized administrative official or committee of the city may approve the application and grant a conditional certificate of program approval if it finds that:

(1)(a) The investment project is set aside primarily for multifamily housing units and the applicant commits to renting or selling at least 50 percent of the units as affordable rental housing or affordable homeownership housing to very low, low, and moderate-income households. In a mixed use project, only the ground floor of a building may be used for commercial purposes with the remainder dedicated to multifamily housing units;

(b) At least 50 percent of the investment project set aside for multifamily housing units will be rented at a price at or below fair market rent for the county or sold at a price at or below county median price; and

(c) The applicant commits to any additional affordability and income eligibility conditions adopted by the local government under this chapter not otherwise inconsistent with this chapter;

(2) The investment project is, or will be, at the time of completion, in conformance with all local plans and regulations that apply at the time the application is approved;

(3) The investment project will occur on land that constitutes underdeveloped property;

(4) The area where the investment project will occur is located within an area zoned for residential or mixed uses;

(5) The terms and conditions of the implementation of the development meets the requirements of this chapter and any requirements of the city that are not otherwise inconsistent with this chapter;

(6) The land where the investment project will occur was not acquired through a condemnation proceeding under Title 8 RCW; and

(7) All other requirements of this chapter have been satisfied as well as any other requirements of the city that are not otherwise inconsistent with this chapter.

**NEW SECTION. Sec. 7.** (1) The duly authorized administrative official or committee of the city must approve or deny an application filed under this chapter within 90 days after receipt of the application.

(2) If the application is approved, the city must issue the applicant a conditional certificate of program approval. The certificate must contain a statement by a duly authorized administrative official of the governing authority that the investment project as described in the application will comply with the required criteria of this chapter.

(3) If the application is denied by the city, the city must state in writing the reasons for denial and send the notice to the applicant at the applicant's last known address within 10 days of the denial.

(4) Upon denial by the city, an applicant may appeal the denial to the city's governing authority or a city official designated by the city to hear such appeals within 30 days after receipt of the denial. The appeal before the city's governing authority or designated city official must be based upon the record made before the city with the burden of proof on the applicant to show that there was no substantial evidence to support the city's decision. The decision of the city on the appeal is final.

**NEW SECTION. Sec. 8.** The governing authority may establish an application fee. This fee may not exceed an amount determined to be required to cover the cost to be incurred by the governing authority in administering the program under this chapter. The application fee must be paid at the time the application for program approval is filed.

**NEW SECTION. Sec. 9.** (1) Within 30 days of the issuance of a certificate of occupancy for an eligible investment project, the conditional recipient must file with the city the following:

(a) A description of the work that has been completed and a statement that the eligible investment project qualifies the property for a sales and use tax deferral under this chapter;

(b) A statement of the new affordable housing to be offered as a result of the new construction; and

(c) A statement that the work has been completed within three years of the issuance of the conditional certificate of program approval.

(2) Within 30 days after receipt of the statements required under subsection (1) of this section, the city must determine and notify the conditional recipient as to whether the work completed and the affordable housing to be offered are consistent with the application and the contract approved by the city, and the investment project continues to qualify for a tax deferral under this chapter. The conditional recipient must notify the department within 30 days from receiving the city's determination to schedule an audit of the deferred taxes. The department must determine the amount of sales and use taxes qualifying for the deferral. If the department determines that purchases were not eligible for deferral it must assess interest, but not penalties, on the nonqualifying amounts.

(3) The city must notify the conditional recipient within 30 days that a tax deferral under this chapter is denied if the city determines that:

(a) The work was not completed within three years of the application date;

(b) The work was not constructed consistent with the application or other applicable requirements;

(c) The affordable housing units to be offered are not consistent with the application and criteria of this chapter; or

(d) The owner's property is otherwise not qualified for a sales and use tax deferral under this chapter.

(4) If the city finds that the work was not completed within the required time period due to circumstances beyond the control of the conditional recipient and that the conditional recipient has been acting and could reasonably be expected to act in good faith and with due diligence, the governing authority may extend the deadline for completion of the work for a period not to exceed 24 consecutive months.

(5) The city's governing authority may enact an ordinance to provide a process for a conditional recipient to appeal a decision by the city that the conditional recipient is not entitled to a deferral of sales and use taxes. The conditional recipient may appeal a decision by the city to deny a deferral of sales and use taxes in superior court under RCW 34.05.510 through 34.05.598, if the appeal is filed within 30 days of notification by the city to the conditional recipient.

(6) A city denying a conditional recipient of a sales and use tax deferral under subsection (3) of this section must notify the department and taxes deferred under this chapter are immediately due and payable, subject to any appeal by the conditional recipient. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

**NEW SECTION. Sec. 10.** (1) Thirty days after the anniversary of the date of issuance of the certificate of occupancy and each year thereafter for 10 years, the conditional recipient must file with a designated authorized representative of the city an annual report indicating the following:

(a) A statement of the affordable housing units constructed on the property as of the anniversary date;

(b) A certification by the conditional recipient that the property has not changed use;

(c) A description of changes or improvements constructed after issuance of the certificate of occupancy; and

(d) Any additional information requested by the city.

(2) The conditional recipient of a deferral of taxes under this chapter must file a complete annual tax performance report with the department pursuant to RCW 82.32.534 beginning the year the certificate of occupancy is issued and each year thereafter for 10 years.

(3) A city that issues a certificate of program approval under this chapter must report annually by December 31st of each year, beginning in 2022, to the department of commerce. The report must include the following information:

(a) The number of program approval certificates granted;

(b) The total number and type of new buildings constructed;

(c) The number of affordable housing units resulting from the new construction; and

(d) The estimated value of the sales and use tax deferral for each investment project receiving a program approval and the total estimated value of sales and use tax deferrals granted.

**NEW SECTION. Sec. 11.** (1) A conditional recipient must submit an application to the department before initiation of the construction of the investment project. In the case of an investment project involving multiple qualified buildings, applications must be made for, and before the initiation of construction of, each qualified building. The application must be made to the department in a form and manner prescribed by the department. The application must include a copy of the conditional certificate of program approval issued by the city, estimated construction costs, time schedules for completion and operation, and any other information required by the department. The department must rule on the application within 60 days.

(2) The department must provide information to the conditional recipient regarding documentation that must be retained by the conditional recipient in order to substantiate the amount of sales and use tax actually deferred under this chapter.

(3) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(4) The application must include a waiver by the conditional recipient of the four-year limitation under RCW 82.32.100.

(5) This section expires July 1, 2032.

**NEW SECTION. Sec. 12.** (1) After receiving the conditional certificate of program approval issued by the city and provided to the department by the applicant, the department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) The department must keep a running total of all estimated sales and use tax deferrals provided under this chapter during each fiscal biennium.

(3) The deferral certificate is valid during active construction of a qualified investment project and expires on the day the city issues a certificate of occupancy for the investment project for which a deferral certificate was issued.

(4) This section expires July 1, 2032.

**NEW SECTION. Sec. 13.** (1) If a conditional recipient voluntarily opts to discontinue compliance with the requirements of this chapter, the recipient must notify the city and department within 60 days of the change in use or intended discontinuance.

(2) If, after the department has issued a sales and use tax deferral certificate and the conditional recipient has received a certificate of occupancy, the city finds that a portion of an investment project is changed or will be changed to disqualify the recipient for sales and use tax deferral eligibility under this chapter, the city must notify the department and all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral. A debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient.

(3) This section does not apply after 10 years from the date of the certificate of occupancy.

**NEW SECTION. Sec. 14.** (1) Transfer of investment project ownership does not terminate the deferral. The deferral is transferred subject to the successor meeting the eligibility requirements of this chapter.

(2) The transferor of an eligible project must notify the city and the department of such transfer. The city must certify to the department that the successor meets the requirements of the deferral. The transferor must provide the information necessary for the department to transfer the deferral. If the transferor fails to notify the city and the department, all deferred sales and use taxes are immediately due and payable. The department must assess interest at the rate provided for delinquent taxes and penalties retroactively to the date of deferral.

**NEW SECTION. Sec. 15.** (1) This section is the tax preference performance statement for the tax preference contained in chapter . . . , Laws of 2022 (this act). This performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or to be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes this tax preference as one intended to induce certain designated behavior by taxpayers, as indicated in RCW 82.32.808(2)(a).

(3) It is the legislature's specific public policy objective to expand affordable housing options for very low to moderate-income households, specifically in underdeveloped urban areas.

(4)(a) To measure the effectiveness of the tax preference in this act, the joint legislative audit and review committee must evaluate the number of increased housing units on underdeveloped property. If a review finds that the number of affordable housing units has not increased, then the legislature intends to repeal this tax preference.

(b) The review must be provided to the fiscal committees of the legislature by December 31, 2030.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including data collected by the department under section 10 of this act.

**NEW SECTION. Sec. 16.** Sections 1 through 14 of this act constitute a new chapter in Title 82 RCW.

**NEW SECTION. Sec. 17.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

Passed by the Senate March 10, 2022.

Passed by the House March 9, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 242

[Engrossed Substitute Senate Bill 5761]

### WAGE AND SALARY INFORMATION—APPLICANTS FOR EMPLOYMENT

AN ACT Relating to employer requirements for providing wage and salary information to applicants for employment; amending RCW 49.58.110; and providing an effective date.

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

**Sec. 1.** RCW 49.58.110 and 2019 c 345 s 3 are each amended to read as follows:

(1) ~~((Upon request of an applicant for employment after the employer has initially offered the applicant the position, the))~~ The employer must ((provide the minimum wage or salary for the position for which the applicant is applying)) disclose in each posting for each job opening the wage scale or salary range, and a general description of all of the benefits and other compensation to be offered to the hired applicant. For the purposes of this section, "posting" means any solicitation intended to recruit job applicants for a specific available position, including recruitment done directly by an employer or indirectly through a third party, and includes any postings done electronically, or with a printed hard copy, that includes qualifications for desired applicants.

(2) Upon request of an employee offered an internal transfer to a new position or promotion, the employer must provide the wage scale or salary range for the employee's new position.

(3) ~~((If no wage scale or salary range exists, the employer must provide the minimum wage or salary expectation set by the employer prior to posting the position, making a position transfer, or making the promotion.~~

~~(4))~~ This section only applies to employers with ~~((fifteen))~~ 15 or more employees.

~~((5) An individual))~~ (4) A job applicant or an employee is entitled to the remedies in RCW 49.58.060 and 49.58.070 for violations of this section. Recovery of any wages and interest must be calculated from the first date wages were owed to the employee.

NEW SECTION. Sec. 2. This act takes effect January 1, 2023.

Passed by the Senate March 7, 2022.

Passed by the House March 1, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 243

[Senate Bill 5788]

### GUARDIANSHIP OF MINORS—VARIOUS PROVISIONS

AN ACT Relating to guardianship of minors; amending RCW 11.130.225, 13.04.030, 26.12.172, 26.23.050, 11.130.010, 11.130.085, 11.130.210, and 11.130.215; and providing an effective date.

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

**Sec. 1.** RCW 11.130.225 and 2020 c 312 s 108 are each amended to read as follows:

(1) On its own, on motion when a guardianship petition is filed under RCW 11.130.190, or on petition by a person interested in a minor's welfare, including the minor, the court may appoint an emergency guardian for the minor if the court finds:

(a) Appointment of an emergency guardian is likely to prevent substantial harm to the minor's health, safety, or welfare; and

(b) No other person appears to have authority, ability, and the willingness to act (~~(in the circumstances)~~) to prevent substantial harm to the minor's health, safety, or welfare.

(2) The duration of authority of an emergency guardian for a minor may not exceed sixty days and the emergency guardian may exercise only the powers specified in the order of appointment. The emergency guardian's authority may be extended once for not more than sixty days if the court finds that the conditions for appointment of an emergency guardian in subsection (1) of this section continue.

(3) Except as otherwise provided in subsection (4) of this section, reasonable notice of the date, time, and place of a hearing on a motion for or a petition for appointment of an emergency guardian for a minor must be given to:

- (a) The minor, if the minor is twelve years of age or older;
  - (b) Any attorney appointed under RCW 11.130.200;
  - (c) Each parent of the minor;
  - (d) Any person, other than a parent, having care or custody of the minor;
- and

(e) Any other person the court determines.

(4) The court may appoint an emergency guardian for a minor without notice under subsection (3) of this section and a hearing only if the court finds from an affidavit or testimony that the minor's health, safety, or welfare will be substantially harmed before a hearing with notice on the appointment can be held. If the court appoints an emergency guardian without notice to an unrepresented minor or the attorney for a represented minor, notice of the appointment must be given not later than forty-eight hours after the appointment to the individuals listed in subsection (3) of this section. Not later than five days after the appointment, the court shall hold a hearing on the appropriateness of the appointment.

(5) Appointment of an emergency guardian under this section, with or without notice, is not a determination that a basis exists for appointment of a guardian under RCW 11.130.185.

(6) The court may remove an emergency guardian appointed under this section at any time. The emergency guardian shall make any report the court requires.

(7) Notwithstanding subsection (2) of this section, the court may extend an emergency guardianship pending the outcome of a full hearing under RCW 11.130.190 or 11.130.220.

(8) If a petition for guardianship under RCW 11.130.215 is pending, or is subsequently filed after a petition under this section, the cases shall be linked or consolidated.

**Sec. 2.** RCW 13.04.030 and 2020 c 41 s 4 are each amended to read as follows:

(1) Except as provided in this section, the juvenile courts in this state shall have exclusive original jurisdiction over all proceedings:

- (a) Under the interstate compact on placement of children as provided in chapter 26.34 RCW;
- (b) Relating to children alleged or found to be dependent as provided in chapter 26.44 RCW and in RCW 13.34.030 through 13.34.161;

(c) Relating to the termination of a parent and child relationship as provided in RCW 13.34.180 through 13.34.210;

(d) To approve or disapprove out-of-home placement as provided in RCW 13.32A.170;

(e) Relating to juveniles alleged or found to have committed offenses, traffic or civil infractions, or violations as provided in RCW 13.40.020 through 13.40.230, unless:

(i) The juvenile court transfers jurisdiction of a particular juvenile to adult criminal court pursuant to RCW 13.40.110;

(ii) The statute of limitations applicable to adult prosecution for the offense, traffic or civil infraction, or violation has expired;

(iii) The alleged offense or infraction is a traffic, fish, boating, or game offense, or traffic or civil infraction committed by a juvenile sixteen years of age or older and would, if committed by an adult, be tried or heard in a court of limited jurisdiction, in which instance the appropriate court of limited jurisdiction shall have jurisdiction over the alleged offense or infraction, and no guardian ad litem is required in any such proceeding due to the juvenile's age. If such an alleged offense or infraction and an alleged offense or infraction subject to juvenile court jurisdiction arise out of the same event or incident, the juvenile court may have jurisdiction of both matters. The jurisdiction under this subsection does not constitute "transfer" or a "decline" for purposes of RCW 13.40.110 (1) or (2) or (e)(i) of this subsection. Courts of limited jurisdiction which confine juveniles for an alleged offense or infraction may place juveniles in juvenile detention facilities under an agreement with the officials responsible for the administration of the juvenile detention facility in RCW 13.04.035 and 13.20.060;

(iv) The alleged offense is a traffic or civil infraction, a violation of compulsory school attendance provisions under chapter 28A.225 RCW, or a misdemeanor, and a court of limited jurisdiction has assumed concurrent jurisdiction over those offenses as provided in RCW 13.04.0301; or

(v) The juvenile is sixteen or seventeen years old on the date the alleged offense is committed and the alleged offense is:

(A) A serious violent offense as defined in RCW 9.94A.030;

(B) A violent offense as defined in RCW 9.94A.030 and the juvenile has a criminal history consisting of: One or more prior serious violent offenses; two or more prior violent offenses; or three or more of any combination of the following offenses: Any class A felony, any class B felony, vehicular assault, or manslaughter in the second degree, all of which must have been committed after the juvenile's thirteenth birthday and prosecuted separately; or

(C) Rape of a child in the first degree.

(I) In such a case the adult criminal court shall have exclusive original jurisdiction, except as provided in (e)(v)(C)(II) and (III) of this subsection.

(II) The juvenile court shall have exclusive jurisdiction over the disposition of any remaining charges in any case in which the juvenile is found not guilty in the adult criminal court of the charge or charges for which he or she was transferred, or is convicted in the adult criminal court of an offense that is not also an offense listed in (e)(v) of this subsection. The juvenile court shall maintain residual juvenile court jurisdiction up to age twenty-five if the juvenile has turned eighteen years of age during the adult criminal court proceedings but



only for the purpose of returning a case to juvenile court for disposition pursuant to RCW 13.40.300(3)(d).

(III) The prosecutor and respondent may agree to juvenile court jurisdiction and waive application of exclusive adult criminal jurisdiction in (e)(v)(A) through (C) of this subsection and remove the proceeding back to juvenile court with the court's approval.

If the juvenile challenges the state's determination of the juvenile's criminal history under (e)(v) of this subsection, the state may establish the offender's criminal history by a preponderance of the evidence. If the criminal history consists of adjudications entered upon a plea of guilty, the state shall not bear a burden of establishing the knowing and voluntariness of the plea;

(f) Under the interstate compact on juveniles as provided in chapter 13.24 RCW;

(g) Relating to termination of a diversion agreement under RCW 13.40.080, including a proceeding in which the divertee has attained eighteen years of age;

(h) Relating to court validation of a voluntary consent to an out-of-home placement under chapter 13.34 RCW, by the parent or Indian custodian of an Indian child, except if the parent or Indian custodian and child are residents of or domiciled within the boundaries of a federally recognized Indian reservation over which the tribe exercises exclusive jurisdiction; and

(i) Relating to petitions to compel disclosure of information filed by the department of social and health services pursuant to RCW 74.13.042.

(2) The family court shall have concurrent original jurisdiction with the juvenile court over all proceedings under this section if the superior court judges of a county authorize concurrent jurisdiction as provided in RCW 26.12.010.

(3) The juvenile court shall have concurrent original jurisdiction with the family or probate court over (~~child custody~~) minor guardianship proceedings under chapter (~~26.10~~) 11.130 RCW and parenting plans or residential schedules under chapter 26.09, 26.26A, or 26.26B RCW as provided for in RCW 13.34.155.

(4) A juvenile subject to adult superior court jurisdiction under subsection (1)(e)(i) through (v) of this section, who is detained pending trial, may be detained in a detention facility as defined in RCW 13.40.020 pending sentencing or a dismissal.

**Sec. 3.** RCW 26.12.172 and 2008 c 6 s 1046 are each amended to read as follows:

Any court rules adopted for the implementation of parenting seminars shall include the following provisions:

(1) In no case shall opposing parties be required to attend seminars together;

(2) Upon a showing of domestic violence or abuse which would not require mutual decision making pursuant to RCW 26.09.191, or that a parent's attendance at the seminar is not in the children's best interests, the court shall either:

(a) Waive the requirement of completion of the seminar; or

(b) Provide an alternative, voluntary parenting seminar for battered spouses or battered domestic partners; and

(3) The court may waive the seminar for good cause.

(4) Cases filed as a minor guardianship under chapter 11.130 RCW are exempt from requirements of parenting seminar attendance.

**Sec. 4.** RCW 26.23.050 and 2021 c 35 s 14 are each amended to read as follows:

(1) If the division of child support is providing support enforcement services under RCW 26.23.045, or if a party is applying for support enforcement services by signing the application form on the bottom of the support order, the superior court shall include in all court orders that establish or modify a support obligation:

(a) A provision that orders and directs the person required to pay support to make all support payments to the Washington state support registry;

(b) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the person required to pay support at any time after entry of the court order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) A statement that the payee under the order or the person entitled to receive support might be required to submit an accounting of how the support, including any cash medical support, is being spent to benefit the child;

(d) A statement that a party to the support order who is required to provide health care coverage for the child or children covered by the order must notify the division of child support and the other party to the support order when the coverage terminates;

(e) A statement that any privilege of the person required to pay support to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the person is not in compliance with a support order as provided in RCW 74.20A.320; and

(f) A statement that the support obligation under the order may be abated as provided in RCW 26.09.320 if the person required to pay support is confined in a jail, prison, or correctional facility for at least six months, or is serving a sentence greater than six months in a jail, prison, or correctional facility.

As used in this subsection and subsection (3) of this section, "good cause not to require immediate income withholding" means a written determination of why implementing immediate wage withholding would not be in the child's best interests and, in modification cases, proof of timely payment of previously ordered support.

(2) In all other cases not under subsection (1) of this section, the court may order the person required to pay support to make payments directly to the person entitled to receive the payments, to the Washington state support registry, or may order that payments be made in accordance with an alternate arrangement agreed upon by the parties.

(a) The superior court shall include in all orders under this subsection that establish or modify a support obligation:

(i) A statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without

further notice to the person required to pay support at any time after entry of the court order, unless:

(A) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding and that withholding should be delayed until a payment is past due; or

(B) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(i) A statement that the payee under the order or the person entitled to receive support may be required to submit an accounting of how the support is being spent to benefit the child;

(iii) A statement that any party to the order required to provide health care coverage for the child or children covered by the order must notify the division of child support and the other party to the order when the coverage terminates; and

(iv) A statement that a party to the order seeking to enforce the other party's obligation to provide health care coverage may:

(A) File a motion in the underlying superior court action; or

(B) If there is not already an underlying superior court action, initiate an action in the superior court.

As used in this subsection, "good cause not to require immediate income withholding" is any reason that the court finds appropriate.

(b) The superior court may order immediate or delayed income withholding as follows:

(i) Immediate income withholding may be ordered if the person required to pay support has earnings. If immediate income withholding is ordered under this subsection, all support payments shall be paid to the Washington state support registry. The superior court shall issue a mandatory wage assignment order as set forth in chapter 26.18 RCW when the support order is signed by the court. The payee under the order or the person entitled to receive the transfer payment is responsible for serving the employer with the order and for its enforcement as set forth in chapter 26.18 RCW.

(ii) If immediate income withholding is not ordered, the court shall require that income withholding be delayed until a payment is past due. The support order shall contain a statement that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the person required to pay support, after a payment is past due.

(c) If a mandatory income withholding order under chapter 26.18 RCW is issued under this subsection and the division of child support provides support enforcement services under RCW 26.23.045, the existing wage withholding assignment is prospectively superseded upon the division of child support's subsequent service of an income withholding order.

(3) The office of administrative hearings and the department of social and health services shall require that all support obligations established as administrative orders include a provision which orders and directs that the person required to pay support shall make all support payments to the Washington state support registry. All administrative orders shall also state that any privilege of the person required to pay support to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be

suspended if the person is not in compliance with a support order as provided in RCW 74.20A.320. All administrative orders shall also state that withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state without further notice to the person required to pay support at any time after entry of the order, unless:

(a) One of the parties demonstrates, and the presiding officer finds, that there is good cause not to require immediate income withholding; or

(b) The parties reach a written agreement that is approved by the presiding officer that provides for an alternate agreement.

(4) If the support order does not include the provision ordering and directing that all payments be made to the Washington state support registry and a statement that withholding action may be taken against wages, earnings, assets, or benefits if a support payment is past due or at any time after the entry of the order, or that licensing privileges of the person required to pay support may not be renewed, or may be suspended, the division of child support may serve a notice on the person stating such requirements and authorizations. Service may be by personal service or any form of mail requiring a return receipt.

(5) Every support order shall state:

(a) The address where the support payment is to be sent;

(b) That withholding action may be taken against wages, earnings, assets, or benefits, and liens enforced against real and personal property under the child support statutes of this or any other state, without further notice to the person required to pay support at any time after entry of a support order, unless:

(i) One of the parties demonstrates, and the court finds, that there is good cause not to require immediate income withholding; or

(ii) The parties reach a written agreement that is approved by the court that provides for an alternate arrangement;

(c) The income of the parties, if known, or that their income is unknown and the income upon which the support award is based;

(d) The support award as a sum certain amount;

(e) The specific day or date on which the support payment is due;

(f) The names and ages of the dependent children;

(g) A provision requiring both the person required to pay support, and the payee under the order or the person entitled to receive support who is a parent of the child or children covered by the order, to keep the Washington state support registry informed of whether he or she has access to health care coverage at reasonable cost and, if so, the health care coverage information;

(h) That either or both the person required to pay support, and the payee under the order or the person entitled to receive support who is a parent of the child or children covered by the order, shall be obligated to provide medical support for a child or children covered by the order through health care coverage if:

(i) The person obligated to provide medical support provides accessible coverage for the child or children through private or public health care coverage; or

(ii) Coverage that can be extended to cover the child or children is or becomes available to the person obligated to provide medical support through employment or is union-related; or

(iii) In the absence of such coverage, through an additional sum certain amount, as that obligated person's monthly payment toward the premium as provided under RCW 26.09.105;

(i) That a person obligated to provide medical support who is providing health care coverage must notify both the division of child support and the other party to the order when coverage terminates;

(j) That if proof of health care coverage or proof that the coverage is unavailable is not provided within twenty days, the person seeking enforcement or the department may seek direct enforcement of the coverage through the employer or union of the person required to provide medical support without further notice to the person as provided under chapter 26.18 RCW;

(k) The reasons for not ordering health care coverage if the order fails to require such coverage;

(l) That any privilege of the person required to pay support to obtain and maintain a license, as defined in RCW 74.20A.320, may not be renewed, or may be suspended if the person is not in compliance with a support order as provided in RCW 74.20A.320;

(m) That each party to the support order must:

(i) Promptly file with the court and update as necessary the confidential information form required by subsection (7) of this section; and

(ii) Provide the state case registry and update as necessary the information required by subsection (7) of this section; and

(n) That parties to administrative support orders shall provide to the state case registry and update as necessary their residential addresses and the address of the employer of the person required to pay support. The division of child support may adopt rules that govern the collection of parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, the names of the children, social security numbers of the children, dates of birth of the children, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers to enforce an administrative support order. The division of child support shall not release this information if the division of child support determines that there is reason to believe that release of the information may result in physical or emotional harm to the party or to the child, or a restraining order or protective order is in effect to protect one party from the other party.

(6) After the person required to pay support has been ordered or notified to make payments to the Washington state support registry under this section, that person shall be fully responsible for making all payments to the Washington state support registry and shall be subject to payroll deduction or other income-withholding action. The person required to pay support shall not be entitled to credit against a support obligation for any payments made to a person or agency other than to the Washington state support registry except as provided under RCW 74.20.101. A civil action may be brought by the person required to pay support to recover payments made to persons or agencies who have received and retained support moneys paid contrary to the provisions of this section.

(7) All petitioners and parties to all court actions under chapters 26.09, ~~((26.10,))~~ 26.12, 26.18, 26.21A, 26.23, 26.26A, 26.26B, and 26.27 RCW and minor guardianships under chapter 11.130 RCW shall complete to the best of their knowledge a verified and signed confidential information form or

equivalent that provides the parties' current residence and mailing addresses, telephone numbers, dates of birth, social security numbers, driver's license numbers, and the names, addresses, and telephone numbers of the parties' employers, to ensure that the parties' information is added to the judicial information system's person database. The clerk of the court shall not accept petitions, except in parentage actions initiated by the state, orders of child support, decrees of dissolution, or parentage orders for filing in such actions unless accompanied by the confidential information form or equivalent, or unless the confidential information form or equivalent is already on file with the court clerk. In lieu of or in addition to requiring the parties to complete a separate confidential information form, the clerk may collect the information in electronic form. The clerk of the court shall transmit the confidential information form or its data to the division of child support with a copy of the order of child support or parentage order, and may provide copies of the confidential information form or its data and any related findings, decrees, parenting plans, orders, or other documents to the state administrative agency that administers Title IV-A, IV-D, IV-E, or XIX of the federal social security act. In state initiated parentage actions, the parties adjudicated the parents of the child or children shall complete the confidential information form or equivalent or the state's attorney of record may complete that form to the best of the attorney's knowledge.

(8) The department has rule-making authority to enact rules consistent with 42 U.S.C. Sec. 652(f) and 42 U.S.C. Sec. 666(a)(19) as amended by section 7307 of the deficit reduction act of 2005. Additionally, the department has rule-making authority to implement regulations required under 45 C.F.R. Parts 302, 303, 304, 305, and 308.

**Sec. 5.** RCW 11.130.010 and 2020 c 312 s 301 are each amended to read as follows:

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

(1) "Adult" means an individual at least eighteen years of age or an emancipated individual under eighteen years of age.

(2) "Adult subject to conservatorship" means an adult for whom a conservator has been appointed under this chapter.

(3) "Adult subject to guardianship" means an adult for whom a guardian has been appointed under this chapter.

(4) "Claim" includes a claim against an individual or conservatorship estate, whether arising in contract, tort, or otherwise.

(5) "Conservator" means a person appointed by a court to make decisions with respect to the property or financial affairs of an individual subject to conservatorship. The term includes a co-conservator.

(6) "Conservatorship estate" means the property subject to conservatorship under this chapter.

(7) "Court visitor" means the person appointed by the court pursuant to this chapter.

(8) "Evaluation and treatment facility" has the same meaning as provided in RCW 71.05.020.

(9) "Full conservatorship" means a conservatorship that grants the conservator all powers available under this chapter.

(10) "Full guardianship" means a guardianship that grants the guardian all powers available under this chapter.

(11) "Guardian" means a person appointed by the court to make decisions with respect to the personal affairs of an individual. The term includes a co-guardian but does not include a guardian ad litem.

(12) "Guardian ad litem" means a person appointed to inform the court about, ~~((and))~~ or to represent, the needs and best interests of a minor.

(13) "Individual subject to conservatorship" means an adult or minor for whom a conservator has been appointed under this chapter.

(14) "Individual subject to guardianship" means an adult or minor for whom a guardian has been appointed under this chapter.

(15) "Less restrictive alternative" means an approach to meeting an individual's needs which restricts fewer rights of the individual than would the appointment of a guardian or conservator. The term includes supported decision making, appropriate technological assistance, appointment of a representative payee, and appointment of an agent by the individual, including appointment under a power of attorney for health care or power of attorney for finances.

(16) "Letters of office" means a record issued by a court certifying a guardian's or conservator's authority to act.

(17) "Limited conservatorship" means a conservatorship that grants the conservator less than all powers available under this chapter, grants powers over only certain property, or otherwise restricts the powers of the conservator.

(18) "Limited guardianship" means a guardianship that grants the guardian less than all powers available under this chapter or otherwise restricts the powers of the guardian.

(19) "Long-term care facility" has the same meaning as provided in RCW 70.129.010.

(20) "Minor" means an unemancipated individual under eighteen years of age.

(21) "Minor subject to conservatorship" means a minor for whom a conservator has been appointed under this chapter.

(22) "Minor subject to guardianship" means a minor for whom a guardian has been appointed under this chapter.

(23) "Notice party" means a person entitled to notice under this chapter or otherwise determined by the court to be entitled to notice.

(24) "Parent" does not include an individual whose parental rights have been terminated.

(25) "Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(26) "Professional guardian or conservator" means a guardian or conservator appointed under this chapter who is not a relative of the person subject to guardianship or conservatorship established under this chapter and who charges fees for carrying out the duties of court-appointed guardian or conservator for three or more persons.

(27) "Property" includes tangible and intangible property.

(28) "Protective arrangement instead of conservatorship" means a court order entered under RCW 11.130.590.

(29) "Protective arrangement instead of guardianship" means a court order entered under RCW 11.130.585.

(30) "Protective arrangement under Article 5 of this chapter" means a court order entered under RCW 11.130.585 or 11.130.590.

(31) "Record," used as a noun, means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(32) "Relative" means any person related by blood or by law to the person subject to guardianship, conservatorship, or other protective arrangements.

(33) "Respondent" means an individual for whom appointment of a guardian or conservator or a protective arrangement instead of guardianship or conservatorship is sought.

(34) "Sign" means, with present intent to authenticate or adopt a record:

(a) To execute or adopt a tangible symbol; or

(b) To attach to or logically associate with the record an electronic symbol, sound, or process.

(35) "Special agent" means the person appointed by the court pursuant to RCW 11.130.375 or 11.130.635.

(36) "Standby guardian" means a person appointed by the court under RCW 11.130.220.

(37) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States. The term includes a federally recognized Indian tribe.

(38) "Supported decision making" means assistance from one or more persons of an individual's choosing in understanding the nature and consequences of potential personal and financial decisions, which enables the individual to make the decisions, and in communicating a decision once made if consistent with the individual's wishes.

(39) "Verified receipt" is a verified receipt signed by the custodian of funds stating that a savings and loan association or bank, trust company, escrow corporation, or other corporations approved by the court hold the cash or securities of the individual subject to conservatorship subject to withdrawal only by order of the court.

(40) "Visitor" means a court visitor.

**Sec. 6.** RCW 11.130.085 and 2019 c 437 s 117 are each amended to read as follows:

(1) Before accepting appointment as a guardian or conservator, a person shall disclose to the court whether the person:

(a) Is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding;

(b) Has been convicted of:

(i) A felony;

(ii) A crime involving dishonesty, neglect, violence, or use of physical force; or

(iii) Other crimes relevant to the functions the individual would assume as guardian or conservator; or



(c) Has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business.

(2) A guardian or conservator that engages or anticipates engaging an agent the guardian or conservator knows has been convicted of a felony, a crime involving dishonesty, neglect, violence, or use of physical force, or other crimes relevant to the functions the agent is being engaged to perform promptly shall disclose that knowledge to the court.

(3) If a conservator engages or anticipates engaging an agent to manage finances of the individual subject to conservatorship and knows the agent is or has been a debtor in a bankruptcy, insolvency, or receivership proceeding, the conservator promptly shall disclose that knowledge to the court.

(4) If a guardian or conservator that engages or anticipates engaging an agent and knows the agent has any court finding of a breach of fiduciary duty or a violation of any state's consumer protection act, or violation of any other statute proscribing unfair or deceptive acts or practices in the conduct of any business, the guardian or conservator promptly shall disclose that knowledge to the court.

(5) A court may not be able to access certain databases. The parties and not the court are responsible for confirming the accuracy of what is represented.

**Sec. 7.** RCW 11.130.210 and 2020 c 312 s 105 are each amended to read as follows:

(1) Before granting any order under this chapter, the court must consult the judicial information system, if available, to determine the existence of any information and proceedings that are relevant to the placement of the child.

(2) Before entering a final order, the court must:

(a) Direct the department of children, youth, and families to release information regarding all proposed guardians and all adult members of any proposed guardian's household as provided under RCW 13.50.100; and

(b) Require the petitioner to provide the results of an examination of state and national criminal identification data provided by the Washington state patrol criminal identification system as described in chapter 43.43 RCW for ~~((the petitioner and))~~ all proposed guardians as well as all adult members of the ((petitioner's)) proposed guardian's household.

**Sec. 8.** RCW 11.130.215 and 2020 c 312 s 106 are each amended to read as follows:

(1) After a hearing under RCW 11.130.195, the court may appoint a guardian for a minor, if appointment is proper under RCW 11.130.185, dismiss the proceeding, or take other appropriate action consistent with this chapter or law of this state other than this chapter.

(2) In appointing a guardian under subsection (1) of this section, the following rules apply:

(a) The court shall appoint a person nominated as guardian by a parent of the minor in a probated will or other record unless the court finds the appointment is contrary to the best interest of the minor. Any "other record" must be a declaration or other sworn document and may include a power of attorney or other sworn statement as to the care, custody, or control of the minor child.

(b) If multiple parents have nominated different persons to serve as guardian, the court shall appoint the nominee whose appointment is in the best interest of the minor, unless the court finds that appointment of none of the nominees is in the best interest of the minor.

(c) If a guardian is not appointed under (a) or (b) of this subsection, the court shall appoint the person nominated by the minor if the minor is twelve years of age or older unless the court finds that appointment is contrary to the best interest of the minor. In that case, the court shall appoint as guardian a person whose appointment is in the best interest of the minor.

(3) In the interest of maintaining or encouraging involvement by a minor's parent in the minor's life, developing self-reliance of the minor, or for other good cause, the court, at the time of appointment of a guardian for the minor or later, on its own or on motion of the minor or other interested person, may create a limited guardianship by limiting the powers otherwise granted by this article to the guardian. Following the same procedure, the court may grant additional powers or withdraw powers previously granted.

(4) The court, as part of an order appointing a guardian for a minor, shall state rights retained by any parent of the minor, which shall preserve the parent-child relationship through an order for parent-child visitation and other contact, unless the court finds the relationship should be limited or restricted under RCW 26.09.191; and which may include decision making regarding the minor's health care, education, or other matter, or access to a record regarding the minor.

(5) An order granting a guardianship for a minor must state that each parent of the minor is entitled to notice that:

(a) The guardian has delegated custody of the minor subject to guardianship;

(b) The court has modified or limited the powers of the guardian; or

(c) The court has removed the guardian.

(6) An order granting a guardianship for a minor must identify any person in addition to a parent of the minor which is entitled to notice of the events listed in subsection (5) of this section.

(7) An order granting guardianship for a minor must direct the clerk of the court to issue letters of office to the guardian containing an expiration date which should be the minor's eighteenth birthday.

**NEW SECTION. Sec. 9.** Section 4 of this act takes effect January 1, 2023.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 244

[Second Substitute Senate Bill 5789]

### WASHINGTON CAREER AND COLLEGE PATHWAYS INNOVATION CHALLENGE PROGRAM

AN ACT Relating to creating the Washington career and college pathways innovation challenge program; amending RCW 28B.120.040; reenacting and amending RCW 43.79A.040; adding a new section to chapter 28B.120 RCW; and repealing RCW 28B.120.005, 28B.120.010, 28B.120.020, 28B.120.025, 28B.120.030, and 28B.120.900.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 28B.120 RCW to read as follows:

(1) The Washington career and college pathways innovation challenge program is established. The purpose of the program is to meet statewide educational attainment goals established in RCW 28B.77.020 by developing local and regional partnerships that foster innovations to:

(a) Increase postsecondary enrollment and completion for students enrolling directly from high school and adults returning to education; and

(b) Eliminate educational opportunity gaps for students of color, English language learners, students with disabilities, and foster and homeless youth.

(2)(a) The student achievement council shall administer the program and award grants, based on a competitive grant process, to local and regional partnerships that represent cross-sector collaborations among education and higher education agencies and institutions, local education agencies, local government, community-based organizations, employers, and other local entities. The student achievement council must consult, in both the design of the grant program as well as in the administration of the grant program, with stakeholders including representatives of:

(i) The state board for community and technical colleges;

(ii) An organization representing the presidents of the public four-year institutions of higher education;

(iii) The workforce training and education coordinating board;

(iv) An organization representing the private, not-for-profit, four-year institutions of higher education;

(v) The commission on African American affairs;

(vi) The commission on Hispanic affairs;

(vii) The commission on Asian Pacific American affairs;

(viii) The Washington state LGBTQ commission;

(ix) The governor's office of Indian affairs; and

(x) The Washington state women's commission.

(b) In awarding the grants, the student achievement council shall consider applications that:

(i) Plan and pilot innovative initiatives to raise educational attainment and decrease opportunity gaps;

(ii) Engage community-based organizations and resources;

(iii) Expand the use of integrated work-based learning;

(iv) Provide financial support to cover expenses beyond educational tuition and fees, and other services and supports for students to enroll and complete education and training; and

(v) Include local matching funds.

(c) In administering the program the student achievement council may hire staff to support grant oversight and provide technical assistance to grantees.

(d) The student achievement council may solicit and receive such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of the program and may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments.

(3) The student achievement council shall provide a report each year beginning September 1, 2022, to the governor and the education and higher education committees of the legislature in accordance with RCW 43.01.036. The report shall:

- (a) Describe grants awarded;
- (b) Report the progress of each local and regional partnership by reporting on high school graduation, postsecondary enrollment, and completion for each of the regions that partnerships serve; and
- (c) Disaggregate data by income, race, ethnicity, and other demographic characteristics.

**Sec. 2.** RCW 28B.120.040 and 2012 c 229 s 575 are each amended to read as follows:

The ~~((student achievement council fund for innovation and quality))~~ Washington career and college pathways innovation challenge program account is hereby established in the custody of the state treasurer. The student achievement council shall deposit in the fund all moneys received ~~((under RCW 28B.120.030))~~ for the Washington career and college pathways innovation challenge program. Moneys in the fund may be spent only for the purposes of ~~((RCW 28B.120.010 and 28B.120.020))~~ awarding grants under the Washington career and college pathways innovation challenge program. Disbursements from the fund shall be on the authorization of the student achievement council. The fund is subject to the allotment procedure provided under chapter 43.88 RCW, but ~~((no))~~ an appropriation is not required for disbursements.

**Sec. 3.** RCW 43.79A.040 and 2021 c 175 s 10 and 2021 c 108 s 5 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, and may be commingled with moneys in the state treasury for cash management and cash balance purposes.

(2) All income received from investment of the treasurer's trust fund must 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 must occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer must distribute the earnings credited to the investment income account to the state general fund except under (b), (c), and (d) of this subsection.

(b) The following accounts and funds must receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The 24/7 sobriety account, the Washington promise scholarship account, the Gina Grant Bull memorial legislative page scholarship account, the Rosa Franklin legislative internship program scholarship ~~((account))~~ account, the

Washington advanced college tuition payment program account, the Washington college savings program account, the accessible communities account, the Washington achieving a better life experience program account, the Washington career and college pathways innovation challenge program account, the community and technical college innovation account, the agricultural local fund, the American Indian scholarship endowment fund, the foster care scholarship endowment fund, the foster care endowed scholarship trust fund, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the county enhanced 911 excise tax account, the county road administration board emergency loan account, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family and medical leave insurance account, the fish and wildlife federal lands revolving account, the natural resources federal lands revolving account, the food animal veterinarian conditional scholarship account, the forest health revolving account, the fruit and vegetable inspection account, the educator conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the Washington global health technologies and product development account, the grain inspection revolving fund, the Washington history day account, the industrial insurance rainy day fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the low-income home rehabilitation revolving loan program account, the multiagency permitting team account, the northeast Washington wolf-livestock management account, the produce railcar pool account, the public use general aviation airport loan revolving account, the regional transportation investment district account, the rural rehabilitation account, the Washington sexual assault kit account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund and breeder awards account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington horse racing commission operating account, the life sciences discovery fund, the Washington state library-archives building account, the reduced cigarette ignition propensity account, the center for deaf and hard of hearing youth account, the school for the blind account, the Millersylvania park trust fund, the public employees' and retirees' insurance reserve fund, the school employees' benefits board insurance reserve fund, the public employees' and retirees' insurance account, the school employees' insurance account, the long-term services and supports trust account, the radiation perpetual maintenance fund, the Indian health improvement reinvestment account, the department of licensing tuition recovery trust fund, the student achievement council tuition recovery trust fund, the tuition recovery trust fund, the industrial insurance premium refund account, the mobile home park relocation fund, the natural resources deposit fund, the Washington state health insurance pool account, the federal forest revolving account, and the library operations account.

(c) The following accounts and funds must receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advance 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.

(d) Any state agency that has independent authority over accounts or funds not statutorily required to be held in the custody of the state treasurer that deposits funds into a fund or account in the custody of the state treasurer pursuant to an agreement with the office of the state treasurer shall receive its proportionate share of earnings based upon each account's or fund's average daily balance for the period.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

**NEW SECTION. Sec. 4.** The following acts or parts of acts are each repealed:

(1) RCW 28B.120.005 (Findings) and 2010 c 245 s 6, 1999 c 169 s 2, & 1991 c 98 s 1;

(2) RCW 28B.120.010 (Washington fund for innovation and quality in higher education program—Incentive grants) and 2012 c 229 s 571, 2010 c 245 s 7, 1999 c 169 s 5, 1996 c 41 s 1, & 1991 c 98 s 2;

(3) RCW 28B.120.020 (Program administration—Powers and duties of student achievement council) and 2012 c 229 s 572, 2011 1st sp.s. c 11 s 235, 2010 c 245 s 8, 1999 c 169 s 3, 1996 c 41 s 2, & 1991 c 98 s 3;

(4) RCW 28B.120.025 (Program administration—Powers and duties of state board for community and technical colleges) and 2012 c 229 s 573 & 1999 c 169 s 4;

(5) RCW 28B.120.030 (Receipt of gifts, grants, and endowments) and 2012 c 229 s 574, 1999 c 169 s 6, & 1991 c 98 s 4; and

(6) RCW 28B.120.900 (Intent—1999 c 169) and 1999 c 169 s 1.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 245

[Second Substitute Senate Bill 5793]

### STATE BOARDS, COMMISSIONS, ETC.—MEMBER STIPENDS

AN ACT Relating to allowing compensation for lived experience on boards, commissions, councils, committees, and other similar groups; amending RCW 28A.300.802, 43.03.050, 43.03.060, and 41.40.035; reenacting and amending RCW 43.03.220; adding new sections to chapter 43.03 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature finds that equitable public policy discussions should include individuals directly impacted by that policy. In order to do so, the legislature supports removing barriers to that participation. The legislature finds that asking community members with lower financial means to volunteer their time and expertise while state employees and representatives of

advocacy organizations receive compensation from their respective agency or organization for their time and experience ultimately hinders full and open public participation. As a result, the legislature finds that removing financial barriers for those individuals fosters increased access to government and enriches public policy discussions and decisions, ultimately leading to more equitable and sustainable policy outcomes.

**Sec. 2.** RCW 43.03.220 and 2011 1st sp.s. c 21 s 55 and 2011 c 5 s 902 are each reenacted and amended to read as follows:

(1) Any part-time board, commission, council, committee, or other similar group which is established by the executive, legislative, or judicial branch to participate in state government and which functions primarily in an advisory, coordinating, or planning capacity shall be identified as a class one group. Unless otherwise identified in law, all newly formed and existing groups are a class one group.

(2) Absent any other provision of law to the contrary, ~~((no money beyond the customary reimbursement or allowance for expenses may be paid by or through the state to members of class one groups for attendance at meetings of such groups))~~ a stipend may be provided to a member of a class one group in accordance with this subsection.

(a) Subject to available funding, an agency may provide a stipend to individuals who are low income or have lived experience to support their participation in class one groups when the agency determines such participation is desirable in order to implement the principles of equity described in RCW 43.06D.020, provided that the individuals are not otherwise compensated for their attendance at meetings.

(b) Stipends shall not exceed \$200 for each day during which the member attends an official meeting or performs statutorily prescribed duties approved by the chairperson of the group.

(c) Individuals eligible for stipends under this section are eligible for reasonable allowances for child and adult care reimbursement, lodging, and travel expenses as provided in RCW 43.03.050 and 43.03.060 in addition to stipend amounts.

(d) Nothing in this subsection creates an employment relationship, or any membership or qualification in any state or other publicly supported retirement system, for this or any other title due to the payment of a stipend, lodging and travel expenses, or child care expenses provided under this section where such a relationship, membership, or qualification did not already exist.

(e) As allowable by federal and state law, state agencies will minimize, to the greatest extent possible, the impact of stipends and reimbursements on public assistance eligibility and benefit amounts.

(3)~~((a) - (e))~~ Except for members who qualify for a stipend under subsection (2) of this section, no person designated as a member of a class one board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund. Exceptions may be granted under RCW 43.03.049. Class one groups, when feasible, shall use an alternative means of conducting a meeting that does not require travel while still maximizing member and public participation and may use a meeting format that requires members to be physically present at one location only when necessary or required by law.

~~((b))~~ (4) Class one groups that are funded by sources other than the state general fund are encouraged to reduce travel, lodging, and other costs associated with conducting the business of the group including use of other meeting formats that do not require travel.

(5) Agencies exercising their authority to provide stipends and allowances under this section must follow the guidelines established by the office of equity pursuant to section 3 of this act.

(6) For purposes of this section:

(a) "Lived experience" means direct personal experience in the subject matter being addressed by the board, commission, council, committee, or other similar group.

(b) "Low income" means an individual whose income is not more than 400 percent of the federal poverty level, adjusted for family size.

NEW SECTION. Sec. 3. A new section is added to chapter 43.03 RCW to read as follows:

(1) By December 1, 2022, the office of equity shall develop uniform equity-driven guidelines for agencies on the issuance of stipends and allowances authorized under RCW 43.03.220 to provide for consistent application of the law. In developing the guidelines, the office of equity shall consult with stakeholders including, but not limited to, state agencies and impacted communities. The guidelines for providing allowances must include the reasonable allowances as prescribed by the office of financial management under RCW 43.03.050.

(2) Agencies exercising their authority under RCW 43.03.220 to provide stipends or allowances to members of class one groups shall adhere to the guidelines established under subsection (1) of this section.

**Sec. 4.** RCW 28A.300.802 and 2011 1st sp.s. c 21 s 53 are each amended to read as follows:

In addition to any board, commission, council, committee, or other similar group established by statute or executive order, the superintendent of public instruction may appoint advisory groups on subject matters within the superintendent's responsibilities or as may be required by any federal legislation as a condition to the receipt of federal funds by the federal department. The advisory groups shall be constituted as required by federal law or as the superintendent may determine.

Members of advisory groups under the authority of the superintendent may be paid their travel expenses in accordance with RCW 43.03.050 and 43.03.060.

Except as provided in this section or as authorized by RCW 43.03.220, members of advisory groups under the authority of the superintendent are volunteering their services and are not eligible for compensation. A person is eligible to receive compensation in an amount not to exceed one hundred dollars for each day during which the member attends an official meeting of the group or performs statutorily prescribed duties approved by the chairperson of the group if the person (1) occupies a position, normally regarded as full-time in nature, as a certificated employee of a local school district; (2) is participating as part of their employment with the local school district; and (3) the meeting or duties are performed outside the period in which school days as defined by RCW 28A.150.030 are conducted. The superintendent may reimburse local school



districts for substitute certificated employees to enable members to meet or perform duties on school days. A person is eligible to receive compensation from federal funds in an amount to be determined by personal service contract for groups required by federal law.

**Sec. 5.** RCW 43.03.050 and 2011 1st sp.s. c 21 s 61 are each amended to read as follows:

(1) The director of financial management shall prescribe reasonable allowances to cover reasonable and necessary subsistence and lodging expenses for elective and appointive officials and state employees while engaged on official business away from their designated posts of duty. The director of financial management may prescribe and regulate the allowances provided in lieu of subsistence and lodging expenses and may prescribe the conditions under which reimbursement for subsistence and lodging may be allowed. The schedule of allowances adopted by the office of financial management may include special allowances for foreign travel and other travel involving higher than usual costs for subsistence and lodging. The allowances established by the director shall not exceed the rates set by the federal government for federal employees. However, during the 2003-05 fiscal biennium, the allowances for any county that is part of a metropolitan statistical area, the largest city of which is in another state, shall equal the allowances prescribed for that larger city.

(2) Those persons appointed to serve without compensation on any state board, commission, or committee, if entitled to payment of travel expenses, shall be paid pursuant to special per diem rates prescribed in accordance with subsection (1) of this section by the office of financial management.

(3) The director of financial management may prescribe reasonable allowances to cover reasonable expenses for meals, coffee, and light refreshment served to elective and appointive officials and state employees regardless of travel status at a meeting where: (a) The purpose of the meeting is to conduct official state business or to provide formal training to state employees or state officials; (b) the meals, coffee, or light refreshment are an integral part of the meeting or training session; (c) the meeting or training session takes place away from the employee's or official's regular workplace; and (d) the agency head or authorized designee approves payments in advance for the meals, coffee, or light refreshment. In order to prevent abuse, the director may regulate such allowances and prescribe additional conditions for claiming the allowances.

(4) Upon approval of the agency head or authorized designee, an agency may serve coffee or light refreshments at a meeting where: (a) The purpose of the meeting is to conduct state business or to provide formal training that benefits the state; and (b) the coffee or light refreshment is an integral part of the meeting or training session. The director of financial management shall adopt requirements necessary to prohibit abuse of the authority authorized in this subsection.

(5) The director of financial management shall prescribe reasonable allowances to cover reasonable and necessary child and adult care expenses incurred by eligible members of a class one board, commission, council, committee, or similar group, who are authorized under RCW 43.03.220 to receive such allowances, while attending an official meeting or performing statutorily prescribed duties approved by the chairperson of the group.

(6) The schedule of allowances prescribed by the director under the terms of this section and any subsequent increases in any maximum allowance or special allowances for areas of higher than usual costs shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature.

~~((6))~~ (7) No person designated as a member of a class one through class three or class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund(~~(- Exceptions may be granted)~~), unless authorized under RCW 43.03.220 or granted an exception under RCW 43.03.049.

**Sec. 6.** RCW 43.03.060 and 2011 1st sp.s. c 21 s 62 are each amended to read as follows:

(1) Whenever it becomes necessary for elective or appointive officials or employees of the state to travel away from their designated posts of duty while engaged on official business, and it is found to be more advantageous or economical to the state that travel be by a privately-owned vehicle rather than a common carrier or a state-owned or operated vehicle, a mileage rate established by the director of financial management shall be allowed. The mileage rate established by the director shall not exceed any rate set by the United States treasury department above which the substantiation requirements specified in Treasury Department Regulations section 1.274-5T(a)(1), as now law or hereafter amended, will apply.

(2) The director of financial management may prescribe and regulate the specific mileage rate or other allowance for the use of privately-owned vehicles or common carriers on official business and the conditions under which reimbursement of transportation costs may be allowed. The reimbursement or other payment for transportation expenses of any employee or appointive official of the state shall be based on the method deemed most advantageous or economical to the state.

(3) The mileage rate established by the director of financial management pursuant to this section and any subsequent changes thereto shall be reported to the ways and means committees of the house of representatives and the senate at each regular session of the legislature.

(4) No person designated as a member of a class one through class three or class five board, commission, council, committee, or similar group may receive an allowance for subsistence, lodging, or travel expenses if the allowance cost is funded by the state general fund(~~(- Exceptions may be granted)~~), unless authorized under RCW 43.03.220 or granted an exception under RCW 43.03.049.

**NEW SECTION. Sec. 7.** A new section is added to chapter 43.03 RCW to read as follows:

(1) An agency exercising its authority to provide stipends under RCW 43.03.220(2) must report to the Washington state office of equity by August 30, 2023, and August 30, 2024, for state fiscal years 2023 and 2024 respectively, the following information:

(a) A brief description of the groups for which stipends have been made available including:

- (i) Number of members receiving a stipend or allowance; and
  - (ii) Aggregate demographic information of members of class one groups including race, ethnicity, income, and geographic representation by county;
  - (b) The amount of stipends distributed;
  - (c) The amount of allowances distributed;
  - (d) An analysis of whether and how the availability of stipends and allowances has reduced barriers to participation and increased the diversity of group participants; and
  - (e) An analysis of whether the provision of stipends and allowances resulted in more applications and willingness to participate.
- (2) The Washington state office of equity shall:
- (a) Compile and analyze the information received from agencies under this section; and
  - (b) Prepare a report, in compliance with RCW 43.01.036, to the governor and legislature by December 1, 2024. The report must include:
    - (i) An overall evaluation of the stipend process authorized in RCW 43.03.220(2);
    - (ii) Recommendations for improving the process; and
    - (iii) Recommendations to further decrease barriers to participation and increase the diversity of group applicants.

**Sec. 8.** RCW 41.40.035 and 1987 c 146 s 1 are each amended to read as follows:

(1) No person appointed to membership on any committee, board, or commission on or after July 1, 1976, who is compensated for service on such committee, board, or commission for fewer than ten days or seventy hours in any month, whichever amount is less, shall receive service credit for such service for that month: PROVIDED, That on and after October 1, 1977, appointive and elective officials who receive monthly compensation earnable from an employer in an amount equal to or less than ninety times the state minimum hourly wage shall not receive any service credit for such employment.

(2) No person appointed on or after the effective date of this subsection to membership on any committee, board, or commission described in RCW 43.03.220 may receive service credit for service on such committee, board, or commission due to the payment of a stipend or allowance as authorized under RCW 43.03.220.

(3) This section does not apply to any person serving on a committee, board, or commission on June 30, 1976, who continued such service until subsequently appointed by the governor to a different committee, board, or commission.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 246

[Substitute Senate Bill 5818]

HOUSING CONSTRUCTION—STATE ENVIRONMENTAL POLICY ACT AND GROWTH  
MANAGEMENT ACT

AN ACT Relating to promoting housing construction in cities through amendments to and limiting appeals under the state environmental policy act and growth management act; amending RCW 36.70A.600, 36.70A.070, 43.21C.495, and 43.21C.501; adding a new section to chapter 43.21C RCW; creating a new section; and providing an expiration date.

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

**Sec. 1.** RCW 36.70A.600 and 2020 c 173 s 1 are each amended to read as follows:

(1) A city planning pursuant to RCW 36.70A.040 is encouraged to take the following actions in order to increase its residential building capacity:

(a) Authorize development in one or more areas of not fewer than five hundred acres that include at least one train station served by commuter rail or light rail with an average of at least fifty residential units per acre that require no more than an average of one on-site parking space per two bedrooms in the portions of multifamily zones that are located within the areas;

(b) Authorize development in one or more areas of not fewer than two hundred acres in cities with a population greater than forty thousand or not fewer than one hundred acres in cities with a population less than forty thousand that include at least one bus stop served by scheduled bus service of at least four times per hour for twelve or more hours per day with an average of at least twenty-five residential units per acre that require no more than an average of one on-site parking space per two bedrooms in portions of the multifamily zones that are located within the areas;

(c) Authorize at least one duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on each parcel in one or more zoning districts that permit single-family residences unless a city documents a specific infrastructure of physical constraint that would make this requirement unfeasible for a particular parcel;

(d) Authorize a duplex, triplex, quadplex, sixplex, stacked flat, townhouse, or courtyard apartment on one or more parcels for which they are not currently authorized;

(e) Authorize cluster zoning or lot size averaging in all zoning districts that permit single-family residences;

(f) Adopt a subarea plan pursuant to RCW 43.21C.420;

(g) Adopt a planned action pursuant to RCW 43.21C.440(1)(b)(ii), except that an environmental impact statement pursuant to RCW 43.21C.030 is not required for such an action;

(h) Adopt increases in categorical exemptions pursuant to RCW 43.21C.229 for residential or mixed-use development;

(i) Adopt a form-based code in one or more zoning districts that permit residential uses. "Form-based code" means a land development regulation that uses physical form, rather than separation of use, as the organizing principle for the code;

(j) Authorize a duplex on each corner lot within all zoning districts that permit single-family residences;

(k) Allow for the division or redivision of land into the maximum number of lots through the short subdivision process provided in chapter 58.17 RCW;

(l) Authorize a minimum net density of six dwelling units per acre in all residential zones, where the residential development capacity will increase within the city. For purposes of this subsection, the calculation of net density does not include the square footage of areas that are otherwise prohibited from development, such as critical areas, the area of buffers around critical areas, and the area of roads and similar features;

(m) Create one or more zoning districts of medium density in which individual lots may be no larger than three thousand five hundred square feet and single-family residences may be no larger than one thousand two hundred square feet;

(n) Authorize accessory dwelling units in one or more zoning districts in which they are currently prohibited;

(o) Remove minimum residential parking requirements related to accessory dwelling units;

(p) Remove owner occupancy requirements related to accessory dwelling units;

(q) Adopt new square footage requirements related to accessory dwelling units that are less restrictive than existing square footage requirements related to accessory dwelling units;

(r) Adopt maximum allowable exemption levels in WAC 197-11-800(1) as it existed on June 11, 2020, or such subsequent date as may be provided by the department of ecology by rule, consistent with the purposes of this section;

(s) Adopt standards for administrative approval of final plats pursuant to RCW 58.17.100;

(t) Adopt ordinances authorizing administrative review of preliminary plats pursuant to RCW 58.17.095;

(u) Adopt other permit process improvements where it is demonstrated that the code, development regulation, or ordinance changes will result in a more efficient permit process for customers;

(v) Update use matrices and allowable use tables that eliminate conditional use permits and administrative conditional use permits for all housing types, including single-family homes, townhomes, multifamily housing, low-income housing, and senior housing, but excluding essential public facilities;

(w) Allow off-street parking to compensate for lack of on-street parking when private roads are utilized or a parking demand study shows that less parking is required for the project;

(x) Develop a local program that offers homeowners a combination of financing, design, permitting, or construction support to build accessory dwelling units. A city may condition this program on a requirement to provide the unit for affordable home ownership or rent the accessory dwelling unit for a defined period of time to either tenants in a housing subsidy program as defined in RCW 43.31.605(14) or to tenants whose income is less than eighty percent of the city or county median family income. If the city includes an affordability requirement under the program, it must provide additional incentives, such as:

(i) Density bonuses;

(ii) Height and bulk bonuses;

(iii) Fee waivers or exemptions;

- (iv) Parking reductions; or
- (v) Expedited permitting; and

(y) Develop a local program that offers homeowners a combination of financing, design, permitting, or construction support to convert a single-family home into a duplex, triplex, or quadplex where those housing types are authorized. A local government may condition this program on a requirement to provide a certain number of units for affordable home ownership or to rent a certain number of the newly created units for a defined period of time to either tenants in a housing subsidy program as defined in RCW 43.31.605(14) or to tenants whose income is less than eighty percent of the city or county median family income. If the city includes an affordability requirement, it must provide additional incentives, such as:

- (i) Density bonuses;
- (ii) Height and bulk bonuses;
- (iii) Fee waivers or exemptions;
- (iv) Parking reductions; or
- (v) Expedited permitting.

(2) A city planning pursuant to RCW 36.70A.040 may adopt a housing action plan as described in this subsection. The goal of any such housing plan must be to encourage construction of additional affordable and market rate housing in a greater variety of housing types and at prices that are accessible to a greater variety of incomes, including strategies aimed at the for-profit single-family home market. A housing action plan may utilize data compiled pursuant to RCW 36.70A.610. The housing action plan should:

(a) Quantify existing and projected housing needs for all income levels, including extremely low-income households, with documentation of housing and household characteristics, and cost-burdened households;

(b) Develop strategies to increase the supply of housing, and variety of housing types, needed to serve the housing needs identified in (a) of this subsection;

(c) Analyze population and employment trends, with documentation of projections;

(d) Consider strategies to minimize displacement of low-income residents resulting from redevelopment;

(e) Review and evaluate the current housing element adopted pursuant to RCW 36.70A.070, including an evaluation of success in attaining planned housing types and units, achievement of goals and policies, and implementation of the schedule of programs and actions;

(f) Provide for participation and input from community members, community groups, local builders, local realtors, nonprofit housing advocates, and local religious groups; and

(g) Include a schedule of programs and actions to implement the recommendations of the housing action plan.

(3) (~~If adopted by April 1, 2023,~~) The adoption of ordinances, development regulations and amendments to ((development)) such regulations, and other nonproject actions taken by a city to implement the actions specified in subsection (1) of this section, with the exception of the action specified in subsection (1)(f) of this section, are not subject to administrative or judicial appeal under chapter 43.21C RCW.

(4) Any action taken by a city prior to April 1, 2023, to amend (~~their~~) its comprehensive plan~~(s)~~ or adopt or amend ordinances or development regulations, solely to enact provisions under subsection (1) of this section is not subject to legal challenge under this chapter.

(5) In taking action under subsection (1) of this section, cities are encouraged to utilize strategies that increase residential building capacity in areas with frequent transit service and with the transportation and utility infrastructure that supports the additional residential building capacity.

(6) A city that is planning to take at least two actions under subsection (1) of this section, and that action will occur between July 28, 2019, and April 1, 2021, is eligible to apply to the department for planning grant assistance of up to one hundred thousand dollars, subject to the availability of funds appropriated for that purpose. The department shall develop grant criteria to ensure that grant funds awarded are proportionate to the level of effort proposed by a city, and the potential increase in housing supply or regulatory streamlining that could be achieved. Funding may be provided in advance of, and to support, adoption of policies or ordinances consistent with this section. A city can request, and the department may award, more than one hundred thousand dollars for applications that demonstrate extraordinary potential to increase housing supply or regulatory streamlining.

(7) A city seeking to develop a housing action plan under subsection (2) of this section is eligible to apply to the department for up to one hundred thousand dollars.

(8) The department shall establish grant award amounts under subsections (6) and (7) of this section based on the expected number of cities that will seek grant assistance, to ensure that all cities can receive some level of grant support. If funding capacity allows, the department may consider accepting and funding applications from cities with a population of less than twenty thousand if the actions proposed in the application will create a significant amount of housing capacity or regulatory streamlining and are consistent with the actions in this section.

(9) In implementing chapter 348, Laws of 2019, cities are encouraged to prioritize the creation of affordable, inclusive neighborhoods and to consider the risk of residential displacement, particularly in neighborhoods with communities at high risk of displacement.

**Sec. 2.** RCW 36.70A.070 and 2021 c 254 s 2 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 groundwater used for public water supplies. Wherever possible, the land use element should consider utilizing urban planning approaches that promote physical activity. Where applicable, the land use element shall review drainage, flooding, and stormwater runoff 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 that identifies the number of housing units necessary to manage projected growth, as provided by the department of commerce, including:

(i) Units for moderate, low, very low, and extremely low-income households; and

(ii) Emergency housing, emergency shelters, and permanent supportive housing;

(b) Includes a statement of goals, policies, objectives, and mandatory provisions for the preservation, improvement, and development of housing, including single-family residences, and within an urban growth area boundary, moderate density housing options including((f+))<sub>2</sub> but not limited to, duplexes, triplexes, and townhomes;

(c) Identifies sufficient capacity of land for housing including, but not limited to, government-assisted housing, housing for moderate, low, very low, and extremely low-income households, manufactured housing, multifamily housing, group homes, foster care facilities, emergency housing, emergency shelters, permanent supportive housing, and within an urban growth area boundary, consideration of duplexes, triplexes, and townhomes;

(d) Makes adequate provisions for existing and projected needs of all economic segments of the community, including:

(i) Incorporating consideration for low, very low, extremely low, and moderate-income households;

(ii) Documenting programs and actions needed to achieve housing availability including gaps in local funding, barriers such as development regulations, and other limitations;

(iii) Consideration of housing locations in relation to employment location; and

(iv) Consideration of the role of accessory dwelling units in meeting housing needs;

(e) Identifies local policies and regulations that result in racially disparate impacts, displacement, and exclusion in housing, including:

(i) Zoning that may have a discriminatory effect;

(ii) Disinvestment; and

(iii) Infrastructure availability;

(f) Identifies and implements policies and regulations to address and begin to undo racially disparate impacts, displacement, and exclusion in housing caused by local policies, plans, and actions;



(g) Identifies areas that may be at higher risk of displacement from market forces that occur with changes to zoning development regulations and capital investments; and

(h) Establishes antidisplacement policies, with consideration given to the preservation of historical and cultural communities as well as investments in low, very low, extremely low, and moderate-income housing; equitable development initiatives; inclusionary zoning; community planning requirements; tenant protections; land disposition policies; and consideration of land that may be used for affordable housing.

In counties and cities subject to the review and evaluation requirements of RCW 36.70A.215, any revision to the housing element shall include consideration of prior review and evaluation reports and any reasonable measures identified. The housing element should link jurisdictional goals with overall county goals to ensure that the housing element goals are met.

The adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city that is required or chooses to plan under RCW 36.70A.040 that increase housing capacity, increase housing affordability, and mitigate displacement as required under this subsection (2) and that apply outside of critical areas are not subject to administrative or judicial appeal under chapter 43.21C RCW unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat.

(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. Park and recreation facilities shall be included in the capital facilities plan element.

(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. 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 economic advancement, 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 groundwater 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) A commercial, industrial, residential, shoreline, or mixed-use area are subject to the requirements of (d)(iv) of this subsection, but are not subject to the requirements of (c)(ii) and (iii) of this subsection.

(B) Any development or redevelopment other than an industrial area or an industrial use within a mixed-use area or an industrial area under this subsection (5)(d)(i) must be principally designed to serve the existing and projected rural population.

(C) Any development or redevelopment in terms of building size, scale, use, or intensity shall be consistent with the character of the existing areas. Development and redevelopment may include changes in use from vacant land or a previously existing use so long as the new use conforms to the requirements of this subsection (5);

(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. Rural counties may allow the expansion of small-scale businesses as long as those small-scale businesses conform with the rural character of the area as defined by the local government according to RCW 36.70A.030(23). Rural counties may also allow new small-scale businesses to utilize a site previously occupied by an existing business as long as the new small-scale business conforms to the rural character of the area as defined by the local government according to RCW 36.70A.030(23). 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.

(a) The transportation element shall include the following subelements:

(i) Land use assumptions used in estimating travel;

(ii) Estimated traffic impacts to state-owned transportation facilities resulting from land use assumptions to assist the department of transportation in monitoring the performance of state facilities, to plan improvements for the facilities, and to assess the impact of land-use decisions on state-owned transportation facilities;

(iii) Facilities and services needs, including:

(A) An inventory of air, water, and ground transportation facilities and services, including 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 within the city or county's jurisdictional boundaries;

(B) Level of service standards for all locally owned arterials and transit routes to serve as a gauge to judge performance of the system. These standards should be regionally coordinated;

(C) For state-owned transportation facilities, level of service standards for highways, as prescribed in chapters 47.06 and 47.80 RCW, to gauge the performance of the system. The purposes of reflecting level of service standards for state highways in the local comprehensive plan are to monitor the performance of the system, to evaluate improvement strategies, and to facilitate coordination between the county's or city's six-year street, road, or transit program and the office of financial management's ten-year investment program. The concurrency requirements of (b) of this subsection do not apply to transportation facilities and services of statewide significance except for counties consisting of islands whose only connection to the mainland are state highways or ferry routes. In these island counties, state highways and ferry route capacity must be a factor in meeting the concurrency requirements in (b) of this subsection;

(D) Specific actions and requirements for bringing into compliance locally owned transportation facilities or services that are below an established level of service standard;

(E) 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;

(F) Identification of state and local system needs to meet current and future demands. Identified needs on state-owned transportation facilities must be consistent with the statewide multimodal transportation plan required under chapter 47.06 RCW;

(iv) Finance, including:

(A) An analysis of funding capability to judge needs against probable funding resources;

(B) 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. The multiyear financing plan should be coordinated with the ten-year investment program developed by the office of financial management as required by RCW 47.05.030;

(C) 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;

(v) Intergovernmental coordination efforts, including an assessment of the impacts of the transportation plan and land use assumptions on the transportation systems of adjacent jurisdictions;

(vi) Demand-management strategies;

(vii) Pedestrian and bicycle component to include collaborative efforts to identify and designate planned improvements for pedestrian and bicycle facilities and corridors that address and encourage enhanced community access and promote healthy lifestyles.

(b) 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 locally owned 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" means 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. If the collection of impact fees is delayed under RCW 82.02.050(3), the six-year period required by this subsection (6)(b) must begin after full payment of all impact fees is due to the county or city.

(c) The transportation element described in this subsection (6), 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, and the ten-year investment program required by RCW 47.05.030 for the state, must be consistent.

(7) An economic development element establishing local goals, policies, objectives, and provisions for economic growth and vitality and a high quality of life. A city that has chosen to be a residential community is exempt from the economic development element requirement of this subsection.

(8) A park and recreation element that implements, and is consistent with, the capital facilities plan element as it relates to park and recreation facilities. The element shall include: (a) Estimates of park and recreation demand for at least a ten-year period; (b) an evaluation of facilities and service needs; and (c) an evaluation of intergovernmental coordination opportunities to provide regional approaches for meeting park and recreational demand.

(9) It is the intent that new or amended elements required after January 1, 2002, be adopted concurrent with the scheduled update provided in RCW 36.70A.130. Requirements to incorporate any such new or amended elements shall be null and void until funds sufficient to cover applicable local government costs are appropriated and distributed by the state at least two years before local government must update comprehensive plans as required in RCW 36.70A.130.

**Sec. 3.** RCW 43.21C.495 and 2020 c 173 s 2 are each amended to read as follows:

~~((If adopted by April 1, 2023, amendments to development regulations))~~  
Adoption of ordinances, development regulations and amendments to such regulations, and other nonproject actions taken by a city to implement: The actions specified in section 2, chapter . . . Laws of 2022 (this act) unless the adoption of such ordinances, development regulations and amendments to such regulations, or other nonproject actions has a probable significant adverse impact on fish habitat; and the increased residential building capacity actions

identified in RCW 36.70A.600(1) (~~or (4)~~), with the exception of the action specified in RCW 36.70A.600(1)(f), are not subject to administrative or judicial appeals under this chapter.

**Sec. 4.** RCW 43.21C.501 and 2019 c 348 s 6 are each amended to read as follows:

(1) Project actions described in this section that pertain to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 are exempt from appeals under this chapter on the basis of the evaluation of or impacts to the following elements of the environment, provided that the appropriate requirements for a particular element of the environment, as set forth in subsections (2) and (3) of this section, are met.

(2)(a) Transportation. A project action pertaining to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to transportation elements of the environment, so long as ~~((the project does not present significant adverse impacts to the state-owned transportation system as determined by the department of transportation and))~~ the project is:

~~((a)(i))~~ (i)(A) Consistent with a locally adopted transportation plan; or

~~((ii))~~ (B) Consistent with the transportation element of a comprehensive plan; and

~~((b)(i))~~ (ii)(A) A project for which traffic or parking impact fees are imposed pursuant to RCW 82.02.050 through 82.02.090; or

~~((ii))~~ (B) A project for which traffic or parking impacts are ~~((expressly))~~ mitigated by an ordinance, or ordinances, of general application adopted by the city or town.

~~((2))~~ (b) The exemption under this subsection (2) does not apply if the department of transportation has found that the project will present significant adverse impacts to the state-owned transportation system.

(3)(a) Aesthetics. A project action pertaining to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to the aesthetics element of the environment, so long as the project is subject to design review pursuant to adopted design review requirements at the local government level.

(b) Light and glare. A project action pertaining to residential, multifamily, or mixed-use development evaluated under this chapter by a city or town planning under RCW 36.70A.040 is exempt from appeals under this chapter on the basis of the evaluation of or impacts to the light and glare element of the environment, so long as the project is subject to design review pursuant to adopted design review requirements at the local government level.

(4) For purposes of this section ~~((, "impacts"))~~:

(a) "Design review" means a formally adopted local government process by which projects are reviewed for compliance with design standards for the type of use adopted through local ordinance.

(b) "Impacts to transportation elements of the environment" include impacts to transportation systems; vehicular traffic; waterborne, rail, and air traffic; parking; movement or circulation of people or goods; and traffic hazards.

**NEW SECTION. Sec. 5.** (1) The legislature recognizes that certain rule-based categorical exemption thresholds to chapter 43.21C RCW, found in WAC 197-11-800, have not been updated in recent years, and should be modified in light of the increased environmental protections in place under chapters 36.70A and 90.58 RCW, the current affordable housing crisis, and other laws. It is the intent of the legislature to direct the department of ecology to conduct expedited rule making to modify the thresholds for the categorical exemptions described under subsection (2) of this section.

(2) By December 31, 2022, the department of ecology shall modify the rule-based categorical exemptions to chapter 43.21C RCW found in WAC 197-11-800 as follows:

(a) Include four attached single-family residential units to the current exemption under WAC 197-11-800(1)(b)(i);

(b) Create a new exemption level under WAC 197-11-800(1)(d) for single-family residential project types with a total square footage of fewer than 1,500 square feet in incorporated urban growth areas of at least 100 units;

(c) Increase the exemption level under WAC 197-11-800(1)(d) for multifamily residential project types in incorporated urban growth areas from 60 units to 200 units; and

(d) Add the following sentence to WAC 197-11-800(1)(c)(i): "The city, town, or county must document the result of its outreach with the department of transportation on impacts to state-owned transportation facilities, including consideration of whether mitigation is necessary for impacts to state-owned transportation facilities."

(3) This section expires January 1, 2024.

**NEW SECTION. Sec. 6.** A new section is added to chapter 43.21C RCW to read as follows:

Any applicant whose project qualifies as exempt or categorically exempt under either this chapter or under rules adopted pursuant to this chapter is not required to file an environmental checklist if other information is available to establish that a project qualifies for an exemption.

Passed by the Senate March 7, 2022.

Passed by the House March 4, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 247

[Substitute Senate Bill 5819]

### DEVELOPMENTAL DISABILITIES ADMINISTRATION—NO-PAID SERVICES CASELOAD

AN ACT Relating to the developmental disabilities administration's no-paid services caseload; adding a new section to chapter 71A.10 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 71A.10 RCW to read as follows:

(1) The department shall hire two permanent, full-time employees to regularly review and maintain the no-paid services caseload. This includes, but is not limited to, updating the no-paid services caseload to accurately reflect a

current headcount of eligible individuals and identifying the number of individuals contacted who are currently interested in receiving a paid service from the developmental disabilities administration and if the individual would like services now or within the next year. Beginning December 1, 2022, the department shall annually report this information to the governor and the appropriate committees of the legislature.

(2) A client on the no-paid services caseload shall receive case resource management services. The case resource manager's duties include: (a) Contacting and responding to the client to discuss the client's service needs, and (b) explaining to the client the service options available through the department or other community resources.

NEW SECTION. Sec. 2. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 248

[Engrossed Substitute Senate Bill 5847]

### PUBLIC SERVICE LOAN FORGIVENESS PROGRAM—PUBLIC SERVICE EMPLOYEES

AN ACT Relating to providing information to public service employees about the public service loan forgiveness program; adding a new section to chapter 28B.77 RCW; adding a new section to chapter 43.41 RCW; adding new sections to chapter 41.04 RCW; creating new sections; and declaring an emergency.

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

NEW SECTION. Sec. 1. (1) The legislature recognizes that our country faces a student loan debt crisis. Nationally, Americans owe \$1.73 trillion in student loans. In Washington state, about 767,300 student loan borrowers owe nearly \$27.4 billion of outstanding debt, more than \$35,700 per borrower on average.

(2) Student loan debt is a multigenerational issue that affects borrowers of all ages and jeopardizes millions of families' long-term financial security. While student loan balances have risen for all age groups, older borrowers have seen the largest increase. Student loan defaults rise with the borrower's age, and parents and grandparents take on debt to help their children and grandchildren pay for their education. Borrowers are increasingly defaulting on their debts, resulting in income garnishment and deductions from federal tax refunds or social security payments.

(3) The legislature further recognizes that the federal government offers and provides loan forgiveness for individuals who have worked in a public service job full time and have made qualifying payments towards their student loans. Unfortunately, the eligibility criteria to qualify for this program has been complex, leading to low approval rates for individuals who would otherwise qualify. By providing more public awareness of this program, the legislature



intends to help alleviate the student loan debt burden of those who have committed their lives to public service.

(4) It is the intent of the legislature to do the following:

(a) Develop materials to increase awareness of the federal public service loan forgiveness program;

(b) Create a program for state agencies to certify employment for the purpose of the public service loan forgiveness program;

(c) Have public service employers collaborate on a statewide initiative to improve access and remove barriers to the public service loan forgiveness program for all public service employees in the state; and

(d) Acknowledge the work done outside the classroom by part-time academic employees, allowing for those hours to be counted towards the definition of full time for the public service loan forgiveness program as set forth in 34 C.F.R. Sec. 685.219.

**NEW SECTION. Sec. 2.** A new section is added to chapter 28B.77 RCW to read as follows:

(1) The student loan advocate, established in RCW 28B.77.007, shall develop, and update annually as necessary, materials designed to increase awareness of the public service loan forgiveness program. Materials include, at a minimum:

(a) A standardized letter for public service employers to send to their employees briefly summarizing the public service loan forgiveness program, information about what eligible employees are required to do in order to benefit from the program, and how an eligible employee may contact their student loan servicer for additional resources;

(b) A detailed fact sheet describing the public service loan forgiveness program, including the official website address maintained by the United States department of education for the program and contact information for the student loan advocate; and

(c) A document containing frequently asked questions about the public service loan forgiveness program.

(2) The student loan advocate shall coordinate with the office of financial management, the secretary of state, local governmental entities, and other relevant agencies and public service employer entities to ensure that public service employers receive materials developed in subsection (1) of this section.

(3) For purposes of this section, the definitions in this subsection apply:

(a) "Public service employer" includes the following:

(i) Any governmental entity including state, county, city, or other local government entity including political subdivisions, such as office, department, independent agency, school district, public college or university system, public library system, authority, or other body including the legislature and the judiciary;

(ii) Any employer that has received designation as a tax-exempt organization pursuant to Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended;

(iii) Any other entities identified as a public service job in Title 20 U.S.C. Sec. 1087e(m).

(b) "Public service loan forgiveness program" means the federal loan forgiveness program established pursuant to Title 20 U.S.C. Sec. 1087e(m) and 34 C.F.R. Sec. 685.219.

**NEW SECTION. Sec. 3.** A new section is added to chapter 43.41 RCW to read as follows:

(1) The office shall:

(a) Develop a program for state agencies to certify employment for the purposes of the public service loan forgiveness program by July 1, 2023.

(b) Assist the student loan advocate in creating and distributing materials designed to increase awareness of the public service loan forgiveness program set forth in section 1 of this act.

(c) Collaborate with the student achievement council, the employment security department, the department of retirement systems, nonprofit entities, local government representatives, and other public service employers in developing a statewide initiative to improve access and remove barriers to the public service loan forgiveness program for all public service employees. The program established for state agencies in this section and the certification process in section 4 of this act may be considered in the development of the initiative. A plan for a statewide initiative must be developed and submitted to the higher education committees of the legislature by December 1, 2024, in compliance with RCW 43.01.036.

(2) For purposes of this section, the definitions in this subsection apply:

(a) "Certifying employment" means either completing the employer sections of the public service loan forgiveness form or sharing data directly with the United States department of education that corresponds to the information required for the public service loan forgiveness form, as allowed by the United States department of education.

(b) "Public service employer" includes the following:

(i) Any governmental entity including state, county, city, or other local government entity including political subdivisions, such as office, department, independent agency, school district, public college or university system, public library system, authority, or other body including the legislature and the judiciary;

(ii) Any employer that has received designation as a tax-exempt organization pursuant to Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended;

(iii) Any other entities identified as a public service job in Title 20 U.S.C. Sec. 1087e(m).

(c) "Public service loan forgiveness program" means the federal loan forgiveness program established pursuant to Title 20 U.S.C. Sec. 1087e(m) and 34 C.F.R. Sec. 685.219.

(d) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

**NEW SECTION. Sec. 4.** A new section is added to chapter 41.04 RCW to read as follows:

(1) As soon as available, a state agency shall provide the materials described in section 2 of this act in written or electronic form to:

(a) All employees annually;  
 (b) Newly hired employees within 30 days of the employee's first day of employment.

(2) A state agency must certify employment for the purposes of the public service loan forgiveness program in accordance with the program established in section 3 of this act beginning July 1, 2023.

(a) If a state agency does not directly certify employment with the United States department of education, the state agency must annually provide notice of renewal and a copy of the public service loan forgiveness form with employer information and employment certification sections of the form already completed reflecting at least the last 12 months of employment to:

(i) An employee who requests a public service loan forgiveness form;  
 (ii) Any current employee for whom the state agency has previously certified employment, unless the employee has opted out; and

(iii) An employee upon separation from service or employment, unless the employee has opted out. The notice of renewal and completed employer sections of the public service loan forgiveness form provided to a separated employee must be sent within 60 days of separation and are exempted from the annual requirement set forth in subsection (2)(a) of this section.

(b) A state agency shall not unreasonably delay in certifying employment.

(c) A state agency must seek permission from its employees prior to certifying their employment.

(d) Institutions of higher education must use the calculation established in section 5 of this act and may apply it retroactively to determine whether a part-time academic employee is considered full time for the public service loan forgiveness program.

(e) A state agency may send the information necessary for public service loan forgiveness employment certification to the United States department of education, or its agents, if the United States department of education permits public service employers to certify employment for past or present individual employees or groups of employees directly, notwithstanding other provisions of law.

(f) The office of financial management is authorized to adopt rules for the purpose of this section.

(3) An employee of a state agency may opt out of the employment certification process established in section 3 of this act at any time.

(4) For purposes of this section, the definitions in this subsection apply:

(a) "Certifying employment" means either completing the employer sections of the public service loan forgiveness form or sharing data directly with the United States department of education that corresponds to the information required for the public service loan forgiveness form.

(b) "Full time" has the same meaning as set forth in 34 C.F.R. Sec. 685.219.

(c) "Public service employer" includes the following:

(i) Any governmental entity including state, county, city, or other local government entity including political subdivisions, such as office, department, independent agency, school district, public college or university system, public library system, authority, or other body including the legislature and the judiciary;

(ii) Any employer that has received designation as a tax-exempt organization pursuant to Title 26 U.S.C. Sec. 501(c)(3) of the federal internal revenue code of 1986, as amended;

(iii) Any other entities identified as a public service job in Title 20 U.S.C. Sec. 1087e(m).

(d) "Public service loan forgiveness program" means the federal loan forgiveness program established pursuant to Title 20 U.S.C. Sec. 1087e(m) and 34 C.F.R. Sec. 685.219.

(e) "State agency" or "agency" means departments, offices, agencies, or institutions of state government, the legislature, institutions of higher education, school districts, and educational service districts.

**NEW SECTION. Sec. 5.** A new section is added to chapter 41.04 RCW to read as follows:

For the purpose of determining whether a part-time academic employee at an institution of higher education is considered full time for certifying employment for the public service loan forgiveness program, duties performed in support of, or in addition to, contractually assigned in-class teaching hours must be included. To calculate this, each hour of in-class teaching time shall be multiplied by 3.35 hours. This section shall not supersede any calculation or adjustment established by a collective bargaining agreement or employer policy for additional work done outside of in-class teaching. An institution of higher education shall not treat any adjusted total hours worked differently from hours worked without an adjustment when determining whether an employee is full time. "Institution of higher education" has the same meaning as "institutions of higher education" in RCW 28B.10.016.

**NEW SECTION. Sec. 6.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

**NEW SECTION. Sec. 7.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

## CHAPTER 249

[Engrossed Substitute Senate Bill 5874]

HIGHER EDUCATION TUITION—MILITARY RESIDENCY—MODIFICATION

AN ACT Relating to students affiliated with the military; and amending RCW 28B.15.012.

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

**Sec. 1.** RCW 28B.15.012 and 2021 c 272 s 9 are each amended to read as follows:

Whenever used in this chapter:

(1) The term "institution" shall mean a public university, college, or community or technical college within the state of Washington.

(2) The term "resident student" shall mean:

(a) A financially independent student who has had a domicile in the state of Washington for the period of one year immediately prior to the time of commencement of the first day of the semester or quarter for which the student has registered at any institution and has in fact established a bona fide domicile in this state primarily for purposes other than educational;

(b) A dependent student, if one or both of the student's parents or legal guardians have maintained a bona fide domicile in the state of Washington for at least one year immediately prior to commencement of the semester or quarter for which the student has registered at any institution;

(c) A student classified as a resident based upon domicile by an institution on or before May 31, 1982, who was enrolled at a state institution during any term of the 1982-1983 academic year, so long as such student's enrollment (excepting summer sessions) at an institution in this state is continuous;

(d) Any student who has spent at least seventy-five percent of both his or her junior and senior years in high schools in this state, whose parents or legal guardians have been domiciled in the state for a period of at least one year within the five-year period before the student graduates from high school, and who enrolls in a public institution of higher education within six months of leaving high school, for as long as the student remains continuously enrolled for three quarters or two semesters in any calendar year;

(e) Any person who has completed and obtained a high school diploma, or a person who has received the equivalent of a diploma; who has continuously lived in the state of Washington for at least a year primarily for purposes other than postsecondary education before the individual is admitted to an institution of higher education under subsection (1) of this section; and who provides to the institution an affidavit indicating that the individual will file an application to become a permanent resident at the earliest opportunity the individual is eligible to do so and a willingness to engage in any other activities necessary to acquire citizenship, including but not limited to citizenship or civics review courses;

(f) Any person who has lived in Washington, primarily for purposes other than ~~((educational))~~ postsecondary education, for at least one year immediately before the date on which the person has enrolled in an institution, and who holds lawful nonimmigrant status pursuant to 8 U.S.C. Sec. (a)(15) (E)(iii), (H)(i), or (L), or who holds lawful nonimmigrant status as the spouse or child of a person having nonimmigrant status under one of those subsections, or who, holding or having previously held such lawful nonimmigrant status as a principal or derivative, has filed an application for adjustment of status pursuant to 8 U.S.C. Sec. 1255(a);

(g) A student who is on active military duty stationed in the state or who is a member of the Washington national guard;

(h) A student who is on active military duty or a member of the Washington national guard who meets the following conditions:

- (i) Entered service as a Washington resident;
- (ii) Has maintained a Washington domicile; and
- (iii) Is stationed out-of-state;

(i) A student who is on active military duty who is stationed out-of-state after having been stationed in Washington and is either:

(i) Admitted to an institution of higher education in Washington before the reassignment and enrolls in that institution for the term the student was admitted;

(ii) Enrolled in an institution of higher education in Washington and remains continuously enrolled at the institution; or

(iii) Enrolls in an institution of higher education in Washington within three years from the date of reassignment out-of-state;

(j) A student who is the spouse, state registered domestic partner, or a dependent as defined in Title 10 U.S.C. Sec. 1072(2) as it existed on January 18, 2022, or such subsequent date as the student achievement council may determine by rule of a person defined in (g) or (h) of this subsection. If the person defined in (g) of this subsection is reassigned out-of-state, the student maintains the status as a resident student so long as the student is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; ((or))

(ii) Enrolled in an institution and remains continuously enrolled at the institution; or

(iii) Enrolled in an institution of higher education in Washington within three years from the date of reassignment out-of-state;

((j) A student who is the spouse or a dependent of a person defined in (h) of this subsection;

(k) A student who is eligible or entitled to transferred federal post 9/11 veterans educational assistance act of 2008 (38 U.S.C. Sec. 3301 et seq.) benefits based on the student's relationship as a spouse, former spouse, or child to an individual who is on active duty in the uniformed services;

(l) A student who resides in the state of Washington and is the spouse or a dependent of a person who is a member of the Washington national guard;

(m) A student who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service; is eligible for educational assistance benefits under Title 38 U.S.C.; and enters an institution of higher education in Washington within three years of the date of separation;

(n) A student who is on terminal, transition, or separation leave pending separation, or release from active duty, from the uniformed services with any period of honorable service after at least ninety days of active duty service and is eligible for educational assistance benefits under Title 38 U.S.C.;

(o) A student who is entitled to veterans administration educational assistance benefits based on the student's relationship as a spouse, former spouse, or child to an individual who has separated from the uniformed services with any period of honorable service after at least ninety days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation;

((p))(k) A student who is eligible for veterans administration educational assistance or rehabilitation benefits under Title 38 U.S.C. or educational assistance under Title 10 U.S.C. chapter 1606 as the titles existed on January 18, 2022, or such subsequent date as the student achievement council may determine by rule;

(l) A student who ((is the spouse or child to an individual who)) has separated or retired from the uniformed services with at least ~~((ten))~~ 10 years of honorable service and at least ~~((ninety))~~ 90 days of active duty service, and who

enters an institution of higher education in Washington within three years of the ~~((service member's))~~ date of separation or retirement;

~~((f))~~(m) A student who is the spouse, state registered domestic partner, or child under the age of 26 years of an individual who has separated or retired from the uniformed services with at least 10 years of honorable service and at least 90 days of active duty service, and who enters an institution of higher education in Washington within three years of the service member's date of separation or retirement;

(n) A student who has separated from the uniformed services who was discharged due to the student's sexual orientation or gender identity or expression;

~~((r))~~ A student who is entitled to veterans administration educational assistance benefits based on the student's relationship with a deceased member of the uniformed services who died in the line of duty;

~~(s)~~ A student who is entitled to federal vocational rehabilitation and employment services for veterans with service-connected disabilities under 38 U.S.C. Sec. 3102(a);

~~((t))~~(o) A student who is defined as a covered individual in 38 U.S.C. Sec. 3679(c)(2) as it existed on ~~((July 28, 2019))~~ January 18, 2022, or such subsequent date as the student achievement council may determine by rule;

~~((u))~~(p) A student of an out-of-state institution of higher education who is attending a Washington state institution of higher education pursuant to a home tuition agreement as described in RCW 28B.15.725;

~~((v))~~(q) A student who meets the requirements of RCW 28B.15.0131 or 28B.15.0139: PROVIDED, That a nonresident student enrolled for more than six hours per semester or quarter shall be considered as attending for primarily educational purposes, and for tuition and fee paying purposes only such period of enrollment shall not be counted toward the establishment of a bona fide domicile of one year in this state unless such student proves that the student has in fact established a bona fide domicile in this state primarily for purposes other than educational;

~~((w))~~(r) A student who resides in Washington and is on active military duty stationed in the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington; or

~~((x))~~(s) A student who resides in Washington and is the spouse or a dependent of a person defined in ~~((w))~~(r) of this subsection. If the person defined in ~~((w))~~(r) of this subsection moves from Washington or is reassigned out of the Oregon counties of Columbia, Gilliam, Hood River, Multnomah, Clatsop, Clackamas, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, or Washington, the student maintains the status as a resident student so long as the student resides in Washington and is either:

(i) Admitted to an institution before the reassignment and enrolls in that institution for the term the student was admitted; or

(ii) Enrolled in an institution and remains continuously enrolled at the institution.

(3)(a) A student who qualifies under subsection (2)(k), (l), (m), (n), or (o) (~~(p)~~, ~~(q)~~, ~~(r)~~, ~~(s)~~, or ~~(t)~~) of this section and who remains continuously enrolled at an institution of higher education shall retain resident student status.

(b) Nothing in subsection (2)(k), (l), (m), (n), or (o) ~~((s), (p), (q), (r), (s), or (t))~~) of this section applies to students who have a dishonorable discharge from the uniformed services, or to students who are the spouse or child of an individual who has had a dishonorable discharge from the uniformed services, unless the student is receiving veterans administration educational assistance benefits.

(4) The term "nonresident student" shall mean any student who does not qualify as a "resident student" under the provisions of this section and RCW 28B.15.013. Except for students qualifying under subsection (2)(e) or ~~((t))~~(p) of this section, a nonresident student shall include:

(a) A student attending an institution with the aid of financial assistance provided by another state or governmental unit or agency thereof, such nonresidency continuing for one year after the completion of such semester or quarter. This condition shall not apply to students from Columbia, Multnomah, Clatsop, Clackamas, or Washington county, Oregon participating in the border county pilot project under RCW 28B.76.685, 28B.76.690, and 28B.15.0139.

(b) A person who is not a citizen of the United States of America, unless the person meets and complies with all applicable requirements in this section and RCW 28B.15.013 and is one of the following:

(i) A lawful permanent resident;

(ii) A temporary resident;

(iii) A person who holds "refugee-parolee," "conditional entrant," or U or T nonimmigrant status with the United States citizenship and immigration services;

(iv) A person who has been issued an employment authorization document by the United States citizenship and immigration services that is valid as of the date the person's residency status is determined;

(v) A person who has been granted deferred action for childhood arrival status before, on, or after June 7, 2018, regardless of whether the person is no longer or will no longer be granted deferred action for childhood arrival status due to the termination, suspension, or modification of the deferred action for childhood arrival program; or

(vi) A person who is otherwise permanently residing in the United States under color of law, including deferred action status.

(5) The term "domicile" shall denote a person's true, fixed and permanent home and place of habitation. It is the place where the student intends to remain, and to which the student expects to return when the student leaves without intending to establish a new domicile elsewhere. The burden of proof that a student, parent or guardian has established a domicile in the state of Washington primarily for purposes other than educational lies with the student.

(6) The term "dependent" shall mean a person who is not financially independent. Factors to be considered in determining whether a person is financially independent shall be set forth in rules adopted by the student achievement council and shall include, but not be limited to, the state and federal income tax returns of the person and/or the student's parents or legal guardian filed for the calendar year prior to the year in which application is made and such other evidence as the council may require.

(7) The term "active military duty" means the person is serving on active duty in:



- (a) The armed forces of the United States government; or
- (b) The Washington national guard; or

(c) The coast guard, merchant mariners, or other nonmilitary organization when such service is recognized by the United States government as equivalent to service in the armed forces.

(8) The term "active duty service" means full-time duty, other than active duty for training, as a member of the uniformed services of the United States. Active duty service as a national guard member under Title 32 U.S.C. for the purpose of organizing, administering, recruiting, instructing, or training and active service under Title 32 U.S.C. Sec. 502(f) for the purpose of responding to a national emergency is recognized as active duty service.

(9) The term "uniformed services" is defined by Title 10 U.S.C.; subsequently structured and organized by Titles 14, 33, and 42 U.S.C.; consisting of the United States army, United States marine corps, United States navy, United States air force, United States coast guard, United States space force, United States public health service commissioned corps, and the national oceanic and atmospheric administration commissioned officer corps.

(10) "Washington national guard" means that part of the military force of the state that is organized, equipped, and federally recognized under the provisions of the national defense act of the United States, and in the event the national guard is called into federal service or in the event the state guard or any part or individual member thereof is called into active state service by the commander-in-chief. National guard service includes being subject to call up for active duty under Title 32 U.S.C. or Title 10 U.S.C. status or when called to state active service by the governor under the provisions of RCW 38.08.040.

(11) "Child" includes, but is not limited to:

- (a) A legitimate child;
- (b) An adopted child;
- (c) A stepchild;
- (d) A foster child; and
- (e) A legal dependent.

Passed by the Senate March 9, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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## CHAPTER 250

[Engrossed Substitute Senate Bill 5878]

### VISUAL AND PERFORMING ARTS INSTRUCTION

AN ACT Relating to visual and performing arts instruction; amending RCW 28A.230.020; adding a new section to chapter 28A.230 RCW; adding a new section to chapter 28A.710 RCW; adding a new section to chapter 28A.715 RCW; and creating a new section.

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

NEW SECTION. Sec. 1. (1) Washington state has long led the way in creating arts education policy. Washington state was one of the first states to adopt visual and performing arts graduation requirements. Our state has a two-credit visual and performing arts graduation requirement, although the second

credit may be waived in certain circumstances. Our state has also been a leader by formally declaring the arts including dance, music, theatre, visual arts, and media as core content areas in the definition of basic education. However, there is a very large gap between policy and practice in our state. While most high schools offer a range of arts courses, it is not uncommon for middle schools to offer only one of the arts, usually music, and for elementary schools to offer no formal arts instruction at all, during the regular school day. When arts instruction is offered, it is often as an extracurricular activity, a volunteer docent program, or as a program which meets far less often than other core subjects do. Further, students who perform poorly on standardized tests in math and English often have what little arts instruction they would normally receive taken away, in favor of remediation in the test subject areas. Our students who live in low socioeconomic areas tend to perform worse on standardized tests. As a result, poorer students in our state tend to be denied arts instruction at a higher rate than students from economically stable homes and neighborhoods. The evidence of the multiple benefits of arts education is voluminous and undeniable. The arts are not only a vehicle for doing better at other subjects; they have immense value in their own right and should be taught as stand-alone disciplines, the way our laws and policies are written.

(2) The legislature intends to clarify, for schools and school districts, the importance of arts education and to bring our schools' practices in line with our state and federal laws and policies, and the promises made to our communities, by ensuring formal instruction in the core disciplines of visual and performing arts for all Washington students, regardless of their family's socioeconomic status or the relative affluence of the neighborhood in which they live. The legislature recognizes and supports that the best practice is for basic education courses, including the arts, to be taught by certificated teachers who are qualified through an endorsement to teach in the subject area of the course. However, the legislature acknowledges that there is a shortage of arts endorsed teachers in Washington, so intends to allow arts instruction to also be provided by certificated teachers actively pursuing an endorsement in the relevant arts discipline.

**Sec. 2.** RCW 28A.230.020 and 2013 c 23 s 48 are each amended to read as follows:

All common schools shall give instruction in reading, handwriting, orthography, written and mental arithmetic, geography, the history of the United States, English grammar, visual and performing arts, physiology and hygiene with special reference to the effects of alcohol and drug abuse on the human system, science with special reference to the environment, and such other studies as may be prescribed by rule of the superintendent of public instruction. All teachers shall stress the importance of the cultivation of manners, the fundamental principles of honesty, honor, industry and economy, the minimum requisites for good health including the beneficial effect of physical exercise and methods to prevent exposure to and transmission of sexually transmitted diseases, and the worth of kindness to all living creatures and the land. The prevention of child abuse may be offered as part of the curriculum in the common schools.

**NEW SECTION. Sec. 3.** A new section is added to chapter 28A.230 RCW to read as follows:

(1) Beginning with the 2023-24 school year, school districts with more than 200 enrolled students shall offer regular instruction in at least one visual art or at least one performing art, throughout the school year. Each student must receive instruction in at least one arts discipline throughout their elementary and middle education experience. For grades nine through 12, all students must be given the opportunity to take arts coursework each academic year.

(2) Every student must have access to arts education, as part of basic education under RCW 28A.150.210. Arts instruction must be accessible by all students, in a manner that is commensurate with instruction in other core subject areas.

(3)(a) Except as provided in (b) of this subsection, arts instruction must be provided by either: A certificated teacher with an endorsement in the relevant arts discipline; or a certificated teacher actively pursuing an endorsement in the relevant arts discipline.

(b) A person holding a limited teaching certificate may provide arts instruction while either: (i) The school district recruits and hires a certificated teacher with the qualifications provided in (a) of this subsection; or (ii) the certificated teacher with qualifications provided in (a) of this subsection takes leave as provided in the school district's written leave policy required by RCW 28A.400.300.

(4) Instruction under this section must be solely for the arts discipline in the skills and craft of each specific arts discipline as their own end, rather than as a vehicle to enhance learning in any other nonarts subject area. If schools wish to integrate or infuse the arts into other subject matter, they must do so in addition to the regular, formal arts instruction required by this section.

(5) The arts instructors in each school district, as subject matter experts, shall be consulted to determine which specific visual and performing arts courses to offer at given grade levels, so that instruction is properly aligned to state learning standards in the arts and students' developmental stages and vertically aligned to give arts-focused students the best chance for success in their arts college or career pathway.

**NEW SECTION. Sec. 4.** A new section is added to chapter 28A.710 RCW to read as follows:

Section 3 of this act, related to arts instruction, governs school operation and management under RCW 28A.710.040 and applies to charter schools with more than 200 enrolled students established under this chapter.

**NEW SECTION. Sec. 5.** A new section is added to chapter 28A.715 RCW to read as follows:

Section 3 of this act, related to arts instruction, governs school operation and management under RCW 28A.715.020 and applies to state-tribal education compact schools with more than 200 enrolled students established under this chapter.

Passed by the Senate March 7, 2022.

Passed by the House March 3, 2022.

Approved by the Governor March 30, 2022.

Filed in Office of Secretary of State March 31, 2022.

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**CHAPTER 251**

[Substitute House Bill 1571]

**INDIGENOUS PERSONS—PROTECTIONS AND SERVICES—MISSING, MURDERED, AND SURVIVORS OF HUMAN TRAFFICKING**

AN ACT Relating to protections and services for indigenous persons who are missing, murdered, or survivors of human trafficking; amending RCW 36.24.155 and 68.50.320; adding a new section to chapter 68.50 RCW; creating new sections; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 68.50 RCW to read as follows:

(1) A county coroner having jurisdiction over human remains pursuant to RCW 68.50.010 shall, upon knowledge that the remains are of an indigenous person, cooperate with law enforcement to attempt to identify and immediately contact family members and any affected tribes, tribal organizations, and communities prior to removal or disturbance of the remains, except as deemed necessary by the county coroner and law enforcement in the interest of safety or to preserve evidence for any ongoing criminal investigation. Efforts to contact family members and affected tribes, tribal organizations, and communities must include an attempt to facilitate contact through the regional liaison for missing and murdered indigenous persons pursuant to RCW 43.43.874 within 10 days of the county coroner having jurisdiction over the remains.

(2) If contact is successfully made, the county coroner shall afford an opportunity for a family member or a representative from any affected tribes, tribal organizations, or communities to visit the remains for the purpose of conducting any spiritual practices or ceremonies to honor or recognize the indigenous person's passing. A family member or representative's activities may not interfere with or jeopardize the integrity of any ongoing criminal investigation. The county coroner and the lead investigator from the law enforcement agency of jurisdiction must provide the family member or representative with a list containing any conduct the family member or representative is prohibited from doing when interacting with the remains, including an explanation of why the conduct is prohibited. The family member or representative may not conduct any practices or ceremonies until the county coroner and the lead investigator provide their authorization.

(3) For the purposes of this section, "affected tribes" has the same meaning as in RCW 68.50.645.

(4) Nothing in this section may be construed to contradict the sovereignty or rights of any federally recognized Indian tribe whose traditional lands and territories included parts of Washington.

**Sec. 2.** RCW 36.24.155 and 2011 c 16 s 1 are each amended to read as follows:

(1) Whenever anyone shall die within a county without making prior plans for the disposition of his or her body and there is no other person willing to provide for the disposition of the body, the county coroner shall cause such body to be entrusted to a funeral home in the county where the body is found. Except in counties where the county coroner or medical examiner has established a

preferred funeral home using a qualified bidding process, disposition shall be on a rotation basis, which shall treat equally all funeral homes or mortuaries desiring to participate, such rotation to be established by the coroner after consultation with representatives of the funeral homes or mortuaries in the county or counties involved.

(2)(a) The county coroner, upon knowledge that a body is of an indigenous person, shall make reasonable efforts to identify and contact family members prior to entrusting the body to a funeral home, including an attempt to facilitate contact through the regional liaison for missing and murdered indigenous persons pursuant to RCW 43.43.874 within 10 days of the county coroner having jurisdiction over the remains.

(b) Upon the written request of a family member responsible for the disposition of the body of an indigenous person, the county coroner shall provide a written estimate of the time frame for entrusting the body to the family member or the family member's chosen funeral home, unless doing so would jeopardize an ongoing criminal investigation.

NEW SECTION. Sec. 3. (1) Subject to the availability of amounts appropriated for this specific purpose, the department of commerce's office of crime victims advocacy shall award grant funding to establish a pilot project providing wraparound services to indigenous persons who are survivors of trafficking.

(2) The department shall establish a competitive grant program to award funding for the pilot project by September 1, 2022.

(3) Public agencies, federally recognized tribes, nonprofit community groups, and nonprofit treatment providers, including organizations which provide services such as shelter, counseling, and case management, are eligible to compete for grant funding.

(4) The grant recipient shall use the grant funds to develop or maintain a center capable of providing wraparound services to at least 50 indigenous persons who are survivors of trafficking, including:

- (a) Short-term and long-term shelter;
- (b) Food;
- (c) Nonemergency health care;
- (d) Mental health counseling and treatment;
- (e) Substance abuse prevention, assessment, and treatment;
- (f) Case management and care coordination;
- (g) Education and special education services;
- (h) Vocational training;
- (i) Legal services, protection, and advocacy; and
- (j) Transportation.

(5) The grant recipient shall provide a report to the department on the results of the pilot project by October 1, 2023. The department shall provide a report on the pilot project to the governor and appropriate committees of the legislature by December 1, 2023.

(6) This section expires January 1, 2024.

NEW SECTION. Sec. 4. (1) Subject to the availability of amounts appropriated for this specific purpose, the department of commerce's office of crime victims advocacy shall award grant funding to increase the visibility and

accessibility of services and resources for indigenous persons who are survivors of trafficking.

(2) The office of crime victims advocacy shall establish a competitive grant program to award funding by September 1, 2022.

(3) Local agencies, federally recognized tribes, nonprofit community groups, and nonprofit treatment providers currently engaged in providing services or resources to survivors of human trafficking are eligible to compete for grant funding.

(4) The department shall award 10 grants, five to eligible applicants in cities west of the crest of the Cascade mountains and five to eligible applicants in cities east of the crest of the Cascade mountains.

(5) Grant recipients shall collaborate with the two liaisons for missing and murdered indigenous persons pursuant to RCW 43.43.874 to develop and implement a campaign to increase the visibility and accessibility of services and resources for indigenous persons who are survivors of human trafficking, including:

(a) Development of methods to help convey information discreetly and effectively, such as through the use of easily recognizable logos and symbols;

(b) Increased signage for relevant antitrafficking hotlines in frequently visited areas, such as truck stops, gas stations, and hotels; and

(c) Increased online promotion.

(6) Grant recipients shall provide a report to the department on the results of their campaigns by October 1, 2023. The department shall provide a report to the governor and appropriate committees of the legislature by December 1, 2023.

(7) This section expires January 1, 2024.

**Sec. 5.** RCW 68.50.320 and 2020 c 45 s 2 are each amended to read as follows:

When a person reported missing has not been found within thirty days of the report, or at any time the investigating agency suspects criminal activity to be the basis of the victim being missing, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall: (1) File a missing person's report with the Washington state patrol missing and unidentified persons unit; (2) initiate the collection of DNA samples from the known missing person and their family members for nuclear and mitochondrial DNA testing along with the necessary consent forms; (3) ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records; and (4) enter the case into the national crime information center system through the Washington state patrol electronic database. Upon knowledge from the national crime information center system, the Washington state patrol's crime information center, or similar or subsequent authority, that a person in custody at a jail, or being released from custody, is the subject of a missing person's report, the jail shall notify the agency of original jurisdiction for the missing person's report.

The missing person's dentist or dentists shall provide diagnostic quality copies of the missing person's dental records or original dental records to the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority, when presented with the written consent from the missing person's family or next of kin or with a statement from the sheriff, chief

of police, county coroner or county medical examiner, or other law enforcement authority that the missing person's family or next of kin could not be located in the exercise of due diligence or that the missing person's family or next of kin refuse to consent to the release of the missing person's dental records and there is reason to believe that the missing person's family or next of kin may have been involved in the missing person's disappearance.

As soon as possible after collecting the DNA samples, the sheriff, chief of police, or other law enforcement authority shall submit the DNA samples to the appropriate laboratory. Dental records shall be submitted as soon as possible to the Washington state patrol missing and unidentified persons unit.

The descriptive information from missing person's reports and dental data submitted to the Washington state patrol missing and unidentified persons unit shall be recorded and maintained by the Washington state patrol missing and unidentified persons unit in the applicable dedicated missing person's databases.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the Washington state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section and such other information as the Washington state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons.

Passed by the House March 7, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 252

[Substitute House Bill 1717]

### GROWTH MANAGEMENT ACT PLANNING—TRIBAL PARTICIPATION

AN ACT Relating to tribal participation in planning under the growth management act; and amending RCW 36.70A.040, 36.70A.085, 36.70A.106, 36.70A.110, 36.70A.190, and 36.70A.210.

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

**Sec. 1.** RCW 36.70A.040 and 2014 c 147 s 1 are each amended to read as follows:

(1) Each county that has both a population of fifty thousand or more and, until May 16, 1995, has had its population increase by more than ten percent in the previous ten years or, on or after May 16, 1995, has had its population increase by more than seventeen percent in the previous ten years, and the cities located within such county, and any other county regardless of its population that has had its population increase by more than twenty percent in the previous ten years, and the cities located within such county, shall conform with all of the requirements of this chapter. However, the county legislative authority of such a county with a population of less than fifty thousand population may adopt a resolution removing the county, and the cities located within the county, from the requirements of adopting comprehensive land use plans and development

regulations under this chapter if this resolution is adopted and filed with the department by December 31, 1990, for counties initially meeting this set of criteria, or within sixty days of the date the office of financial management certifies that a county meets this set of criteria under subsection (5) of this section. For the purposes of this subsection, a county not currently planning under this chapter is not required to include in its population count those persons confined in a correctional facility under the jurisdiction of the department of corrections that is located in the county.

Once a county meets either of these sets of criteria, the requirement to conform with all of the requirements of this chapter remains in effect, even if the county no longer meets one of these sets of criteria.

(2)(a) The county legislative authority of any county that does not meet either of the sets of criteria established under subsection (1) of this section may adopt a resolution indicating its intention to have subsection (1) of this section apply to the county. Each city, located in a county that chooses to plan under this subsection, shall conform with all of the requirements of this chapter. Once such a resolution has been adopted, the county and the cities located within the county remain subject to all of the requirements of this chapter, unless the county subsequently adopts a withdrawal resolution for partial planning pursuant to (b)(i) of this subsection.

(b)(i) Until December 31, 2015, the legislative authority of a county may adopt a resolution removing the county and the cities located within the county from the requirements to plan under this section if:

(A) The county has a population, as estimated by the office of financial management, of twenty thousand or fewer inhabitants at any time between April 1, 2010, and April 1, 2015;

(B) The county has previously adopted a resolution indicating its intention to have subsection (1) of this section apply to the county;

(C) At least sixty days prior to adopting a resolution for partial planning, the county provides written notification to the legislative body of each city within the county of its intent to consider adopting the resolution; and

(D) The legislative bodies of at least sixty percent of those cities having an aggregate population of at least seventy-five percent of the incorporated county population have not: Adopted resolutions opposing the action by the county; and provided written notification of the resolutions to the county.

(ii) Upon adoption of a resolution for partial planning under (b)(i) of this subsection:

(A) The county and the cities within the county are, except as provided otherwise, no longer obligated to plan under this section; and

(B) The county may not, for a minimum of ten years from the date of adoption of the resolution, adopt another resolution indicating its intention to have subsection (1) of this section apply to the county.

(c) The adoption of a resolution for partial planning under (b)(i) of this subsection does not nullify or otherwise modify the requirements for counties and cities established in RCW 36.70A.060, 36.70A.070(5) and associated development regulations, 36.70A.170, and 36.70A.172.

(3) Any county or city that is initially required to conform with all of the requirements of this chapter under subsection (1) of this section shall take actions under this chapter as follows: (a) The county legislative authority shall



adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city located within the county shall designate critical areas, agricultural lands, forestlands, and mineral resource lands, and adopt development regulations conserving these designated agricultural lands, forestlands, and mineral resource lands and protecting these designated critical areas, under RCW 36.70A.170 and 36.70A.060; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; ~~((and))~~ and (d) if the county has a population of fifty thousand or more, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan on or before July 1, 1994, and if the county has a population of less than fifty thousand, the county and each city located within the county shall adopt a comprehensive plan under this chapter and development regulations that are consistent with and implement the comprehensive plan by January 1, 1995, but if the governor makes written findings that a county with a population of less than fifty thousand or a city located within such a county is not making reasonable progress toward adopting a comprehensive plan and development regulations the governor may reduce this deadline for such actions to be taken by no more than one hundred eighty days. Any county or city subject to this subsection may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(4) Any county or city that is required to conform with all the requirements of this chapter, as a result of the county legislative authority adopting its resolution of intention under subsection (2) of this section, shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under RCW 36.70A.210; (b) the county and each city that is located within the county shall adopt development regulations conserving agricultural lands, forestlands, and mineral resource lands it designated under RCW 36.70A.060 within one year of the date the county legislative authority adopts its resolution of intention; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city that is located within the county shall adopt a comprehensive plan and development regulations that are consistent with and implement the comprehensive plan not later than four years from the date the county legislative authority adopts its resolution of intention, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(5) If the office of financial management certifies that the population of a county that previously had not been required to plan under subsection (1) or (2) of this section has changed sufficiently to meet either of the sets of criteria specified under subsection (1) of this section, and where applicable, the county legislative authority has not adopted a resolution removing the county from these requirements as provided in subsection (1) of this section, the county and each city within such county shall take actions under this chapter as follows: (a) The county legislative authority shall adopt a countywide planning policy under

RCW 36.70A.210; (b) the county and each city located within the county shall adopt development regulations under RCW 36.70A.060 conserving agricultural lands, forestlands, and mineral resource lands it designated within one year of the certification by the office of financial management; (c) the county shall designate and take other actions related to urban growth areas under RCW 36.70A.110; and (d) the county and each city located within the county shall adopt a comprehensive land use plan and development regulations that are consistent with and implement the comprehensive plan within four years of the certification by the office of financial management, but a county or city may obtain an additional six months before it is required to have adopted its development regulations by submitting a letter notifying the department of its need prior to the deadline for adopting both a comprehensive plan and development regulations.

(6) A copy of each document that is required under this section shall be submitted to the department at the time of its adoption.

(7) Cities and counties planning under this chapter must amend the transportation element of the comprehensive plan to be in compliance with this chapter and chapter 47.80 RCW no later than December 31, 2000.

(8) A federally recognized Indian tribe may voluntarily choose to participate in the county or regional planning process and coordinate with the county and cities that are either required to comply with the provisions of this chapter pursuant to subsection (1) of this section or voluntarily choose to comply with the provisions of this chapter pursuant to subsection (2) of this section. Collaboration and participation is a nonexclusive exercise of coordination and cooperation in the planning process and failure to exercise discretionary collaboration and participation shall not limit a party's standing for quasi-judicial or judicial review or appeal under this chapter.

(a) Upon receipt of notice in the form of a tribal resolution from a federally recognized Indian tribe whose reservation or ceded lands lie within the county, which indicates the tribe has a planning process or intends to initiate a parallel planning process, the county, cities, and other local governments conducting the planning under this chapter shall enter into good faith negotiations to develop a mutually agreeable memorandum of agreement with such tribes in regard to collaboration and participation in the planning process. If a mutually agreeable memorandum of agreement cannot be reached between the local government and such tribes, the local government shall enter mediation with such tribes for a period not to exceed 30 days, which shall be arranged by the department using a suitable expert to be paid by the department. If a mutually agreeable memorandum of agreement is not reached at the conclusion of the mediation period, the period shall be extended for one additional period not to exceed 30 days, upon written notice to the department by one or more parties. If a mutually agreeable memorandum of agreement cannot be reached at the end of the mediation period or the extended mediation period, the parties shall have no further obligation to develop a memorandum of agreement. Inability to reach a mutually agreeable memorandum of agreement shall not preclude a tribe from providing notice as described in this subsection (8)(a) in subsequent planning processes.

(b) Nothing in this subsection, any other provision in this chapter, or a tribe's decision to become a participating tribe for planning purposes, shall

affect, alter, or limit in any way a tribe's authority, jurisdiction, or any treaty or other rights it may have by virtue of its status as a sovereign Indian tribe.

(c) Nothing in this subsection or any other provision in this chapter shall affect, alter, or limit in any way a local government legislative body's authority to adopt and amend comprehensive land use plans and development regulations in accordance with this chapter.

**Sec. 2.** RCW 36.70A.085 and 2009 c 514 s 2 are each amended to read as follows:

(1) Comprehensive plans of cities that have a marine container port with annual operating revenues in excess of sixty million dollars within their jurisdiction must include a container port element.

(2) Comprehensive plans of cities that include all or part of a port district with annual operating revenues in excess of twenty million dollars may include a marine industrial port element. Prior to adopting a marine industrial port element under this subsection (2), the commission of the applicable port district must adopt a resolution in support of the proposed element.

(3) Port elements adopted under subsections (1) and (2) of this section must be developed collaboratively between the city (~~and~~), the applicable port, and the applicable tribe, which shall comply with RCW 36.70A.040(8), and must establish policies and programs that:

(a) Define and protect the core areas of port and port-related industrial uses within the city;

(b) Provide reasonably efficient access to the core area through freight corridors within the city limits; and

(c) Identify and resolve key land use conflicts along the edge of the core area, and minimize and mitigate, to the extent practicable, incompatible uses along the edge of the core area.

(4) Port elements adopted under subsections (1) and (2) of this section must be:

(a) Completed and approved by the city according to the schedule specified in RCW 36.70A.130; and

(b) Consistent with the economic development, transportation, and land use elements of the city's comprehensive plan, and consistent with the city's capital facilities plan.

(5) In adopting port elements under subsections (1) and (2) of this section, cities and ports must: Ensure that there is consistency between the port elements and the port comprehensive scheme required under chapters 53.20 and 53.25 RCW; and retain sufficient planning flexibility to secure emerging economic opportunities.

(6) In developing port elements under subsections (1) and (2) of this section, a city may utilize one or more of the following approaches:

(a) Creation of a port overlay district that protects container port uses;

(b) Use of industrial land banks;

(c) Use of buffers and transition zones between incompatible uses;

(d) Use of joint transportation funding agreements;

(e) Use of policies to encourage the retention of valuable warehouse and storage facilities;

(f) Use of limitations on the location or size, or both, of nonindustrial uses in the core area and surrounding areas; and

(g) Use of other approaches by agreement between the city and the port.

(7) The department of community, trade, and economic development must provide matching grant funds to cities meeting the requirements of subsection (1) of this section to support development of the required container port element.

(8) Any planned improvements identified in port elements adopted under subsections (1) and (2) of this section must be transmitted by the city to the transportation commission for consideration of inclusion in the statewide transportation plan required under RCW 47.01.071.

**Sec. 3.** RCW 36.70A.106 and 2004 c 197 s 1 are each amended to read as follows:

(1) Each county and city proposing adoption of a comprehensive plan or development regulations under this chapter shall notify the department of its intent to adopt such plan or regulations at least sixty days prior to final adoption. State agencies including the department may provide comments to the county or city on the proposed comprehensive plan, or proposed development regulations, during the public review process prior to adoption.

(2) Each county and city planning under this chapter shall transmit a complete and accurate copy of its comprehensive plan or development regulations to the department within ten days after final adoption.

(3)(a) Any amendments for permanent changes to a comprehensive plan or development regulation that are proposed by a county or city to its adopted plan or regulations shall be submitted to the department in the same manner as initial plans and development regulations under this section. Any amendments to a comprehensive plan or development regulations that are adopted by a county or city shall be transmitted to the department in the same manner as the initial plans and regulations under this section.

(b) Each county and city planning under this chapter may request expedited review for any amendments for permanent changes to a development regulation. Upon receiving a request for expedited review, and after consultation with other state agencies, the department may grant expedited review if the department determines that expedited review does not compromise the state's ability to provide timely comments related to compliance with the goals and requirements of this chapter or on other matters of state interest. Cities and counties may adopt amendments for permanent changes to a development regulation immediately following the granting of the request for expedited review by the department.

(c) A federally recognized Indian tribe may request to receive from the department copies of notices received from cities or counties under this section. Upon receipt of a submittal from a city or county under this section, the department shall forward the submittal to any tribe that has requested notification.

**Sec. 4.** RCW 36.70A.110 and 2017 c 305 s 1 are each amended to read as follows:

(1) Each county that is required or chooses to plan under RCW 36.70A.040 shall designate an urban growth area or areas within which urban growth shall be encouraged and outside of which growth can occur only if it is not urban in nature. Each city that is located in such a county shall be included within an urban growth area. An urban growth area may include more than a single city. An urban growth area may include territory that is located outside of a city only

if such territory already is characterized by urban growth whether or not the urban growth area includes a city, or is adjacent to territory already characterized by urban growth, or is a designated new fully contained community as defined by RCW 36.70A.350. When a federally recognized Indian tribe whose reservation or ceded lands lie within the county or city has voluntarily chosen to participate in the planning process pursuant to RCW 36.70A.040, the county or city and the tribe shall coordinate their planning efforts for any areas planned for urban growth consistent with the terms outlined in the memorandum of agreement provided for in RCW 36.70A.040(8).

(2) Based upon the growth management population projection made for the county by the office of financial management, the county and each city within the county shall include areas and densities sufficient to permit the urban growth that is projected to occur in the county or city for the succeeding twenty-year period, except for those urban growth areas contained totally within a national historical reserve. As part of this planning process, each city within the county must include areas sufficient to accommodate the broad range of needs and uses that will accompany the projected urban growth including, as appropriate, medical, governmental, institutional, commercial, service, retail, and other nonresidential uses.

Each urban growth area shall permit urban densities and shall include greenbelt and open space areas. In the case of urban growth areas contained totally within a national historical reserve, the city may restrict densities, intensities, and forms of urban growth as determined to be necessary and appropriate to protect the physical, cultural, or historic integrity of the reserve. An urban growth area determination may include a reasonable land market supply factor and shall permit a range of urban densities and uses. In determining this market factor, cities and counties may consider local circumstances. Cities and counties have discretion in their comprehensive plans to make many choices about accommodating growth.

Within one year of July 1, 1990, each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040, shall begin consulting with each city located within its boundaries and each city shall propose the location of an urban growth area. Within sixty days of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall begin this consultation with each city located within its boundaries. The county shall attempt to reach agreement with each city on the location of an urban growth area within which the city is located. If such an agreement is not reached with each city located within the urban growth area, the county shall justify in writing why it so designated the area an urban growth area. A city may object formally with the department over the designation of the urban growth area within which it is located. Where appropriate, the department shall attempt to resolve the conflicts, including the use of mediation services.

(3) Urban growth should be located first in areas already characterized by urban growth that have adequate existing public facility and service capacities to serve such development, second in areas already characterized by urban growth that will be served adequately by a combination of both existing public facilities and services and any additional needed public facilities and services that are

provided by either public or private sources, and third in the remaining portions of the urban growth areas. Urban growth may also be located in designated new fully contained communities as defined by RCW 36.70A.350.

(4) In general, cities are the units of local government most appropriate to provide urban governmental services. In general, it is not appropriate that urban governmental services be extended to or expanded in rural areas except in those limited circumstances shown to be necessary to protect basic public health and safety and the environment and when such services are financially supportable at rural densities and do not permit urban development.

(5) On or before October 1, 1993, each county that was initially required to plan under RCW 36.70A.040(1) shall adopt development regulations designating interim urban growth areas under this chapter. Within three years and three months of the date the county legislative authority of a county adopts its resolution of intention or of certification by the office of financial management, all other counties that are required or choose to plan under RCW 36.70A.040 shall adopt development regulations designating interim urban growth areas under this chapter. Adoption of the interim urban growth areas may only occur after public notice; public hearing; and compliance with the state environmental policy act, chapter 43.21C RCW, and under this section. Such action may be appealed to the growth management hearings board under RCW 36.70A.280. Final urban growth areas shall be adopted at the time of comprehensive plan adoption under this chapter.

(6) Each county shall include designations of urban growth areas in its comprehensive plan.

(7) An urban growth area designated in accordance with this section may include within its boundaries urban service areas or potential annexation areas designated for specific cities or towns within the county.

(8)(a) Except as provided in (b) of this subsection, the expansion of an urban growth area is prohibited into the one hundred year floodplain of any river or river segment that: (i) Is located west of the crest of the Cascade mountains; and (ii) has a mean annual flow of one thousand or more cubic feet per second as determined by the department of ecology.

(b) Subsection (8)(a) of this section does not apply to:

(i) Urban growth areas that are fully contained within a floodplain and lack adjacent buildable areas outside the floodplain;

(ii) Urban growth areas where expansions are precluded outside floodplains because:

(A) Urban governmental services cannot be physically provided to serve areas outside the floodplain; or

(B) Expansions outside the floodplain would require a river or estuary crossing to access the expansion; or

(iii) Urban growth area expansions where:

(A) Public facilities already exist within the floodplain and the expansion of an existing public facility is only possible on the land to be included in the urban growth area and located within the floodplain; or

(B) Urban development already exists within a floodplain as of July 26, 2009, and is adjacent to, but outside of, the urban growth area, and the expansion of the urban growth area is necessary to include such urban development within the urban growth area; or

(C) The land is owned by a jurisdiction planning under this chapter or the rights to the development of the land have been permanently extinguished, and the following criteria are met:

(I) The permissible use of the land is limited to one of the following: Outdoor recreation; environmentally beneficial projects, including but not limited to habitat enhancement or environmental restoration; stormwater facilities; flood control facilities; or underground conveyances; and

(II) The development and use of such facilities or projects will not decrease flood storage, increase stormwater runoff, discharge pollutants to fresh or salt waters during normal operations or floods, or increase hazards to people and property.

(c) For the purposes of this subsection (8), "one hundred year floodplain" means the same as "special flood hazard area" as set forth in WAC 173-158-040 as it exists on July 26, 2009.

(9) If a county, city, or utility has adopted a capital facility plan or utilities element to provide sewer service within the urban growth areas during the twenty-year planning period, nothing in this chapter obligates counties, cities, or utilities to install sanitary sewer systems to properties within urban growth areas designated under subsection (2) of this section by the end of the twenty-year planning period when those properties:

(a)(i) Have existing, functioning, nonpolluting on-site sewage systems;

(ii) Have a periodic inspection program by a public agency to verify the on-site sewage systems function properly and do not pollute surface or groundwater; and

(iii) Have no redevelopment capacity; or

(b) Do not require sewer service because development densities are limited due to wetlands, flood plains, fish and wildlife habitats, or geological hazards.

**Sec. 5.** RCW 36.70A.190 and 1991 sp.s. c 32 s 3 are each amended to read as follows:

(1) The department shall establish a program of technical and financial assistance and incentives to counties and cities to encourage and facilitate the adoption and implementation of comprehensive plans and development regulations throughout the state.

(2) The department shall develop a priority list and establish funding levels for planning and technical assistance grants both for counties and cities that plan under RCW 36.70A.040. Priority for assistance shall be based on a county's or city's population growth rates, commercial and industrial development rates, the existence and quality of a comprehensive plan and development regulations, and other relevant factors.

(3) The department shall develop and administer a grant program to provide direct financial assistance to counties and cities for the preparation of comprehensive plans under this chapter. The department may establish provisions for county and city matching funds to conduct activities under this subsection. Grants may be expended for any purpose directly related to the preparation of a county or city comprehensive plan as the county or city and the department may agree, including, without limitation, the conducting of surveys, inventories and other data gathering and management activities, the retention of planning consultants, contracts with regional councils for planning and related services, and other related purposes.

(4) The department shall establish a program of technical assistance:

(a) Utilizing department staff, the staff of other state agencies, and the technical resources of counties and cities to help in the development of comprehensive plans required under this chapter. The technical assistance may include, but not be limited to, model land use ordinances, regional education and training programs, and information for local and regional inventories; and

(b) Adopting by rule procedural criteria to assist counties and cities in adopting comprehensive plans and development regulations that meet the goals and requirements of this chapter. These criteria shall reflect regional and local variations and the diversity that exists among different counties and cities that plan under this chapter.

(5) The department shall provide mediation services to resolve disputes between counties and cities regarding, among other things, coordination of regional issues and designation of urban growth areas.

(6) The department shall provide services to facilitate the timely resolution of disputes between a federally recognized Indian tribe and a city or county.

(a) A federally recognized Indian tribe may request the department to provide facilitation services to resolve issues of concern with a proposed comprehensive plan and its development regulations, or any amendment to the comprehensive plan and its development regulations.

(b) Upon receipt of a request from a tribe, the department shall notify the city or county of the request and offer to assist in providing facilitation services to encourage resolution before adoption of the proposed comprehensive plan. Upon receipt of the notice from the department, the city or county must delay any final action to adopt any comprehensive plan or any amendment or its development regulations for at least 60 days. The tribe and the city or county may jointly agree to extend this period by notifying the department. A county or city must not be penalized for noncompliance under this chapter due to any delays associated with this process.

(c) Upon receipt of a request, the department shall provide comments to the county or city including a summary and supporting materials regarding the tribe's concerns. The county or city may either agree to amend the comprehensive plan as requested consistent with the comments from the department, or enter into a facilitated process with the tribe, which must be arranged by the department using a suitable expert to be paid by the department. This facilitated process may also extend the 60-day delay of adoption, upon agreement of the tribe and the city or county.

(d) At the end of the 60-day period, unless by agreement there is an extension of the 60-day period, the city or county may proceed with adoption of the proposed comprehensive plan and development regulations. The facilitator shall write a report of findings describing the basis for agreements or disagreements that occurred during the process that are allowed to be disclosed by the parties and the resulting agreed upon elements of the plan to be amended.

(7) The department shall provide planning grants to enhance citizen participation under RCW 36.70A.140.

**Sec. 6.** RCW 36.70A.210 and 2009 c 121 s 2 are each amended to read as follows:

(1) The legislature recognizes that counties are regional governments within their boundaries, and cities are primary providers of urban governmental



services within urban growth areas. For the purposes of this section, a "countywide planning policy" is a written policy statement or statements used solely for establishing a countywide framework from which county and city comprehensive plans are developed and adopted pursuant to this chapter. This framework shall ensure that city and county comprehensive plans are consistent as required in RCW 36.70A.100. Nothing in this section shall be construed to alter the land-use powers of cities.

(2) The legislative authority of a county that plans under RCW 36.70A.040 shall adopt a countywide planning policy in cooperation with the cities located in whole or in part within the county as follows:

(a) No later than sixty calendar days from July 16, 1991, the legislative authority of each county that as of June 1, 1991, was required or chose to plan under RCW 36.70A.040 shall convene a meeting with representatives of each city located within the county for the purpose of establishing a collaborative process that will provide a framework for the adoption of a countywide planning policy. In other counties that are required or choose to plan under RCW 36.70A.040, this meeting shall be convened no later than sixty days after the date the county adopts its resolution of intention or was certified by the office of financial management.

(b) The process and framework for adoption of a countywide planning policy specified in (a) of this subsection shall determine the manner in which the county and the cities agree to all procedures and provisions including but not limited to desired planning policies, deadlines, ratification of final agreements and demonstration thereof, and financing, if any, of all activities associated therewith.

(c) If a county fails for any reason to convene a meeting with representatives of cities as required in (a) of this subsection, the governor may immediately impose any appropriate sanction or sanctions on the county from those specified under RCW 36.70A.340.

(d) If there is no agreement by October 1, 1991, in a county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or if there is no agreement within one hundred twenty days of the date the county adopted its resolution of intention or was certified by the office of financial management in any other county that is required or chooses to plan under RCW 36.70A.040, the governor shall first inquire of the jurisdictions as to the reason or reasons for failure to reach an agreement. If the governor deems it appropriate, the governor may immediately request the assistance of the department of (~~community, trade, and economic development~~) commerce to mediate any disputes that preclude agreement. If mediation is unsuccessful in resolving all disputes that will lead to agreement, the governor may impose appropriate sanctions from those specified under RCW 36.70A.340 on the county, city, or cities for failure to reach an agreement as provided in this section. The governor shall specify the reason or reasons for the imposition of any sanction.

(e) No later than July 1, 1992, the legislative authority of each county that was required or chose to plan under RCW 36.70A.040 as of June 1, 1991, or no later than fourteen months after the date the county adopted its resolution of intention or was certified by the office of financial management the county legislative authority of any other county that is required or chooses to plan under RCW 36.70A.040, shall adopt a countywide planning policy according to the

process provided under this section and that is consistent with the agreement pursuant to (b) of this subsection, and after holding a public hearing or hearings on the proposed countywide planning policy.

(3) A countywide planning policy shall at a minimum, address the following:

(a) Policies to implement RCW 36.70A.110;

(b) Policies for promotion of contiguous and orderly development and provision of urban services to such development;

(c) Policies for siting public capital facilities of a countywide or statewide nature, including transportation facilities of statewide significance as defined in RCW 47.06.140;

(d) Policies for countywide transportation facilities and strategies;

(e) Policies that consider the need for affordable housing, such as housing for all economic segments of the population and parameters for its distribution;

(f) Policies for joint county and city planning within urban growth areas;

(g) Policies for countywide economic development and employment, which must include consideration of the future development of commercial and industrial facilities; ~~((and))~~

(h) An analysis of the fiscal impact; and

(i) Policies that address the protection of tribal cultural resources in collaboration with federally recognized Indian tribes that are invited pursuant to subsection (4) of this section, provided that a tribe, or more than one tribe, chooses to participate in the process.

(4) Federal agencies and federally recognized Indian tribes ~~((may))~~ whose reservation or ceded lands lie within the county shall be invited to participate in and cooperate with the countywide planning policy adoption process. Adopted countywide planning policies shall be adhered to by state agencies.

(5) Failure to adopt a countywide planning policy that meets the requirements of this section may result in the imposition of a sanction or sanctions on a county or city within the county, as specified in RCW 36.70A.340. In imposing a sanction or sanctions, the governor shall specify the reasons for failure to adopt a countywide planning policy in order that any imposed sanction or sanctions are fairly and equitably related to the failure to adopt a countywide planning policy.

(6) Cities and the governor may appeal an adopted countywide planning policy to the growth management hearings board within sixty days of the adoption of the countywide planning policy.

(7) Multicounty planning policies shall be adopted by two or more counties, each with a population of four hundred fifty thousand or more, with contiguous urban areas and may be adopted by other counties, according to the process established under this section or other processes agreed to among the counties and cities within the affected counties throughout the multicounty region.

Passed by the House February 11, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

## CHAPTER 253

[Engrossed Substitute House Bill 1753]

## CLIMATE COMMITMENT ACT FUNDING—TRIBAL CONSULTATION

AN ACT Relating to tribal consultation regarding the use of certain funding authorized by the climate commitment act; amending RCW 70A.65.250; reenacting and amending RCW 43.376.020; and adding a new section to chapter 70A.65 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 70A.65 RCW to read as follows:

(1) Agencies that allocate funding or administer grant programs appropriated from the climate investment account created in RCW 70A.65.250, the climate commitment account created in RCW 70A.65.260, and the natural climate solutions account created in RCW 70A.65.270 must offer early, meaningful, and individual consultation with any affected federally recognized tribe on all funding decisions and funding programs that may impact tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order. The consultation is independent of, and in addition to, any public participation process required by federal or state law, or by a federal or state agency, including the requirements of Executive Order 21-02 related to archaeological and cultural resources, and regardless of whether the agency receives a request for consultation from a federally recognized tribe. The goal of the consultation process is to identify tribal resources or rights potentially affected by the funding decisions and funding programs, assess their effects, and seek ways to avoid, minimize, or mitigate any adverse effects on tribal resources or rights.

(2) At the earliest possible date prior to submittal of an application, applicants for funding from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270 shall engage in a preapplication process with all affected federally recognized tribes within the project area.

(a) The preapplication process must include the applicant notifying the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. The notification must include geographical location, detailed scope of the proposed project, preliminary application details available to federal, state, or local governmental jurisdictions, and all publicly available materials, including public funding sources.

(b) The applicant must also offer to discuss the project with the department of archaeology and historic preservation, the department of fish and wildlife, and all affected federally recognized tribes within the project area. Discussions may include the project's impact to tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved or protected by federal treaty, statute, or executive order.

(c) All affected federally recognized tribes may submit to the appropriate agency or agencies a summary of tribal issues, questions, concerns, or other statements regarding the project, which must become part of the official application file. The summary does not limit what issues affected federally

recognized tribes may raise in the consultation process identified in subsections (1), (3) through (7), and (9) of this section.

(d) The notification and offer to initiate discussion must be documented with the application when it is filed, and a copy of the application must be delivered to the department of archaeology and historic preservation, the department of fish and wildlife, and to the affected federally recognized tribe or tribes. If the discussions pursuant to (b) of this subsection do not occur, the applicant must document the reason why the discussion or discussions did not occur.

(e) Nothing in this section may be interpreted to require the disclosure of information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966. Any information that is exempt from disclosure pursuant to RCW 42.56.300 or federal law, including section 304 of the national historic preservation act of 1966, shall not become part of the official application file.

(3) If any funding decision, program, project, or activity that may impact tribal resources, including tribal cultural resources, archaeological sites, sacred sites, fisheries, or other rights and interests in tribal lands and lands within which a tribe or tribes possess rights reserved by federal treaty, statute, or executive order is funded from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270 without such a consultation with an affected federally recognized tribe, the affected federally recognized tribe may request that all further action on the decision, program, project, or activity cease until meaningful consultation is completed. Upon receipt of such a request by an agency or agencies with the authority to allocate funding or administer grant programs from the accounts listed in subsection (1) of this section in support of the proposed project, further action by the agency or agencies on any decision, program, project, or activity that would result in significant physical disturbance of the tribal resource or resources described in this subsection must cease until the consultation has been completed.

(4) Upon completion of agency and tribal consultation, an affected federally recognized tribe may request a formal review of the consultation by submitting a request to the governor's office of Indian affairs and notifying the appropriate agencies and the department of archaeology and historic preservation. The state agencies and tribe must meet to initiate discussion within no more than 20 days of the request. This consultation must be offered and conducted separately with each affected federally recognized tribe, unless the tribes agree to conduct a joint consultation with the state.

(5) After the state agencies and tribe or tribes have conducted a formal review under subsection (4) of this section, an affected federally recognized tribe or state agency may request that the governor and an elected tribal leader or leaders of a federally recognized tribal government meet to formally consider the recommendations from the parties. If requested, this meeting must occur within 30 days of the request, except that a federally recognized tribe may choose to opt out of the meeting. This timeline may be extended by mutual agreement between the governor and the tribal leaders.

(6) After the meeting identified in subsection (5) of this section has occurred, the governor or an elected tribal leader of a federally recognized tribe may call for the state and tribe or tribes to enter into formal mediation, except

that a federally recognized tribe may choose to opt out of the mediation. If entered into, the mediation must be conducted as a government-to-government proceeding, with each sovereign government retaining their right to a final decision that meets their separate obligations and interests. Mediators must be jointly selected by the parties to the mediation. An agreement between the governor and a tribal leader or leaders resulting from the mediation is formally recognized and binding on the signatory parties. Absent an agreement, participation in mediation does not preclude any additional steps that any party can initiate, including legal review, to resolve a continuing disagreement.

(7) During the proceedings outlined in subsections (4) through (6) of this section, the agency or agencies with the authority to allocate funding or administer grant programs from the accounts listed in subsection (1) of this section in support of the proposed project may not approve or release funding, or make other formal decisions, including permitting, that advance the proposed project except where required by law.

(8) By June 30, 2023, the governor's office of Indian affairs, in coordination with the department of archaeology and historic preservation and federally recognized tribes, shall develop a state agency tribal consultation process, including best practices for early, meaningful, and effective consultation, early notification and engagement by applicants with federally recognized tribes as a part of the preapplication process in subsection (2) of this section, and protocols for communication and collaboration with federally recognized tribes. The consultation process developed under this section must be periodically reviewed and updated in coordination with federally recognized tribes. The governor's office of Indian affairs must provide training and other technical assistance to state agencies, as they implement the required consultation. Notwithstanding the governor's office of Indian affairs' ongoing work pursuant to this subsection, the provisions of subsections (1) through (7) and (9) of this section become effective as of the effective date of this section.

(9) The requirements of this section apply to local governments that receive funding from the accounts created in RCW 70A.65.250, 70A.65.260, and 70A.65.270, where that funding is disbursed to project and program applicants. Where requested, the governor's office of Indian affairs must provide training and other technical assistance to local government agencies as they implement the consultation requirements of this section.

(10) Any agency subject to or implementing this section may adopt rules in furtherance of its duties under this section.

(11) Subject to the availability of amounts appropriated for this specific purpose, the department must establish a tribal capacity grant program to provide funding to federally recognized tribes for the costs of implementing this section.

**Sec. 2.** RCW 70A.65.250 and 2021 c 316 s 28 are each amended to read as follows:

(1)(a) The climate investment account is created in the state treasury. Except as otherwise provided in chapter 316, Laws of 2021, all receipts from the auction of allowances authorized in this chapter must be deposited into the account. Moneys in the account may be spent only after appropriation.

(b) Projects or activities funded from the account must meet high labor standards, including family sustaining wages, providing benefits including

health care and employer-contributed retirement plans, career development opportunities, and maximize access to economic benefits from such projects for local workers and diverse businesses. Each contracting entity's proposal must be reviewed for equity and opportunity improvement efforts, including: (i) Employer paid sick leave programs; (ii) pay practices in relation to living wage indicators such as the federal poverty level; (iii) efforts to evaluate pay equity based on gender identity, race, and other protected status under Washington law; (iv) facilitating career development opportunities, such as apprenticeship programs, internships, job-shadowing, and on-the-job training; and (v) employment assistance and employment barriers for justice affected individuals.

(2) Moneys in the account may be used only for projects and programs that achieve the purposes of the greenhouse gas emissions cap and invest program established under this chapter and for tribal capacity grants under section 1 of this act. Moneys in the account as described in this subsection must first be appropriated for the administration of the requirements of this chapter, in an amount not to exceed five percent of the total receipt of funds from allowance auction proceeds under this chapter. Beginning July 1, 2024, and annually thereafter, the state treasurer shall distribute funds in the account that exceed the amounts appropriated for the purposes of this subsection (2) as follows:

(a) Seventy-five percent of the moneys to the climate commitment account created in RCW 70A.65.260; and

(b) Twenty-five percent of the moneys to the natural climate solutions account created in RCW 70A.65.270.

(3) The allocations specified in subsection (2)(a) and (b) of this section must be reviewed by the legislature on a biennial basis based on the changing needs of the state in meeting its clean economy and greenhouse gas reduction goals in a timely, economically advantageous, and equitable manner.

**Sec. 3.** RCW 43.376.020 and 2021 c 316 s 40 and 2021 c 314 s 23 are each reenacted and amended to read as follows:

In establishing a government-to-government relationship with Indian tribes, state agencies must:

(1) Make reasonable efforts to collaborate with Indian tribes in the development of policies, agreements, and program implementation that directly affect Indian tribes and develop a consultation process that is used by the agency for issues involving specific Indian tribes. Covered agencies, as defined in RCW 70A.02.010, subject to the requirements of chapter 70A.02 RCW, must offer consultation with Indian tribes on the actions specified in RCW 70A.02.100. State agencies described in (~~section 6 of this act~~) section 1 of this act must offer consultation with Indian tribes on the actions specified in (~~section 6 of this act~~) section 1 of this act;

(2) Designate a tribal liaison who reports directly to the head of the state agency;

(3) Ensure that tribal liaisons who interact with Indian tribes and the executive directors of state agencies receive training as described in RCW 43.376.040; and

(4) Submit an annual report to the governor on activities of the state agency involving Indian tribes and on implementation of this chapter.

Passed by the House February 10, 2022.

Passed by the Senate March 4, 2022.  
 Approved by the Governor March 31, 2022.  
 Filed in Office of Secretary of State April 1, 2022.

## CHAPTER 254

[Senate Bill 5694]

### DEPARTMENT OF CORRECTIONS—AGREEMENTS WITH INDIAN TRIBES

AN ACT Relating to recognizing Indian tribes as among the governmental entities with which the department of corrections may enter into agreements on matters to include the housing of inmates convicted in tribal court; amending RCW 72.09.015, 72.09.050, 72.68.080, 72.68.090, and 72.68.100; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes that many federally recognized Indian tribes in Washington exercise felony criminal jurisdiction, yet none operate or have access to a prison facility. Tribal defendants sentenced to greater than one year in custody must serve their time in local jail facilities ill-equipped to house inmates for long sentences. This act will authorize the Washington state department of corrections to negotiate agreements with Indian tribes that will provide a public safety benefit to all residents of Washington by allowing tribal court inmates to serve their felony sentences in an appropriate facility with access to rehabilitative services.

**Sec. 2.** RCW 72.09.015 and 2020 c 319 s 2 are each amended to read as follows:

The definitions in this section apply throughout this chapter.

(1) "Adult basic education" means education or instruction designed to achieve general competence of skills in reading, writing, and oral communication, including English as a second language and preparation and testing services for obtaining a high school diploma or a high school equivalency certificate as provided in RCW 28B.50.536.

(2) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(3) "Civil judgment for assault" means a civil judgment for monetary damages awarded to a correctional officer or department employee entered by a court of competent jurisdiction against an inmate that is based on, or arises from, injury to the correctional officer or department employee caused by the inmate while the correctional officer or department employee was acting in the course and scope of his or her employment.

(4) "Community custody" has the same meaning as that provided in RCW 9.94A.030 and also includes community placement and community supervision as defined in RCW 9.94B.020.

(5) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(6) "Correctional facility" means a facility or institution operated directly or by contract by the secretary for the purposes of incarcerating adults in total or partial confinement, as defined in RCW 9.94A.030.

(7) "County" means a county or combination of counties.

(8) "Department" means the department of corrections.

(9) "Earned early release" means earned release as authorized by RCW 9.94A.729.

(10) "Evidence-based" means a program or practice that has had multiple-site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective in reducing recidivism for the population.

(11) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(12) "Good conduct" means compliance with department rules and policies.

(13) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(14) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, aunts, uncles, and a person legally married to or in a state registered domestic partnership with an inmate. "Immediate family" includes the immediate family of an inmate who was adopted as a child or an adult, but does not include an inmate adopted by another inmate.

(15) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a (~~twenty-five dollar~~) \$25 balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the (~~thirty~~) 30 days previous to the request.

(16) "Individual reentry plan" means the plan to prepare an offender for release into the community. It should be developed collaboratively between the department and the offender and based on an assessment of the offender using a standardized and comprehensive tool to identify the offender's risks and needs. The individual reentry plan describes actions that should occur to prepare individual offenders for release from prison or jail, specifies the supervision and services they will experience in the community, and describes an offender's eventual discharge to aftercare upon successful completion of supervision. An individual reentry plan is updated throughout the period of an offender's incarceration and supervision to be relevant to the offender's current needs and risks.

(17) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released from such facility on furlough, work release, or community custody, and persons received from another state, state agency, county, federally recognized tribe, or federal jurisdiction.

(18) "Labor" means the period of time before a birth during which contractions are of sufficient frequency, intensity, and duration to bring about effacement and progressive dilation of the cervix.

(19) "Physical restraint" means the use of any bodily force or physical intervention to control an offender or limit an offender's freedom of movement in a way that does not involve a mechanical restraint. Physical restraint does not include momentary periods of minimal physical restriction by direct person-to-person contact, without the aid of mechanical restraint, accomplished with limited force and designed to:



(a) Prevent an offender from completing an act that would result in potential bodily harm to self or others or damage property;

(b) Remove a disruptive offender who is unwilling to leave the area voluntarily; or

(c) Guide an offender from one location to another.

(20) "Postpartum recovery" means (a) the entire period a woman or youth is in the hospital, birthing center, or clinic after giving birth and (b) an additional time period, if any, a treating physician determines is necessary for healing after the woman or youth leaves the hospital, birthing center, or clinic.

(21) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(22) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

(23) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(24) "Restraints" means anything used to control the movement of a person's body or limbs and includes:

(a) Physical restraint; or

(b) Mechanical device including but not limited to: Metal handcuffs, plastic ties, ankle restraints, leather cuffs, other hospital-type restraints, tasers, or batons.

(25) "Secretary" means the secretary of corrections or his or her designee.

(26) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(27) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(28) "Transportation" means the conveying, by any means, of an incarcerated pregnant woman or youth from the correctional facility to another location from the moment she leaves the correctional facility to the time of arrival at the other location, and includes the escorting of the pregnant incarcerated woman or youth from the correctional facility to a transport vehicle and from the vehicle to the other location.

(29) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the department of corrections shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(30) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

(31) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(32) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

**Sec. 3.** RCW 72.09.050 and 2020 c 318 s 5 are each amended to read as follows:

The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, any federally recognized tribe, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the other governmental entities, alone. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action.

**Sec. 4.** RCW 72.68.080 and 1983 c 255 s 11 are each amended to read as follows:

All persons sentenced to prison by the authority of the United States or of any state or territory of the United States or federally recognized tribe may be received by the department and imprisoned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state.

**Sec. 5.** RCW 72.68.090 and 1979 c 141 s 288 are each amended to read as follows:

The secretary is authorized to enter into contracts with the proper officers or agencies of the United States, federally recognized tribes, and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner.

**Sec. 6.** RCW 72.68.100 and 1992 c 7 s 58 are each amended to read as follows:

The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government, any federally recognized tribe, or any other state unless there is vacant space and unused facilities in state correctional facilities.

Passed by the Senate February 2, 2022.

Passed by the House March 1, 2022.  
 Approved by the Governor March 31, 2022.  
 Filed in Office of Secretary of State April 1, 2022.

## CHAPTER 255

[Senate Bill 5866]

### MEDICAID LONG-TERM SERVICES AND SUPPORTS—CONTRACTS WITH INDIAN TRIBES

AN ACT Relating to medicaid long-term services and supports eligibility determinations completed by federally recognized Indian tribes; and amending RCW 74.39A.090, 74.39A.095, 74.39A.515, 74.09.520, and 74.39A.009.

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

**Sec. 1.** RCW 74.39A.090 and 2018 c 278 s 11 are each amended to read as follows:

(1) Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term services under RCW 70.41.320, 74.39A.040, or 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) ~~((The))~~ Except as provided in subsection (3) of this section, the department shall, consistent with the intent of this section, contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) The department may contract with a federally recognized Indian tribe to determine eligibility, including assessments and reassessments, authorize and reauthorize services, and perform case management functions within its regional authority.

(4) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

~~((4))~~ (5)(a) ~~The department shall ((include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing))~~ assess the degree and quality of the case management performed by the contracted area agency on aging staff or federally recognized Indian tribe for elderly and persons with disabilities in the community.

(b) The department shall incorporate the expected outcomes and criteria to measure the performance of service coordination organizations into contracts with area agencies on aging as provided in chapter 70.320 RCW.

~~((5) Area)~~ (6) The contracts must require area agencies on aging and federally recognized Indian tribes to assess the quality of the in-home care services provided to consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care consumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

~~((6))~~ (7) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care.

**Sec. 2.** RCW 74.39A.095 and 2018 c 278 s 12 are each amended to read as follows:

(1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under programs authorized through the medicaid state plan, medicaid waiver authorities, or similar state-funded in-home care programs, to the extent of available funding, the contracts with each area agency on aging or federally recognized Indian tribe shall require the contracted agency to:

(a) Work with each client to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services and supports. In developing the plan, the area agency on aging or federally recognized Indian tribe shall use and modify as needed any comprehensive plan of care developed by the department as provided in RCW 74.39A.040;

(b) Monitor the implementation of the consumer's plan of care to verify that it adequately meets the needs of the consumer through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging or federally recognized Indian tribe indicating that a consumer may be experiencing problems relating to his or her home care;

(c) Reassess and reauthorize services;

(d) Explain to the consumer that consumers have the right to waive case management services offered by the area agency on aging or federally recognized Indian tribe, except consumers may not waive the ~~((area agency on aging's))~~ reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care; and

(e) Document the waiver of any case management services by the consumer.

(2) Each consumer has the right to direct and participate in the development of their plan of care to the maximum extent practicable, and to be provided with the time and support necessary to facilitate that participation.

(3) As authorized by the consumer, a copy of the plan of care may be distributed to: (a) The consumer's individual provider contracted with the department; (b) the entity contracted with the department to provide personal care services; and (c) other relevant providers with whom the consumer has frequent contact.

(4) If an individual provider is employed by a consumer directed employer, the department ~~((or)),~~ area agency on aging, or federally recognized Indian tribe must notify the consumer directed employer if:

(a) There is reason to believe that an individual provider or prospective individual provider is not delivering or will not be able to deliver the services identified in the consumer's plan of care; or

(b) The individual provider's performance is jeopardizing the health, safety, or well-being of a consumer receiving services under this section.

**Sec. 3.** RCW 74.39A.515 and 2018 c 278 s 13 are each amended to read as follows:

(1) If a consumer directed employer employs individual providers, then the consumer directed employer shall:

(a) Verify that each individual provider has met any training requirements established under this chapter and rules adopted under this chapter;

(b) Conduct background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and the rules adopted by the department; or verify that a background check has been conducted for each individual provider and that the background check is still valid in accordance with department rules;

(c) Implement an electronic visit verification system that complies with federal requirements, or in the absence of an electronic visit verification system, monitor a statistically valid sample of individual provider's claims to the receipt of services by the consumer;

(d) Monitor individual provider compliance with employment requirements;

(e) As authorized and determined by the consumer, provide a copy of the consumer's plan of care to the individual provider who has been selected by the consumer;

(f) Verify the individual provider is able and willing to carry out his or her responsibilities under the plan of care;

(g) Take into account information provided by the consumer or the consumer's case manager about the consumer's specific needs;

(h) Discontinue the individual provider's assignment to a consumer when the consumer directed employer has reason to believe, or the department or area agency on aging has reported, that the health, safety, or well-being of a consumer is in imminent jeopardy due to the performance of the individual provider;

(i) Reject a request by a consumer to assign a specific person as his or her individual provider, if the consumer directed employer has reason to believe that the individual will be unable to appropriately meet the care needs of the consumer; and

(j) Establish a dispute resolution process for consumers who wish to dispute decisions made under (h) and (i) of this subsection.

(2) If any individual providers are contracted with the department to provide services under this chapter, the ~~((area agency on aging))~~ case management responsibilities of RCW 74.39A.090 and 74.39A.095 shall include:

(a) Verifying that each individual provider has met all training requirements under this chapter and department rules;

(b) Conducting background checks on individual providers as required under this chapter, RCW 43.43.830 through 43.43.842, 43.20A.710, and department rules; or verifying that background checks have been conducted for

each individual provider and that the background check is still valid in accordance with department rules;

(c) Monitoring that the individual provider is providing services as outlined in the consumer's plan of care;

(d) Attaching the consumer's plan of care to the contract with the individual provider;

(e) Verifying with the individual provider that he or she is able and willing to carry out his or her responsibilities under the plan of care;

(f) Terminating the contract between the department and the individual provider if the department (~~((~~the~~))~~), area agency on aging, or federally recognized Indian tribe finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section;

(g) Summarily suspending the contract pending a fair hearing, if there is reason to believe the health, safety, or well-being of a consumer is in imminent jeopardy; and

(h) Rejecting a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the (~~((~~ease manager~~))~~) department, area agency on aging, or federally recognized Indian tribe has reason to believe that the family member or other person will be unable to appropriately meet the care needs of the consumer.

(3) The consumer may request a fair hearing under chapter 34.05 RCW to contest a planned action of the (~~((~~ease manager~~))~~) department under subsection (2)(g) and (h) of this section.

(4) The department may adopt rules to implement this section.

**Sec. 4.** RCW 74.09.520 and 2021 c 126 s 2 are each amended to read as follows:

(1) The term "medical assistance" may include the following care and services subject to rules adopted by the authority or department: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and X-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary or director; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, neither the authority nor the department may cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(3) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with the greatest need as determined by the assessment of functional disability.

(4) Effective July 1, 1989, the authority shall offer hospice services in accordance with available funds.

(5) For Title XIX personal care services administered by (~~aging and disability services administration of~~) the department, the department shall contract with area agencies on aging or may contract with a federally recognized Indian tribe under RCW 74.39A.090(3):

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(6) In the event that an area agency on aging or federally recognized Indian tribe is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(7) Subject to the availability of amounts appropriated for this specific purpose, the authority may offer medicare part D prescription drug copayment coverage to full benefit dual eligible beneficiaries.

(8) Effective January 1, 2016, the authority shall require universal screening and provider payment for autism and developmental delays as recommended by

the bright futures guidelines of the American academy of pediatrics, as they existed on August 27, 2015. This requirement is subject to the availability of funds.

(9) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for annual depression screening for youth ages twelve through eighteen as recommended by the bright futures guidelines of the American academy of pediatrics, as they existed on January 1, 2017. Providers may include, but are not limited to, primary care providers, public health nurses, and other providers in a clinical setting. This requirement is subject to the availability of funds appropriated for this specific purpose.

(10) Subject to the availability of amounts appropriated for this specific purpose, effective January 1, 2018, the authority shall require provider payment for maternal depression screening for mothers of children ages birth to six months. This requirement is subject to the availability of funds appropriated for this specific purpose.

(11) Subject to the availability of amounts appropriated for this specific purpose, the authority shall:

(a) Allow otherwise eligible reimbursement for the following related to mental health assessment and diagnosis of children from birth through five years of age:

(i) Up to five sessions for purposes of intake and assessment, if necessary;

(ii) Assessments in home or community settings, including reimbursement for provider travel; and

(b) Require providers to use the current version of the DC:0-5 diagnostic classification system for mental health assessment and diagnosis of children from birth through five years of age.

**Sec. 5.** RCW 74.39A.009 and 2018 c 278 s 2 are each amended to read as follows:

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

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living facility" means a facility licensed under chapter 18.20 RCW.

(4) "Assisted living services" means services provided by an assisted living facility that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services; and the facility provides these services to residents who are living in private apartment-like units.

(5) "Community residential service business" means a business that:

(a) Is certified by the department of social and health services to provide to individuals who have a developmental disability as defined in RCW 71A.10.020(5):

(i) Group home services;

(ii) Group training home services;



(iii) Supported living services; or  
(iv) Voluntary placement services provided in a licensed staff residential facility for children;

(b) Has a contract with the developmental disabilities administration to provide the services identified in (a) of this subsection; and

(c) All of the business's long-term care workers are subject to statutory or regulatory training requirements that are required to provide the services identified in (a) of this subsection.

(6) "Consumer" or "client" means a person who is receiving or has applied for services under this chapter, including a person who is receiving services from an individual provider.

(7) "Consumer directed employer" is a private entity that contracts with the department to be the legal employer of individual providers for purposes of performing administrative functions. The consumer directed employer is patterned after the agency with choice model, recognized by the federal centers for medicare and medicaid services for financial management in consumer directed programs. The entity's responsibilities are described in RCW 74.39A.515 and throughout this chapter and include: (a) Coordination with the consumer, who is the individual provider's managing employer; (b) withholding, filing, and paying income and employment taxes, including workers' compensation premiums and unemployment taxes, for individual providers; (c) verifying an individual provider's qualifications; and (d) providing other administrative and employment-related supports. The consumer directed employer is a social service agency and its employees are mandated reporters as defined in RCW 74.34.020.

(8) "Core competencies" means basic training topics, including but not limited to, communication skills, worker self-care, problem solving, maintaining dignity, consumer directed care, cultural sensitivity, body mechanics, fall prevention, skin and body care, long-term care worker roles and boundaries, supporting activities of daily living, and food preparation and handling.

(9) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

(10) "Department" means the department of social and health services.

(11) "Developmental disability" has the same meaning as defined in RCW 71A.10.020.

(12) "Direct care worker" means a paid caregiver who provides direct, hands-on personal care services to persons with disabilities or the elderly requiring long-term care.

(13) "Enhanced adult residential care" means services provided by an assisted living facility that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(14) "Facility" means an adult family home, an assisted living facility, a nursing home, an enhanced services facility licensed under chapter 70.97 RCW,

or a facility certified to provide medicare or medicaid services in nursing facilities or intermediate care facilities for individuals with intellectual disabilities under 42 C.F.R. Part 483.

(15) "Home and community-based services" means services provided in adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or federally recognized Indian tribes, or similar services provided by facilities and agencies licensed or certified by the department.

(16) "Home care aide" means a long-term care worker who is certified as a home care aide by the department of health under chapter 18.88B RCW.

(17) "Individual provider" is defined according to RCW 74.39A.240.

(18) "Legal employer" means the consumer directed employer, which along with the consumer, coemploys individual providers. The legal employer is responsible for setting wages and benefits for individual providers and must comply with applicable laws including, but not limited to, workers compensation and unemployment insurance laws.

(19) "Long-term care" means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age who are functionally disabled due to chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance provided by any individuals, groups, residential care settings, or professions unless otherwise required by law.

(20)(a) "Long-term care workers" include all persons who provide paid, hands-on personal care services for the elderly or persons with disabilities, including but not limited to individual providers of home care services, direct care workers employed by home care agencies or a consumer directed employer, providers of home care services to persons with developmental disabilities under Title 71A RCW, all direct care workers in state-licensed assisted living facilities, enhanced services facilities, and adult family homes, respite care providers, direct care workers employed by community residential service businesses, and any other direct care worker providing home or community-based services to the elderly or persons with functional disabilities or developmental disabilities.

(b) "Long-term care workers" do not include: (i) Persons employed by the following facilities or agencies: Nursing homes licensed under chapter 18.51 RCW, hospitals or other acute care settings, residential habilitation centers under chapter 71A.20 RCW, facilities certified under 42 C.F.R., Part 483, hospice agencies subject to chapter 70.127 RCW, adult day care centers, and adult day health care centers; or (ii) persons who are not paid by the state or by a private agency or facility licensed or certified by the state to provide personal care services.

(21) "Managing employer" means a consumer who coemploys one or more individual providers and whose responsibilities include (a) choosing potential individual providers and referring them to the consumer directed employer; (b) overseeing the day-to-day management and scheduling of the individual provider's tasks consistent with the plan of care; and (c) dismissing the individual provider when desired.

(22) "Nursing home" or "nursing facility" means a facility licensed under chapter 18.51 RCW or certified as a medicaid nursing facility under 42 C.F.R. Part 483, or both.

(23) "Person who is functionally disabled" means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency or developmental disability, is dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living," in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances may also be considered when assessing a person's functional ~~((abilities [ability]))~~ ability to perform activities in the home and the community.

(24) "Personal care services" means physical or verbal assistance with activities of daily living and instrumental activities of daily living provided because of a person's functional disability.

(25) "Population specific competencies" means basic training topics unique to the care needs of the population the long-term care worker is serving, including but not limited to, mental health, dementia, developmental disabilities, young adults with physical disabilities, and older adults.

(26) "Qualified instructor" means a registered nurse or other person with specific knowledge, training, and work experience in the provision of direct, hands-on personal care and other assistance services to the elderly or persons with disabilities requiring long-term care.

(27) "Secretary" means the secretary of social and health services.

(28) "Training partnership" means a joint partnership or trust that includes the office of the governor and the exclusive bargaining representative of individual providers under RCW 74.39A.270 with the capacity to provide training, peer mentoring, and workforce development, or other services to individual providers.

(29) "Tribally licensed assisted living facility" means an assisted living facility licensed by a federally recognized Indian tribe in which a facility provides services similar to services provided by assisted living facilities licensed under chapter 18.20 RCW.

Passed by the Senate February 8, 2022.

Passed by the House March 2, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 256

[Substitute House Bill 1725]

### INDIGENOUS PERSONS—ENDANGERED MISSING PERSON ADVISORY DESIGNATION

AN ACT Relating to the creation of an endangered missing person advisory designation for missing indigenous persons; amending RCW 13.60.010; and creating a new section.

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

NEW SECTION. **Sec. 1.** The legislature finds that indigenous people experience disproportionate rates of violence in Washington state. Tribes, state

leaders, and grassroots activists have done substantial work to identify factors directly affecting the rates of violence and to ensure that addressing the crisis of missing and murdered indigenous people is a priority at every level. The legislature intends to provide law enforcement with additional tools to disseminate timely, accurate information to engage the public more effectively in assisting with locating missing indigenous people, and to compensate for the unique challenges that indigenous communities face accessing media coverage and the ability to share information.

**Sec. 2.** RCW 13.60.010 and 2017 3rd sp.s. c 6 s 315 are each amended to read as follows:

(1) The Washington state patrol shall establish a missing children and endangered person clearinghouse which shall include the maintenance and operation of a toll-free telephone hotline. The clearinghouse shall distribute information to local law enforcement agencies, school districts, the department of children, youth, and families, and the general public regarding missing children and endangered persons. The information shall include pictures, bulletins, training sessions, reports, and biographical materials that will assist in local law enforcement efforts to locate missing children and endangered persons. The state patrol shall also maintain a regularly updated computerized link with national and other statewide missing person systems or clearinghouses, and within existing resources, shall develop and implement a plan, commonly known as an "amber alert plan" or an "endangered missing person advisory plan" which includes ~~((a))~~ "silver alert" ~~((designation))~~ and "missing indigenous person alert" designations for voluntary cooperation between local, state, tribal, and other law enforcement agencies, state government agencies, radio and television stations, cable and satellite systems, and social media pages and sites to enhance the public's ability to assist in recovering abducted children and missing endangered persons consistent with the state endangered missing person advisory plan.

(2) For the purposes of this chapter:

(a) "Child" or "children" means an individual under ~~((eighteen))~~ 18 years of age.

(b) "Missing endangered person" means ~~((a))~~:

(i) A missing indigenous woman or indigenous person; or

(ii) A person who is believed to be in danger because of age, health, mental or physical disability, in combination with environmental or weather conditions, or is believed to be unable to return to safety without assistance and who is:

~~((#))~~ (A) A person with a developmental disability as defined in RCW 71A.10.020(5);

~~((#))~~ (B) A vulnerable adult as defined in RCW 74.34.020; or

~~((##))~~ (C) A person who has been diagnosed as having Alzheimer's disease or other age-related dementia.

(c) "Missing indigenous person alert" means the designated title of a missing endangered person advisory that will be used on a variable message sign and text of the highway advisory radio message when used as part of an activated advisory to assist in the recovery of a missing indigenous person.

(d) "Silver alert" means the designated title of a missing endangered person advisory that will be used on a variable message sign and text of the highway advisory radio message when used as part of an activated advisory to assist in the recovery of a missing endangered person age ~~((sixty))~~ 60 or older.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 257

[Engrossed Senate Bill 5901]

### MANUFACTURING AND RESEARCH AND DEVELOPMENT SALES AND USE TAX INCENTIVE PROGRAM

AN ACT Relating to economic development tax incentives for targeted counties; amending RCW 82.08.820 and 82.12.820; adding a new chapter to Title 82 RCW; creating new sections; providing an effective date; and providing expiration dates.

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

#### PART I

### CREATING A SALES AND USE TAX DEFERRAL PROGRAM TO INCENTIVIZE MANUFACTURING AND RESEARCH AND DEVELOPMENT ACTIVITIES IN CERTAIN DESIGNATED COUNTIES

**NEW SECTION. Sec. 101.** (1) The legislature finds that there are counties in the state that face additional economic development challenges beyond the challenges faced by counties located in the central Puget Sound region. The legislature further finds that these regions do not experience the same degree of job growth and investment. The legislature further finds that, in some areas, increased economic development incentives are needed to help support economic growth and that a one-size-fits-all approach to economic development does not work for the diversity of the statewide economy. For these reasons, the legislature intends to establish a tax deferral program to be effective solely in certain targeted counties. The legislature declares that this limited program serves the vital public purpose of creating employment opportunities and generally spurring economic development in these counties of the state.

(2) The legislature also finds that this act is consistent with the Substitute House Bill No. 1170, the Washington BEST manufacturing act, enacted in 2021. The 2021 Washington BEST manufacturing act recognized that the state must retain and build on its leadership in the manufacturing and research and development sectors and also recognized that a thriving manufacturing and research sector are complimentary and should be promoted in every region of the state. Therefore, the legislature further finds the sales and use tax deferral program for manufacturing and research and development in this act is a critical tool and strategy to help achieve the goals expressed in the Washington BEST manufacturing act of doubling the state's manufacturing employment base, the number of small businesses, and the number of women and minority-owned manufacturing businesses in the next 10 years.

**NEW SECTION. Sec. 102.** Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Applicant" means a person applying for a tax deferral under this chapter.

(2) "Department" means the department of revenue.

(3) "Eligible area" means a qualifying county.

(4)(a) "Eligible investment project" means an investment project that is located, as of the date the application required by section 103 of this act is received by the department, in an eligible area as defined in subsection (3) of this section.

(b) "Eligible investment project" does not include any portion of an investment project undertaken by a light and power business as defined in RCW 82.16.010(4), other than that portion of a cogeneration project that is used to generate power for consumption within the manufacturing site of which the cogeneration project is an integral part, or investment projects that have already received deferrals under this chapter.

(5)(a) "Initiation of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for:

(i) Construction of the qualified building, if the underlying ownership of the building vests exclusively with the person receiving the economic benefit of the deferral;

(ii) Construction of the qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025; or

(iii) Tenant improvements for a qualified building, if the economic benefits of the deferral are passed to a lessee as provided in RCW 82.60.025.

(b) "Initiation of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of the building.

(c) If the eligible investment project is a phased project, "initiation of construction" applies separately to each phase.

(6) "Investment project" means an investment in qualified buildings or qualified machinery and equipment, including labor and services rendered in the planning, installation, and construction of the project.

(7) "Manufacturing" means the same as defined in RCW 82.04.120. "Manufacturing" also includes:

(a) The activities performed by research and development laboratories and commercial testing laboratories; and

(b) The conditioning of vegetable seeds.

(8) "Meaningful construction" means an active construction site, where excavation of a building site, laying of a building foundation, or other tangible signs of construction are taking place and that clearly show a progression in the construction process at the location designated by the taxpayer in the application for deferral. Planning, permitting, or land clearing before excavation of the building site, without more, does not constitute "meaningful construction."

(9) "Person" has the meaning given in RCW 82.04.030.

(10) "Qualified buildings" means construction of new structures, and expansion or renovation of existing structures for the purpose of increasing floor space or production capacity used for manufacturing or research and development activities, including plant offices and warehouses or other facilities for the storage of raw material or finished goods if such facilities are an essential or an integral part of a factory, mill, plant, or laboratory used for manufacturing or research and development. If a building is used partly for manufacturing or research and development and partly for other purposes, the applicable tax

deferral must be determined by apportionment of the costs of construction under rules adopted by the department.

(11) "Qualified machinery and equipment" means all new industrial and research fixtures, equipment, and support facilities that are an integral and necessary part of a manufacturing or research and development operation. "Qualified machinery and equipment" includes: Computers; software; data processing equipment; laboratory equipment; manufacturing components such as belts, pulleys, shafts, and moving parts; molds, tools, and dies; operating structures; and all equipment used to control or operate the machinery.

(12) "Qualifying county" means a county that has a population less than 650,000 at the time an application is submitted under section 103 of this act.

(13) "Recipient" means a person receiving a tax deferral under this chapter.

(14) "Research and development" means the development, refinement, testing, marketing, and commercialization of a product, service, or process before commercial sales have begun, but only when such activities are intended to ultimately result in the production of a new, different, or useful substance or article of tangible personal property for sale. As used in this subsection, "commercial sales" excludes sales of prototypes or sales for market testing if the total gross receipts from such sales of the product, service, or process do not exceed \$1,000,000.

**NEW SECTION. Sec. 103.** (1) Application for deferral of taxes under this chapter must be made before initiation of the construction of the investment project or acquisition of equipment or machinery. The application must be made to the department in a form and manner prescribed by the department. The application must contain information regarding the location of the investment project, the applicant's average employment in the state for the prior year, estimated or actual new employment related to the project, estimated or actual wages of employees related to the project, estimated or actual costs, time schedules for completion and operation, and other information required by the department. The department must rule on the application within 60 days.

(2) The department may not accept applications for the deferral under this chapter after June 30, 2032.

(3) This section expires July 1, 2032.

**NEW SECTION. Sec. 104.** (1) The department must issue a sales and use tax deferral certificate for state and local sales and use taxes due under chapters 82.08, 82.12, and 82.14 RCW on each eligible investment project.

(2) The department must keep a running total of all deferrals granted under this chapter during each fiscal biennium. The amount of state and local sales and use taxes eligible for deferral under this chapter is limited to \$400,000 per person.

(3) This section expires July 1, 2032.

**NEW SECTION. Sec. 105.** (1) The recipient of a deferral certificate under section 104 of this act must begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, unless construction was delayed due to circumstances beyond the recipient's control. Lack of funding is not considered a circumstance beyond the recipient's control.

(2) If the recipient does not begin meaningful construction on an eligible investment project within two years of receiving a deferral certificate, the

deferral certificate issued under section 104 of this act is invalid and taxes deferred under this chapter are due immediately.

**NEW SECTION. Sec. 106.** (1)(a) Each recipient of a deferral of taxes granted under this chapter must file a complete annual tax performance report with the department under RCW 82.32.534 during the period covered by the schedule under subsection (2) of this section. If the economic benefits of the deferral are passed to a lessee as provided in section 108 of this act, the lessee must file a complete annual tax performance report, and the applicant is not required to file a complete annual tax performance report.

(b) The joint legislative audit and review committee, as part of its tax preference review process under chapter 43.136 RCW, must use the information reported on the annual tax performance report required by this section to study the tax deferral program authorized under this chapter. The committee must report to the legislature by December 1, 2030. The report must measure the effect of the program on job creation, the number of jobs created for residents of eligible areas, company growth, and such other factors as the committee selects.

(2)(a) Except as otherwise provided in this chapter, taxes deferred under this chapter need not be repaid.

(b) If the investment project is not operationally complete within five calendar years from the issuance of the tax deferral certificate, or if, on the basis of the tax performance report under RCW 82.32.534 or other information, the department finds that an investment project is used for purposes other than a qualified manufacturing or research and development operation at any time during the calendar year in which the investment project is certified by the department as having been operationally completed, or at any time during any of the seven succeeding calendar years, a portion of deferred taxes is immediately due according to the following schedule:

Year in which use occurs	% of deferred taxes due
1	100%
2	87.5%
3	75%
4	62.5%
5	50%
6	37.5%
7	25%
8	12.5%

(c) If the economic benefits of the deferral are passed to a lessee as provided in section 108 of this act, the lessee is responsible for payment to the extent the lessee has received the economic benefit.

(3) A recipient who must repay deferred taxes under this section because the department has found that an investment project is not eligible for tax deferral under this chapter is no longer required to file annual tax performance reports



under RCW 82.32.534 beginning on the date an investment project is used for nonqualifying purposes.

(4) The department must assess interest at the rate provided for delinquent taxes, but not penalties, retroactively to the date of deferral for a recipient who must repay deferred taxes under this section because the department has found that an investment project is not eligible for tax deferral. The debt for deferred taxes will not be extinguished by insolvency or other failure of the recipient. Transfer of ownership does not terminate the deferral. The deferral is transferred, subject to the successor meeting the eligibility requirements of this chapter, for the remaining periods of the deferral.

(5) Notwithstanding any other provision of this section or RCW 82.32.534, deferred taxes on the following need not be repaid:

(a) Machinery and equipment, and sales of or charges made for labor and services, which at the time of purchase would have qualified for exemption under RCW 82.08.02565; and

(b) Machinery and equipment which at the time of first use would have qualified for exemption under RCW 82.12.02565.

NEW SECTION. Sec. 107. The department must establish a list of qualifying counties, effective July 1, 2022. The list of qualifying counties is effective for a 24-month period and must be updated by July 1st of the year that is two calendar years after the list was established or last updated, as the case may be.

NEW SECTION. Sec. 108. The lessor or owner of a qualified building is not eligible for a deferral unless:

(1) The underlying ownership of the buildings, machinery, and equipment vests exclusively in the same person; or

(2)(a) The lessor by written contract agrees to pass the economic benefit of the deferral to the lessee;

(b) The lessee that receives the economic benefit of the deferral agrees in writing with the department to complete the annual tax performance report required under section 106 of this act; and

(c) The economic benefit of the deferral passed to the lessee is no less than the amount of tax deferred by the lessor and is evidenced by written documentation of any type of payment, credit, or other financial arrangement between the lessor or owner of the qualified building and the lessee.

NEW SECTION. Sec. 109. Chapter 82.32 RCW applies to the administration of this chapter.

NEW SECTION. Sec. 110. Applications, reports, and any other information received by the department under this chapter, except applications not approved by the department, are not confidential and are subject to disclosure.

## PART II MODIFYING THE SALES AND USE TAX EXEMPTION FOR WAREHOUSES, DISTRIBUTION CENTERS, AND GRAIN ELEVATORS

*\*Sec. 201. RCW 82.08.820 and 2014 c 140 s 23 are each amended to read as follows:*

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators and retailers who own or operate distribution centers, and who have paid the tax levied by RCW 82.08.020 on:

(a) Material-handling and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Construction of a warehouse or grain elevator, including materials, and including service and labor costs, are eligible for an exemption in the form of a remittance. The amount of the remittance is computed under subsection (3) of this section and is based on the state share of sales tax.

(2) For purposes of this section and RCW 82.12.820:

(a) "Agricultural products" has the meaning given in RCW 82.04.213;

(b)(i) "Construction" means the actual construction of a warehouse or grain elevator that did not exist before the construction began. (~~"Construction"~~) Except as provided in (b)(ii) of this subsection, "construction" includes expansion if the expansion adds at least two hundred thousand square feet of additional space to an existing warehouse or additional storage capacity of at least one million bushels to an existing grain elevator. "Construction" does not include renovation, remodeling, or repair;

(ii) For an existing warehouse located in a qualifying county, "construction" includes expansion if the expansion adds at least 100,000 square feet of additional space to an existing warehouse;

(c) "Department" means the department of revenue;

(d) "Distribution center" means a warehouse that is used exclusively by a retailer solely for the storage and distribution of finished goods to retail outlets of the retailer. "Distribution center" does not include a warehouse at which retail sales occur;

(e) "Finished goods" means tangible personal property intended for sale by a retailer or wholesaler. "Finished goods" does not include:

(i) Agricultural products stored by wholesalers, third-party warehouses, or retailers if the storage takes place on the land of the person who produced the agricultural product;

(ii) Logs, minerals, petroleum, gas, or other extracted products stored as raw materials or in bulk; or

(iii) Marijuana, useable marijuana, or marijuana-infused products;

(f) "Grain elevator" means a structure used for storage and handling of grain in bulk;

(g) "Material-handling equipment and racking equipment" means equipment in a warehouse or grain elevator that is primarily used to handle, store, organize, convey, package, or repackage finished goods. The term includes tangible personal property with a useful life of one year or more that becomes an ingredient or component of the equipment, including repair and replacement parts. The term does not include equipment in offices, lunchrooms, restrooms, and other like space, within a warehouse or grain elevator, or equipment used for nonwarehousing purposes. "Material-handling equipment" includes but is not limited to: Conveyers, carousels, lifts, positioners, pick-up-and-place units, cranes, hoists, mechanical arms, and robots; mechanized systems, including containers that are an integral part of

*the system, whose purpose is to lift or move tangible personal property; and automated handling, storage, and retrieval systems, including computers that control them, whose purpose is to lift or move tangible personal property; and forklifts and other off-the-road vehicles that are used to lift or move tangible personal property and that cannot be operated legally on roads and streets. "Racking equipment" includes, but is not limited to, conveying systems, chutes, shelves, racks, bins, drawers, pallets, and other containers and storage devices that form a necessary part of the storage system;*

*(h) "Person" has the meaning given in RCW 82.04.030;*

*(i) "Retailer" means a person who makes "sales at retail" as defined in chapter 82.04 RCW of tangible personal property;*

*(j) "Square footage" means the product of the two horizontal dimensions of each floor of a specific warehouse. The entire footprint of the warehouse must be measured in calculating the square footage, including space that juts out from the building profile such as loading docks. "Square footage" does not mean the aggregate of the square footage of more than one warehouse at a location or the aggregate of the square footage of warehouses at more than one location;*

*(k) "Third-party warehouse" means a person taxable under RCW 82.04.280(1)(d);*

*(l) "Qualifying county" means a county that has a population less than 650,000 at the time an application is submitted under this section and RCW 82.12.820;*

*(m) "Warehouse" means an enclosed building or structure in which finished goods are stored. A warehouse building or structure may have more than one storage room and more than one floor. Office space, lunchrooms, restrooms, and other space within the warehouse and necessary for the operation of the warehouse are considered part of the warehouse as are loading docks and other such space attached to the building and used for handling of finished goods. Landscaping and parking lots are not considered part of the warehouse. A storage yard is not a warehouse, nor is a building in which manufacturing takes place; and*

*((~~m~~)) (n) "Wholesaler" means a person who makes "sales at wholesale" as defined in chapter 82.04 RCW of tangible personal property, but "wholesaler" does not include a person who makes sales exempt under RCW 82.04.330.*

*(3)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.08.020. The buyer may then apply to the department for remittance of all or part of the tax paid under RCW 82.08.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. ~~((~~For~~))~~ Except as provided under (d) of this subsection, for warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction, materials, service, and labor, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment, and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment. The maximum amount of tax that may*

be remitted under this section and RCW 82.12.820 for the construction or expansion of a warehouse or grain elevator is \$400,000.

(b) The department must determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer must on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer must retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses and grain elevators; and construction invoices and documents.

(c) The department must on a quarterly basis remit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(d) For warehouses located in a qualifying county, the square footage requirement is 100,000 square feet or more.

(4) Warehouses, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Warehouses and grain elevators upon which construction was initiated before May 20, 1997, are not eligible for a remittance under this section.

(5) The lessor or owner of a warehouse or grain elevator is not eligible for a remittance under this section unless the underlying ownership of the warehouse or grain elevator and the material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the remittance to the lessee in the form of reduced rent payments.

(6) This section expires July 1, 2032.

\*Sec. 201 was vetoed. See message at end of chapter.

\*Sec. 202. RCW 82.12.820 and 2006 c 354 s 13 are each amended to read as follows:

(1) Wholesalers or third-party warehouse owners who own or operate warehouses or grain elevators, and retailers who own or operate distribution centers, and who have paid the tax levied under RCW 82.12.020 on:

(a) Material-handling equipment and racking equipment and labor and services rendered in respect to installing, repairing, cleaning, altering, or improving the equipment; or

(b) Materials incorporated in the construction of a warehouse or grain elevator, are eligible for an exemption on tax paid in the form of a remittance or credit against tax owed. The amount of the remittance or credit is computed under subsection (2) of this section and is based on the state share of use tax.

(2)(a) A person claiming an exemption from state tax in the form of a remittance under this section must pay the tax imposed by RCW 82.12.020 to the department. The person may then apply to the department for remittance of all or part of the tax paid under RCW 82.12.020. For grain elevators with bushel capacity of one million but less than two million, the remittance is equal to fifty percent of the amount of tax paid. ~~((For))~~ Except as provided

under (d) of this subsection, for warehouses with square footage of two hundred thousand or more and for grain elevators with bushel capacity of two million or more, the remittance is equal to one hundred percent of the amount of tax paid for qualifying construction materials, and fifty percent of the amount of tax paid for qualifying material-handling equipment and racking equipment. The maximum amount of tax that may be remitted under this section and RCW 82.08.820 for the construction or expansion of a warehouse or grain elevator is \$400,000.

(b) The department shall determine eligibility under this section based on information provided by the buyer and through audit and other administrative records. The buyer shall on a quarterly basis submit an information sheet, in a form and manner as required by the department by rule, specifying the amount of exempted tax claimed and the qualifying purchases or acquisitions for which the exemption is claimed. The buyer shall retain, in adequate detail to enable the department to determine whether the equipment or construction meets the criteria under this section: Invoices; proof of tax paid; documents describing the material-handling equipment and racking equipment; location and size of warehouses, if applicable; and construction invoices and documents.

(c) The department shall on a quarterly basis remit or credit exempted amounts to qualifying persons who submitted applications during the previous quarter.

(d) For warehouses located in a qualifying county, the square footage requirement is 100,000 square feet or more.

(3) Warehouse, grain elevators, and material-handling equipment and racking equipment for which an exemption, credit, or deferral has been or is being received under chapter 82.60, 82.62, or 82.63 RCW or RCW 82.08.02565 or 82.12.02565 are not eligible for any remittance under this section. Materials incorporated in warehouses and grain elevators upon which construction was initiated prior to May 20, 1997, are not eligible for a remittance under this section.

(4) The lessor or owner of the warehouse or grain elevator is not eligible for a remittance or credit under this section unless the underlying ownership of the warehouse or grain elevator and material-handling equipment and racking equipment vests exclusively in the same person, or unless the lessor by written contract agrees to pass the economic benefit of the exemption to the lessee in the form of reduced rent payments.

(5) The definitions in RCW 82.08.820 apply to this section.

(6) This section expires July 1, 2032.

\*Sec. 202 was vetoed. See message at end of chapter.

\***NEW SECTION.** Sec. 203. A person claiming an exemption from state tax in the form of a remittance under RCW 82.08.820 or 82.12.820 for a warehouse or distribution center must file the annual tax preference performance report under RCW 82.32.534 beginning in the first calendar year following the year the warehouse, distribution center, or grain elevator is operationally complete and for the next two subsequent years.

\*Sec. 203 was vetoed. See message at end of chapter.

\***NEW SECTION.** Sec. 204. (1) This section is the tax preference performance statement for the warehousing, distribution, and grain elevator

*sales and use tax exemptions in sections 201 and 202, chapter . . ., Laws of 2022 (sections 201 and 202 of this act). The performance statement is only intended to be used for subsequent evaluation of the tax preference. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.*

*(2) The legislature categorizes this tax preference as one intended to accomplish the general purposes indicated in RCW 82.32.808(2) (a) and (c) to induce certain designated behavior by businesses and to create jobs.*

*(3) It is the legislature's specific public policy objective to induce the construction of new or expanded warehouses and distribution centers in certain targeted counties by reducing the square footage requirement in order to diversify the tax base and increase employment within the targeted counties.*

*(4) To measure the effectiveness of these exemptions in achieving the specific public policy objectives described in subsection (3) of this section, the joint legislative audit and review committee must evaluate the changes in the number of employment positions in the warehousing and distribution industry sector in the targeted counties and changes to the tax base as a result of increased warehousing and distribution activity.*

*(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to the remittance data prepared by the department of revenue and the annual tax preference performance report submitted by the beneficiary of the tax preference under RCW 82.32.534.*

*\*Sec. 204 was vetoed. See message at end of chapter.*

**NEW SECTION. Sec. 205.** Sections 101 through 110 of this act constitute a new chapter in Title 82 RCW.

**NEW SECTION. Sec. 206.** This act takes effect July 1, 2022.

Passed by the Senate March 10, 2022.

Passed by the House March 9, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

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

"I am returning herewith, without my approval as to Sections 201, 202, 203, and 204, Engrossed Senate Bill No. 5901 entitled:

"AN ACT Relating to economic development tax incentives for targeted counties."

Engrossed Senate Bill 5901 expands the existing warehouse and grain elevator sales and use tax exemption to include construction or expansion of warehouses of at least 100,000 square feet or more for counties with a population less than 650,000.

I recognize that warehousing is an important part of the state's rural economy, but the tax incentives in this bill are overly broad, as they apply to 36 of the 39 counties in the state. Additionally, due to the increasing consumer preference for online shopping over the past few years, which only increased with the pandemic, the warehousing industry has remained strong and does not require an expanded tax incentive program to remain competitive at this time.

For these reasons I have vetoed Sections 201, 202, 203, and 204 of Engrossed Senate Bill No. 5901.

With the exception of Sections 201, 202, 203, and 204, Engrossed Senate Bill No. 5901 is approved."

## CHAPTER 258

[House Bill 1122]

## WASHINGTON STATE GUARD—RETIREMENT AGE

AN ACT Relating to the retirement age for state guard members; amending RCW 38.16.015; and declaring an emergency.

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

**Sec. 1.** RCW 38.16.015 and 2012 c 12 s 1 are each amended to read as follows:

(1) The period of enlistment in the Washington state guard shall be set by regulation by the adjutant general or the adjutant general's designee. ~~((However, no original enlistment may be consummated unless the term thereof can be completed before the applicant attains the age of sixty-four.))~~

(2) Notwithstanding subsection (1) of this section and RCW 38.12.180(2), the adjutant general, or the adjutant general's designee, may extend the service age upon request by an active member of the Washington state guard if the adjutant general, or the adjutant general's designee, determines the member's extension would be in the best interest of the Washington state guard. Extensions under this subsection have a ~~((one-year))~~ two-year duration and may be renewed ~~((until the member attains the age of sixty-eight))~~ beyond the age of sixty-four, subject to the discretion of the adjutant general or the adjutant general's designee, if:

(a) The member is physically and mentally capable to complete all assigned mission tasks; and

(b) The Washington state guard officer review board recommends the extension.

***\*NEW SECTION. Sec. 2. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.***

*\*Sec. 2 was vetoed. See message at end of chapter.*

Passed by the House January 12, 2022.

Passed by the Senate March 1, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

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

"I am returning herewith, without my approval as to Section 2, House Bill No. 1122 entitled:

"AN ACT Relating to the retirement age for state guard members."

Section 1 of House Bill 1122 updates the retirement age for Washington state guard members. Current law allows volunteer guard members to serve until age 64, with possible one-year extensions until age 68. This bill retains the retirement age of 64 but now allows for unlimited two-year extensions if the member is physically and mentally capable of completing assigned mission tasks and if the extension is approved by leadership. Section 2 is an emergency clause that would make this change effective immediately. I agree that allowing volunteers to serve for as long as they can complete their tasks is beneficial to our entire community. However, as important as this bill is, modifying the retirement age of volunteer state guard members is not an emergency.

For these reasons I have vetoed Section 2 of House Bill No. 1122.

With the exception of Section 2, House Bill No. 1122 is approved."

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**CHAPTER 259**

[Second Substitute House Bill 1173]

## STATE LANDS DEVELOPMENT AUTHORITIES—INTERBAY PROPERTY

AN ACT Relating to state lands development authorities; and adding a new chapter to Title 43 RCW.

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

**NEW SECTION. Sec. 1.** (1) State lands development authorities are hereby authorized to oversee and manage the development or redevelopment of state-owned property that is within or adjacent to manufacturing industrial centers. Any property owned or managed by the department of natural resources is exempt from the provisions of this chapter.

(2) The legislative delegation from a district containing state-owned land that is included within, or is adjacent to, a manufacturing industrial center may propose the formation of a state lands development authority. The proposal must be presented in writing to the relevant legislative committees in both the house of representatives and the senate. The proposal must contain:

(a) The proposed general geographic boundaries of the state lands development authority; and

(b) Legislative findings relating to formation of the state lands development authority which find that:

(i) The state owns property within the boundaries of the proposed state lands development authority;

(ii) The state-owned land is located within or adjacent to a manufacturing industrial center;

(iii) The state agency with custodial responsibility for the property has completed an assessment regarding the current use, future use, and a projected date or conditions when the land is vacant, excess, or surplus to the mission of the state agency;

(iv) The legislature intends that the state lands development authority be appropriately funded and staffed; and

(v) The formation of a state lands development authority to oversee and manage the development or redevelopment of the state-owned land will be useful and beneficial to the community within and adjacent to the boundaries of the state lands development authority.

(3) Formation of a state lands development authority is subject to legislative authorization by statute.

(4) A state lands development authority may only be formed in a county with a population of 2,000,000 or greater.

(5) For the purposes of this chapter, all state lands development authorities are a public body corporate and politic and instrumentality of the state of Washington.

**NEW SECTION. Sec. 2.** (1) The affairs of a state lands development authority shall be managed by a board of directors.

(2) The initial board of directors of a state lands development authority must be appointed by the governor upon recommendation from the state legislative



delegation from the district in which the boundaries of the state lands development authority are contained.

(3) The number of persons on the board of directors must be included in the proposal to establish a state lands development authority under section 1 of this act.

(4) Members of the board of directors must include:

(a) At least one member representing each of the following:

(i) The governing body of each city included in the boundaries of the state lands development authority;

(ii) The mayor's office of each city included in the boundaries of the state lands development authority;

(iii) The governing body of each county included in the boundaries of the state lands development authority; and

(iv) The governing body of each port district included in the boundaries of the state lands development authority;

(b) Additional members if required by the proposal to establish a state lands development authority under section 1 of this act; and

(c) Ex officio, nonvoting members if required by the proposal to establish a state lands development authority under section 1 of this act.

(5) In addition to other applicable provisions of law pertaining to conflicts of interest of public officials, no state lands development authority board member, appointed or otherwise, may participate in any decision on any board contract in which the board member has any interests, direct or indirect, with any firm, partnership, corporation, or association that would be the recipient of any gain or benefit resulting from transactions with the state lands development authority. In any instance where the participation occurs, the board shall void the transaction, and the involved member shall be subject to whatever sanctions may be provided by law. The board shall frame and adopt a code of ethics for its members, which must be designed to protect the state and its citizens from any unethical conduct by the board.

**NEW SECTION. Sec. 3.** (1) State lands development authorities have the power to:

(a) Accept gifts, grants, loans, or other aid from public and private entities;

(b) Employ and appoint such agents, attorneys, officers, and employees as may be necessary to implement its purposes and duties;

(c) Contract and enter into partnerships with individuals, associations, corporations, and local, state, and federal governments;

(d) Buy, own, and lease real and personal property;

(e) Sell real and personal property, subject to any rules and restrictions contained in the proposal to establish a state lands development authority under section 1 of this act;

(f) Hold in trust, improve, and develop land;

(g) Invest, deposit, and reinvest its funds;

(h) Incur debt in furtherance of its mission: Provided, however, that state lands development authorities are expressly prohibited from incurring debt on behalf of the state of Washington as defined in Article VIII, section 1 of the state Constitution. A state lands development authority obligation to repay borrowed money does not constitute an obligation, either general, special, or moral, of the state of Washington. State lands development authorities are expressly

prohibited from using, either directly or indirectly, "general state revenues" as defined in Article VIII, section 1 of the state Constitution to satisfy any state lands development authority obligation to repay borrowed money;

(i) Lend or grant its funds for any lawful purposes. For purposes of this section, "lawful purposes" includes without limitation, any use of funds, including loans thereof to public or private parties, authorized by agreements with the United States or any department or agency thereof under which federal or private funds are obtained, or authorized under federal laws and regulations pertinent to such agreements; and

(j) Exercise such additional powers as may be authorized by law.

(2) A state lands development authority that accepts public funds under subsection (1)(a) of this section:

(a) Is subject in all respects to Article VIII, section 5 or 7, as appropriate, of the state Constitution, and RCW 42.17A.550; and

(b) May not use such funds to support or oppose a candidate, ballot proposition, political party, or political committee.

(3) State lands development authorities do not have any authority to levy taxes or assessments.

**NEW SECTION. Sec. 4.** A state lands development authority has the duty to:

(1) Adopt bylaws for the authority that will govern how the authority will generally conduct its affairs;

(2) Establish specific geographic boundaries for the authority with its bylaws based on the general geographic boundaries established in the proposal approved by the legislature;

(3) Assume responsibility for the development or redevelopment of the state-owned property within the boundaries of the authority;

(4) Create a strategic plan for the development or redevelopment of the state-owned property that includes, but is not limited to, the following elements:

(a) An examination of the existing uses of the property and an assessment of whether such should change in the future in order for the use of the property to achieve maximum public benefit;

(b) An examination of options for development or redevelopment that include industrial uses only, mixed-use commercial and residential development, and mixed-use light industrial and residential development, as well as the incorporation of community-oriented facilities, and an evaluation of which options would achieve maximum public benefit;

(c) A plan for extensive public engagement throughout the development or redevelopment process, which must include a regular schedule of public meetings and opportunities for public comment; and

(d) A financial plan for the authority that identifies funding sources necessary to carry out the authority's strategic plan;

(5) Use gifts, grants, loans, and other aid from public or private entities to further the development and redevelopment projects identified in the authority's strategic plan; and

(6) Submit a written report to the relevant committees of the legislature by December 1st of each even-numbered year that summarizes the authority's strategic plan and details the progress of the authority in meeting its strategic

goals related to development and redevelopment, public engagement, and financial planning.

**NEW SECTION. Sec. 5.** The state lands development authority operating account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for operating expenses under this chapter.

**NEW SECTION. Sec. 6.** The state lands development authority capital account is hereby created in the state treasury. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for capital projects under this chapter.

**NEW SECTION. Sec. 7.** (1) The legislature finds:

(a) The state of Washington owns a property of approximately 25 acres in size located at 1601 West Armory Way within Seattle's Ballard-Interbay northend manufacturing industrial center and Interbay neighborhood, known as the Interbay property. The Interbay property was transferred to the state of Washington in 1971 with deed limitations which limit use of the property for national guard purposes only. The national guard currently uses the Interbay property for the Seattle readiness center, built in 1974. The national guard has determined that it must relocate from the Interbay property to another site, and an assessment has been completed pursuant to section 1(2)(b) of this act. Once the national guard facilities are funded and constructed and the national guard is relocated in a new, fully operational readiness center, and the department of defense has released its use restrictions on the property, the Interbay property will be available for redevelopment.

(b) The formation of a state lands development authority to oversee and manage the redevelopment of the Interbay property will be useful and beneficial to the community within and adjacent to the Interbay neighborhood in the city of Seattle. The legislature intends that the authority be appropriately funded and staffed.

(2)(a) The legislature authorizes the establishment of the Ballard-Interbay state lands development authority, which boundaries are coextensive with the boundaries of the Interbay property.

(b) The Ballard-Interbay state lands development authority is a public body corporate and politic and instrumentality of the state of Washington.

(3) The Ballard-Interbay state lands development authority may exercise its authority in furtherance of projects that are located only within the boundaries of the Interbay property.

(4) The Ballard-Interbay state lands development authority does not have site control or access until after the national guard relocation and may not sell the Interbay property or portions of the Interbay property to another entity.

(5) The affairs of the Ballard-Interbay state lands development authority shall be managed by a board of directors, consisting of the following members:

(a) One member with experience developing workforce or affordable housing;

(b) One member with knowledge of project financing options for public-private partnerships related to housing;

(c) Two members with architectural design and development experience related to industrial and mixed-use zoning;

- (d) One member representing the port of Seattle;
- (e) One member representing the governor's office;
- (f) One member representing the King county council;
- (g) One member representing the city of Seattle mayor's office;
- (h) One member representing the Seattle city council; and
- (i) The director of the department of commerce or the director's designee as an ex officio, nonvoting member.

(6) No member of the board of directors may hold office for more than four years. Board positions must be numbered one through 11 and the terms staggered as follows:

(a) Board members appointed to positions one through five shall serve two-year terms, and if reappointed, may serve no more than one additional two-year term.

(b) Board members initially appointed to positions six through 11 shall serve a three-year term only.

(c) Board members appointed to positions six through 11 after the initial three-year term shall serve two-year terms, and if reappointed, may serve no more than one additional two-year term.

(7) The initial board of directors of the Ballard-Interbay state lands development authority must be appointed by the governor upon recommendation from the legislative delegation from the district in which the boundaries of the authority are contained, as required by section 2(2) of this act. With respect to the appointment of subsequent boards of directors, the existing board members must develop a list of candidates for each position and deliver the recommendations to the members of the legislative delegation from the district in which the authority is located. The legislative delegation must present the list of candidates for recommendation to the governor for appointment to the board of directors. In developing the list of candidates, the board of directors must consider racial, gender, and geographic diversity so that the board may reflect the diversity of the community.

(8) In addition to other applicable provisions of law pertaining to conflicts of interest of public officials, no Ballard-Interbay state lands development authority board member, appointive or otherwise, may participate in any decision on any board contract in which the board member has any interests, direct or indirect, with any firm, partnership, corporation, or association that would be the recipient of any gain or benefit resulting from transactions with the state lands development authority. In any instance where the participation occurs, the board shall void the transaction, and the involved member must be subject to whatever sanctions may be provided by law. The board shall frame and adopt a code of ethics for its members, which must be designed to protect the state and its citizens from any unethical conduct by the board.

(9) For purposes of this section, "Interbay property" means a state-owned property with deed limitations indicating it may be used for national guard purposes only located at 1601 West Armory Way, consisting of approximately 25 acres of land within Seattle's Ballard-Interbay northend manufacturing industrial center and Interbay neighborhood.

**NEW SECTION. Sec. 8.** Sections 1 through 7 of this act constitute a new chapter in Title 43 RCW.

Passed by the House March 7, 2022.  
 Passed by the Senate March 4, 2022.  
 Approved by the Governor March 31, 2022.  
 Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 260

[Engrossed Fourth Substitute House Bill 1412]

### LEGAL FINANCIAL OBLIGATIONS—VARIOUS PROVISIONS

AN ACT Relating to legal financial obligations; amending RCW 3.66.120, 9.94A.750, 9.94A.753, 9.94A.760, 6.17.020, 9.92.060, 9.95.210, 10.01.160, 10.73.160, 10.64.015, 10.82.090, 9.94A.6333, 9.94B.040, 10.01.180, 3.62.085, 10.01.170, 10.46.190, 9.92.070, 7.68.240, 9.94A.505, and 9.94A.777; reenacting and amending RCW 36.18.020; adding a new section to chapter 10.01 RCW; adding a new section to chapter 3.66 RCW; creating a new section; and providing an effective date.

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

**Sec. 1.** RCW 3.66.120 and 2001 c 115 s 1 are each amended to read as follows:

(1) All court-ordered restitution obligations that are ordered as a result of a conviction for a criminal offense in a court of limited jurisdiction may be enforced in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. The judgment and sentence must identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment.

(2) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). For the purposes of this subsection, the terms "insurer" and "state agency" have the same meanings as provided in RCW 9.94A.750(3).

(3) All court-ordered restitution obligations may be enforced at any time during the (~~ten-year~~) 10-year period following the offender's release from total confinement or within (~~ten~~) 10 years of entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial (~~ten-year~~) 10-year period, the court may extend the criminal judgment an additional (~~ten~~) 10 years for payment of court-ordered restitution only if the court finds that the offender has not made a good faith attempt to pay.

(4) The party or entity to whom the court-ordered restitution obligation is owed may utilize any other remedies available to the party or entity to collect the court-ordered financial obligation.

(5) Nothing in this section may be construed to deprive the court of the authority to determine whether the offender's failure to pay the legal financial obligation constitutes a violation of a condition of probation or to impose a sanction upon the offender if such a violation is found.

**Sec. 2.** RCW 9.94A.750 and 2018 c 123 s 1 are each amended to read as follows:

This section applies to offenses committed on or before July 1, 1985.

(1) If restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within (~~((one hundred eighty))~~) 180 days. The court may continue the hearing beyond the (~~((one hundred eighty))~~) 180 days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3)(a) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish, pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the offense.

(b) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). For the purposes of this subsection:

(i) "Insurer" means any insurer as defined and authorized under Title 48 RCW. "Insurer" does not include an individual self-insurance program or joint self-insurance program.

(ii) "Self-insurance" means a formal program of advance funding and management of entity financial exposure to a risk of loss that is not transferred through the purchase of an insurance policy or contract.

(iii) "State agency" has the same meaning as provided in RCW 42.56.010(1).

(4) For the purposes of this section, the offender shall remain under the court's jurisdiction for a term of (~~(ten)~~) 10 years following the offender's release from total confinement or (~~(ten)~~) 10 years subsequent to the entry of the judgment and sentence, whichever period is longer. Prior to the expiration of the initial (~~(ten-year)~~) 10-year period, the superior court may extend jurisdiction under the criminal judgment an additional (~~(ten)~~) 10 years for payment of restitution. The portion of the sentence concerning restitution may be modified as to amount, terms and conditions during either the initial (~~(ten-year)~~) 10-year period or subsequent (~~(ten-year)~~) 10-year period if the criminal judgment is extended, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution may be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section. In addition, restitution may be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a proceeding in superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order but not longer than a maximum term of (~~(twenty-five)~~) 25 years following the offender's release from total confinement or (~~(twenty-five)~~) 25 years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce

the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(8) This section does not limit civil remedies or defenses available to the victim or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

**Sec. 3.** RCW 9.94A.753 and 2018 c 123 s 2 are each amended to read as follows:

This section applies to offenses committed after July 1, 1985.

(1) When restitution is ordered, the court shall determine the amount of restitution due at the sentencing hearing or within (~~(one hundred eighty)~~) 180 days except as provided in subsection (7) of this section. The court may continue the hearing beyond the (~~(one hundred eighty)~~) 180 days for good cause. The court shall then set a minimum monthly payment that the offender is required to make towards the restitution that is ordered. The court shall not issue any order that postpones the commencement of restitution payments until after the offender is released from total confinement. The court should take into consideration the total amount of the restitution owed, the offender's present, past, and future ability to pay, as well as any assets that the offender may have. An offender's inability to make restitution payments while in total confinement may not be the basis for a violation of his or her sentence unless his or her inability to make payments resulted from a refusal to accept an employment offer to a class I or class II job or a termination for cause from such a job.

(2) During the period of supervision, the community corrections officer may examine the offender to determine if there has been a change in circumstances that warrants an amendment of the monthly payment schedule. The community corrections officer may recommend a change to the schedule of payment and shall inform the court of the recommended change and the reasons for the change. The sentencing court may then reset the monthly minimum payments based on the report from the community corrections officer of the change in circumstances.

(3)(a) Except as provided in subsection (6) of this section, restitution ordered by a court pursuant to a criminal conviction shall be based on easily ascertainable damages for injury to or loss of property, actual expenses incurred for treatment for injury to persons, and lost wages resulting from injury. Restitution shall not include reimbursement for damages for mental anguish,



pain and suffering, or other intangible losses, but may include the costs of counseling reasonably related to the offense. The amount of restitution shall not exceed double the amount of the offender's gain or the victim's loss from the commission of the crime.

(b) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). For the purposes of this subsection, the terms "insurer" and "state agency" have the same meanings as provided in RCW 9.94A.750(3).

(4) For the purposes of this section, for an offense committed prior to July 1, 2000, the offender shall remain under the court's jurisdiction for a term of ~~((ten))~~ 10 years following the offender's release from total confinement or ~~((ten))~~ 10 years subsequent to the entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ~~((ten-year))~~ 10-year period, the superior court may extend jurisdiction under the criminal judgment an additional ~~((ten))~~ 10 years for payment of restitution. For an offense committed on or after July 1, 2000, the offender shall remain under the court's jurisdiction until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The portion of the sentence concerning restitution may be modified as to amount, terms, and conditions during any period of time the offender remains under the court's jurisdiction, regardless of the expiration of the offender's term of community supervision and regardless of the statutory maximum sentence for the crime. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The offender's compliance with the restitution shall be supervised by the department only during any period which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is in confinement in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is responsible for supervision of the offender only during confinement and authorized supervision and not during any subsequent period in which the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid restitution at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) Restitution shall be ordered whenever the offender is convicted of an offense which results in injury to any person or damage to or loss of property or as provided in subsection (6) of this section unless extraordinary circumstances exist which make restitution inappropriate in the court's judgment and the court sets forth such circumstances in the record. In addition, restitution shall be ordered to pay for an injury, loss, or damage if the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement.

(6) Restitution for the crime of rape of a child in the first, second, or third degree, in which the victim becomes pregnant, shall include: (a) All of the victim's medical expenses that are associated with the rape and resulting pregnancy; and (b) child support for any child born as a result of the rape if child support is ordered pursuant to a civil superior court or administrative order for support for that child. The clerk must forward any restitution payments made on behalf of the victim's child to the Washington state child support registry under chapter 26.23 RCW. Identifying information about the victim and child shall not be included in the order. The offender shall receive a credit against any obligation owing under the administrative or superior court order for support of the victim's child. For the purposes of this subsection, the offender shall remain under the court's jurisdiction until the offender has satisfied support obligations under the superior court or administrative order for the period provided in RCW 4.16.020 or a maximum term of (~~twenty-five~~) 25 years following the offender's release from total confinement or (~~twenty-five~~) 25 years subsequent to the entry of the judgment and sentence, whichever period is longer. The court may not reduce the total amount of restitution ordered because the offender may lack the ability to pay the total amount. The department shall supervise the offender's compliance with the restitution ordered under this subsection.

(7) Regardless of the provisions of subsections (1) through (6) of this section, the court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the court within one year of entry of the judgment and sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the court shall hold a restitution hearing and shall enter a restitution order.

(8) In addition to any sentence that may be imposed, an offender who has been found guilty of an offense involving fraud or other deceptive practice or an organization which has been found guilty of any such offense may be ordered by the sentencing court to give notice of the conviction to the class of persons or to the sector of the public affected by the conviction or financially interested in the subject matter of the offense by mail, by advertising in designated areas or through designated media, or by other appropriate means.

(9) This section does not limit civil remedies or defenses available to the victim, survivors of the victim, or offender including support enforcement remedies for support ordered under subsection (6) of this section for a child born as a result of a rape of a child victim. The court shall identify in the judgment and sentence the victim or victims entitled to restitution and what amount is due each victim. The state or victim may enforce the court-ordered restitution in the same manner as a judgment in a civil action. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim.

(10) If a person has caused a victim to lose money or property through the filing of a vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, upon

conviction or when the offender pleads guilty and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim, the court may order the defendant to pay an amount, fixed by the court, not to exceed double the amount of the defendant's gain or victim's loss from the filing of the vehicle report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale. Such an amount may be used to provide restitution to the victim at the order of the court. It is the duty of the prosecuting attorney to investigate the alternative of restitution, and to recommend it to the court, when the prosecuting attorney believes that restitution is appropriate and feasible. If the court orders restitution, the court must make a finding as to the amount of the victim's loss due to the filing of the report of sale in which the designated buyer had no knowledge of the vehicle transfer or the fraudulent filing of the report of sale, and if the record does not contain sufficient evidence to support such finding, the court may conduct a hearing upon the issue. For purposes of this section, "loss" refers to the amount of money or the value of property or services lost.

**Sec. 4.** RCW 9.94A.760 and 2018 c 269 s 14 are each amended to read as follows:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court may not order an offender to pay costs as described in RCW 10.01.160 if the court finds that the offender at the time of sentencing is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3). An offender being indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3) is not grounds for failing to impose restitution or the crime victim penalty assessment under RCW 7.68.035. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount.

(2) Upon receipt of each payment made by or on behalf of an offender, the county clerk shall distribute the payment in the following order of priority until satisfied:

(a) First, proportionally to restitution to victims that have not been fully compensated from other sources;

(b) Second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;

(c) Third, proportionally to crime victims' assessments; and

(d) Fourth, proportionally to costs, fines, and other assessments required by law.

(3) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration. The court shall not order the offender to pay the cost of incarceration if the court finds that the offender at the time of sentencing is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~

10.01.160(3). Costs of incarceration ordered by the court shall not exceed a rate of ~~((fifty dollars))~~ \$50 per day of incarceration, if incarcerated in a prison, or the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than ~~((one hundred dollars))~~ \$100 per day for the cost of incarceration. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(4) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(5)(a) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment.

(b) If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6).

(c) All other ~~((legal financial))~~ restitution obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ~~((ten-year))~~ 10-year period following the offender's release from total confinement or within ~~((ten))~~ 10 years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ~~((ten-year))~~ 10-year period, the superior court may extend the criminal judgment an additional ~~((ten))~~ 10 years for payment of ~~((legal financial))~~ restitution obligations ~~((including crime victims' assessments))~~. All other ~~((legal financial))~~ restitution obligations for an offense committed on or after July 1, 2000, may be enforced at any time the

offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the ~~((legal financial))~~ restitution obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime.

(d) All other legal financial obligations other than restitution may be enforced at any time during the 10-year period following the offender's release from total confinement or within 10 years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial 10-year period, the superior court may extend the criminal judgment an additional 10 years for payment of nonrestitution legal financial obligations only if the court finds that the offender has the current or likely future ability to pay the obligations. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3).

(e) The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(6) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(7) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(8)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may

make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(9) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(10) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(11) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties for noncompliance as provided in RCW 9.94B.040, 9.94A.737, or 9.94A.740. If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties.

(12)(a) The administrative office of the courts shall mail individualized periodic billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(b) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(c) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(d) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(13) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (5) of this section. The costs for collection services shall be paid by the offender.

(14) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(15) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, and who remains under the jurisdiction of the court for payment of legal financial obligations.

**Sec. 5.** RCW 6.17.020 and 2002 c 261 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2), (3), and (4) of this section, the party in whose favor a judgment of a court has been, or may be filed or rendered, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued for the collection or enforcement of the judgment at any time within (~~ten~~) 10 years from entry of the judgment or the filing of the judgment in this state.

(2) After July 23, 1989, a party who obtains a judgment or order of a court or an administrative order entered as defined in RCW 74.20A.020(6) for accrued child support, or the assignee or the current holder thereof, may have an execution, garnishment, or other legal process issued upon that judgment or order at any time within (~~ten~~) 10 years of the (~~eighteenth~~) 18th birthday of the youngest child named in the order for whom support is ordered.

(3) After June 9, 1994, a party in whose favor a judgment has been filed as a foreign judgment or rendered pursuant to subsection (1) or (4) of this section, or the assignee or the current holder thereof, may, within (~~ninety~~) 90 days before the expiration of the original (~~ten-year~~) 10-year period, apply to the court that rendered the judgment or to the court where the judgment was filed as a foreign judgment for an order granting an additional (~~ten~~) 10 years during which an execution, garnishment, or other legal process may be issued. If a district court judgment of this state is transcribed to a superior court of this state, the original district court judgment shall not be extended and any petition under this section to extend the judgment that has been transcribed to superior court shall be filed in the superior court within (~~ninety~~) 90 days before the expiration of the (~~ten-year~~) 10-year period of the date the transcript of the district court judgment was filed in the superior court of this state. The petitioner shall pay to the court a filing fee equal to the filing fee for filing the first or initial paper in a civil action in the court, except in the case of district court judgments transcribed to superior court, where the filing fee shall be the fee for filing the first or initial paper in a civil action in the superior court where the judgment was transcribed. The order

granting the application shall contain an updated judgment summary as provided in RCW 4.64.030. The filing fee required under this subsection shall be included in the judgment summary and shall be a recoverable cost. The application shall be granted as a matter of right, subject to review only for timeliness, factual issues of full or partial satisfaction, or errors in calculating the judgment summary amounts.

(4)(a) A party who obtains a judgment or order for restitution(~~(—crime victims' assessment, or other court-ordered legal financial obligations)~~) pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and/or have legal process issued upon the judgment or order any time within (~~(ten)~~) 10 years subsequent to the entry of the judgment and sentence or (~~(ten)~~) 10 years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, provided that no filing fee shall be required.

(b) A party who obtains a judgment or order for court-ordered legal financial obligations other than restitution, pursuant to a criminal judgment and sentence, or the assignee or the current holder thereof, may execute, garnish, and have legal process issued upon the judgment or order any time within 10 years subsequent to the entry of the judgment and sentence or 10 years following the offender's release from total confinement as provided in chapter 9.94A RCW. The clerk of superior court, or a party designated by the clerk, may seek extension under subsection (3) of this section for purposes of collection as allowed under RCW 36.18.190, only if the court finds that the offender has the current or likely future ability to pay the nonrestitution legal financial obligations. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). No filing fee shall be required for filing a petition for an extension pursuant to this subsection (4)(b).

(5) "Court" as used in this section includes but is not limited to the United States supreme court, the United States courts of appeals, the United States district courts, the United States bankruptcy courts, the Washington state supreme court, the court of appeals of the state of Washington, superior courts and district courts of the counties of the state of Washington, and courts of other states and jurisdictions from which judgment has been filed in this state under chapter 6.36 or 6.40 RCW.

(6) The perfection of any judgment lien and the priority of that judgment lien on property as established by RCW 6.13.090 and chapter 4.56 RCW is not altered by the extension of the judgment pursuant to the provisions of this section and the lien remains in full force and effect and does not have to be rerecorded after it is extended. Continued perfection of a judgment that has been transcribed to other counties and perfected in those counties may be accomplished after extension of the judgment by filing with the clerk of the other counties where the judgment has been filed either a certified copy of the order extending the judgment or a certified copy of the docket of the matter where the judgment was extended.

(7) Except as ordered in RCW 4.16.020 (2) or (3), chapter 9.94A RCW, or chapter 13.40 RCW, no judgment is enforceable for a period exceeding (~~(twenty)~~) 20 years from the date of entry in the originating court. Nothing in



this section may be interpreted to extend the expiration date of a foreign judgment beyond the expiration date under the laws of the jurisdiction where the judgment originated.

(8) The chapter 261, Laws of 2002 amendments to this section apply to all judgments currently in effect on June 13, 2002, to all judgments extended after June 9, 1994, unless the judgment has been satisfied, vacated, and/or quashed, and to all judgments filed or rendered, or both, after June 13, 2002.

**Sec. 6.** RCW 9.92.060 and 2011 1st sp.s. c 40 s 5 are each amended to read as follows:

(1) Whenever any person is convicted of any crime except murder, burglary in the first degree, arson in the first degree, robbery, rape of a child, or rape, the superior court may, in its discretion, at the time of imposing sentence upon such person, direct that such sentence be stayed and suspended until otherwise ordered by the superior court, and, upon such terms as the superior court may determine, that the sentenced person be placed under the charge of:

(a) A community corrections officer employed by the department of corrections, if the person is subject to supervision under RCW 9.94A.501 or 9.94A.5011; or

(b) A probation officer employed or contracted for by the county, if the county has elected to assume responsibility for the supervision of superior court misdemeanant probationers.

(2) As a condition to suspension of sentence, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. In addition, the superior court may require the convicted person to make such monetary payments, on such terms as the superior court deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not prosecuted pursuant to a plea agreement; (c) to pay any fine imposed and not suspended and the court or other costs incurred in the prosecution of the case, including reimbursement of the state for costs of extradition if return to this state by extradition was required; and (d) to contribute to a county or interlocal drug fund.

(3) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or a state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). For the purposes of this subsection, the terms "insurer" and "state agency" have the same meanings as provided in RCW 9.94A.750(3).

(4) As a condition of the suspended sentence, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the

instructions of the secretary. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

~~((4))~~ (5) If restitution to the victim has been ordered under subsection (2)(b) of this section and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made as ordered. If the superior court has ordered supervision and restitution has not been made, the officer shall inform the prosecutor of that violation of the terms of the suspended sentence not less than three months prior to the termination of the suspended sentence.

**Sec. 7.** RCW 9.95.210 and 2019 c 263 s 302 are each amended to read as follows:

(1)(a) Except as provided in (b) of this subsection in granting probation, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension may continue upon such conditions and for such time as it shall designate, not exceeding the maximum term of sentence or two years, whichever is longer.

(b) For a defendant sentenced for a domestic violence offense, or under RCW 46.61.5055, the superior court may suspend the imposition or the execution of the sentence and may direct that the suspension continue upon such conditions and for such time as the court shall designate, not to exceed five years. The court shall have continuing jurisdiction and authority to suspend the execution of all or any part of the sentence upon stated terms, including installment payment of fines. A defendant who has been sentenced, and who then fails to appear for any hearing to address the defendant's compliance with the terms of probation when ordered to do so by the court shall have the term of probation tolled until such time as the defendant makes his or her presence known to the court on the record. Any time before entering an order terminating probation, the court may modify or revoke its order suspending the imposition or execution of the sentence if the defendant violates or fails to carry out any of the conditions of the suspended sentence.

(2) In the order granting probation and as a condition thereof, the superior court may in its discretion imprison the defendant in the county jail for a period not exceeding one year and may fine the defendant any sum not exceeding the statutory limit for the offense committed, and court costs. As a condition of probation, the superior court shall require the payment of the penalty assessment required by RCW 7.68.035. The superior court may also require the defendant to make such monetary payments, on such terms as it deems appropriate under the circumstances, as are necessary: (a) To comply with any order of the court for the payment of family support; (b) to make restitution to any person or persons who may have suffered loss or damage by reason of the commission of the crime in question or when the offender pleads guilty to a lesser offense or fewer offenses and agrees with the prosecutor's recommendation that the offender be required to pay restitution to a victim of an offense or offenses which are not

prosecuted pursuant to a plea agreement; (c) to pay such fine as may be imposed and court costs, including reimbursement of the state for costs of extradition if return to this state by extradition was required; (d) following consideration of the financial condition of the person subject to possible electronic monitoring, to pay for the costs of electronic monitoring if that monitoring was required by the court as a condition of release from custody or as a condition of probation; (e) to contribute to a county or interlocal drug fund; and (f) to make restitution to a public agency for the costs of an emergency response under RCW 38.52.430, and may require bonds for the faithful observance of any and all conditions imposed in the probation.

(3) The superior court shall order restitution in all cases where the victim is entitled to benefits under the crime victims' compensation act, chapter 7.68 RCW. If the superior court does not order restitution and the victim of the crime has been determined to be entitled to benefits under the crime victims' compensation act, the department of labor and industries, as administrator of the crime victims' compensation program, may petition the superior court within one year of imposition of the sentence for entry of a restitution order. Upon receipt of a petition from the department of labor and industries, the superior court shall hold a restitution hearing and shall enter a restitution order.

(4) At any time, including at sentencing, the court may determine that the offender is not required to pay, or may relieve the offender of the requirement to pay, full or partial restitution and accrued interest on restitution where the entity to whom restitution is owed is an insurer or a state agency, except for restitution owed to the department of labor and industries under chapter 7.68 RCW, if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). For the purposes of this subsection, the terms "insurer" and "state agency" have the same meanings as provided in RCW 9.94A.750(3).

(5) In granting probation, the superior court may order the probationer to report to the secretary of corrections or such officer as the secretary may designate and as a condition of the probation to follow the instructions of the secretary for up to twelve months. If the county legislative authority has elected to assume responsibility for the supervision of superior court misdemeanor probationers within its jurisdiction, the superior court misdemeanor probationer shall report to a probation officer employed or contracted for by the county. In cases where a superior court misdemeanor probationer is sentenced in one county, but resides within another county, there must be provisions for the probationer to report to the agency having supervision responsibility for the probationer's county of residence.

~~((5))~~ (6) If the probationer has been ordered to make restitution and the superior court has ordered supervision, the officer supervising the probationer shall make a reasonable effort to ascertain whether restitution has been made. If the superior court has ordered supervision and restitution has not been made as ordered, the officer shall inform the prosecutor of that violation of the terms of probation not less than three months prior to the termination of the probation period. The secretary of corrections will promulgate rules and regulations for the conduct of the person during the term of probation. For defendants found guilty in district court, like functions as the secretary performs in regard to probation

may be performed by probation officers employed for that purpose by the county legislative authority of the county wherein the court is located.

~~((6))~~ (7) The provisions of RCW 9.94A.501 and 9.94A.5011 apply to sentences imposed under this section.

~~((7))~~ (8) For purposes of this section, "domestic violence" means the same as in RCW 10.99.020.

**NEW SECTION. Sec. 8.** A new section is added to chapter 10.01 RCW to read as follows:

A defendant who has been ordered to pay fines and who has not willfully failed to pay the obligation, as described in RCW 9.94A.6333, 9.94B.040, and 10.01.180, may at any time petition the sentencing court for remission of the payment of fines or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in fines, modify the method of payment under RCW 10.01.170, or convert the unpaid amounts to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. Manifest hardship exists where the defendant is indigent as defined in RCW 10.01.160(3).

**Sec. 9.** RCW 10.01.160 and 2018 c 269 s 6 are each amended to read as follows:

(1) Except as provided in subsection (3) of this section, the court may require a defendant to pay costs. Costs may be imposed only upon a convicted defendant, except for costs imposed upon a defendant's entry into a deferred prosecution program, costs imposed upon a defendant for pretrial supervision, or costs imposed upon a defendant for preparing and serving a warrant for failure to appear.

(2) Costs shall be limited to expenses specially incurred by the state in prosecuting the defendant or in administering the deferred prosecution program under chapter 10.05 RCW or pretrial supervision. They cannot include expenses inherent in providing a constitutionally guaranteed jury trial or expenditures in connection with the maintenance and operation of government agencies that must be made by the public irrespective of specific violations of law. Expenses incurred for serving of warrants for failure to appear and jury fees under RCW 10.46.190 may be included in costs the court may require a defendant to pay. Costs for administering a deferred prosecution may not exceed ~~((two hundred fifty dollars))~~ \$250. Costs for administering a pretrial supervision other than a pretrial electronic alcohol monitoring program, drug monitoring program, or 24/7 sobriety program may not exceed ~~((one hundred fifty dollars))~~ \$150. Costs for preparing and serving a warrant for failure to appear may not exceed ~~((one hundred dollars))~~ \$100. Costs of incarceration imposed on a defendant convicted of a misdemeanor or a gross misdemeanor may not exceed the actual cost of incarceration. In no case may the court require the offender to pay more than ~~((one hundred dollars))~~ \$100 per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision take precedence over the payment of the cost of incarceration ordered by the court. All funds received from defendants for the

cost of incarceration in the county or city jail must be remitted for criminal justice purposes to the county or city that is responsible for the defendant's jail costs. Costs imposed constitute a judgment against a defendant and survive a dismissal of the underlying action against the defendant. However, if the defendant is acquitted on the underlying action, the costs for preparing and serving a warrant for failure to appear do not survive the acquittal, and the judgment that such costs would otherwise constitute shall be vacated.

(3) The court shall not order a defendant to pay costs if the defendant at the time of sentencing is indigent (~~(as defined in RCW 10.101.010(3) (a) through (e))~~). In determining the amount and method of payment of costs for defendants who are not indigent (~~(as defined in RCW 10.101.010(3) (a) through (e))~~), the court shall take account of the financial resources of the defendant and the nature of the burden that payment of costs will impose. For the purposes of this section, a defendant is "indigent" if the defendant: (a) Meets the criteria defined in RCW 10.101.010(3) (a) through (c); (b) is homeless or mentally ill as defined in RCW 71.24.025; (c) has household income above 125 percent of the federal poverty guidelines and has recurring basic living costs, as defined in RCW 10.101.010, that render the defendant without the financial ability to pay; or (d) has other compelling circumstances that exist that demonstrate an inability to pay.

(4) A defendant who has been ordered to pay costs and who (~~is not in contemptuous default in the payment thereof~~) has not willfully failed to pay the obligation, as described in RCW 9.94A.6333, 9.94B.040, and 10.01.180, may at any time (~~(after release from total confinement)~~) petition the sentencing court for remission of the payment of costs or of any unpaid portion thereof. If it appears to the satisfaction of the court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the court may remit all or part of the amount due in costs, modify the method of payment under RCW 10.01.170, or convert the unpaid costs to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. Manifest hardship exists where the defendant is indigent as defined in (~~RCW 10.101.010(3) (a) through (e))~~ subsection (3) of this section.

(5) Except for direct costs relating to evaluating and reporting to the court, prosecutor, or defense counsel regarding a defendant's competency to stand trial as provided in RCW 10.77.060, this section shall not apply to costs related to medical or mental health treatment or services a defendant receives while in custody of the secretary of the department of social and health services or other governmental units. This section shall not prevent the secretary of the department of social and health services or other governmental units from imposing liability and seeking reimbursement from a defendant committed to an appropriate facility as provided in RCW 10.77.084 while criminal proceedings are stayed. This section shall also not prevent governmental units from imposing liability on defendants for costs related to providing medical or mental health treatment while the defendant is in the governmental unit's custody. Medical or mental health treatment and services a defendant receives at a state hospital or other facility are not a cost of prosecution and shall be recoverable under RCW 10.77.250 and 70.48.130, chapter 43.20B RCW, and any other applicable statute.

**Sec. 10.** RCW 10.73.160 and 2018 c 269 s 12 are each amended to read as follows:

(1) The court of appeals, supreme court, and superior courts may require an adult offender convicted of an offense to pay appellate costs.

(2) Appellate costs are limited to expenses specifically incurred by the state in prosecuting or defending an appeal or collateral attack from a criminal conviction. Appellate costs shall not include expenditures to maintain and operate government agencies that must be made irrespective of specific violations of the law. Expenses incurred for producing a verbatim report of proceedings and clerk's papers may be included in costs the court may require a convicted defendant to pay.

(3) Costs, including recoupment of fees for court-appointed counsel, shall be requested in accordance with the procedures contained in Title 14 of the rules of appellate procedure and in Title 9 of the rules for appeal of decisions of courts of limited jurisdiction. An award of costs shall become part of the trial court judgment and sentence.

(4) A defendant who has been sentenced to pay costs and who ~~((is not in contumacious default in the payment))~~ has not willfully failed to pay the obligation, as described in RCW 9.94A.6333, 9.94B.040, and 10.01.180, may at any time ~~((after release from total confinement))~~ petition the court that sentenced the defendant or juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the defendant or the defendant's immediate family, the sentencing court may remit all or part of the amount due in costs, modify the method of payment under RCW 10.01.170, or convert the unpaid costs to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. Manifest hardship exists where the defendant or juvenile offender is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3).

(5) The parents or another person legally obligated to support a juvenile offender who has been ordered to pay appellate costs and who is not in contumacious default in the payment may at any time petition the court that sentenced the juvenile offender for remission of the payment of costs or of any unpaid portion. If it appears to the satisfaction of the sentencing court that payment of the amount due will impose manifest hardship on the parents or another person legally obligated to support a juvenile offender or on their immediate families, the sentencing court may remit all or part of the amount due in costs, or may modify the method of payment.

**Sec. 11.** RCW 10.64.015 and 2018 c 269 s 10 are each amended to read as follows:

When the defendant is found guilty, the court shall render judgment accordingly, and the defendant may be liable for all costs, unless the court or jury trying the cause expressly find otherwise. The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3).

**Sec. 12.** RCW 10.82.090 and 2018 c 269 s 1 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section and RCW 3.50.100, 3.62.020, and 35.20.220, restitution imposed in a judgment shall bear interest from the date of the judgment until payment, at the rate applicable to civil judgments. As of June 7, 2018, no interest shall accrue on nonrestitution legal financial obligations. All nonrestitution interest retained by the court shall be split (~~((twenty-five))~~) 25 percent to the state treasurer for deposit in the state general fund, (~~((twenty-five))~~) 25 percent to the state treasurer for deposit in the judicial information system account as provided in RCW 2.68.020, (~~((twenty-five))~~) 25 percent to the county current expense fund, and (~~((twenty-five))~~) 25 percent to the county current expense fund to fund local courts.

(2) The court may elect not to impose interest on any restitution the court orders. Before determining not to impose interest on restitution, the court shall inquire into and consider the following factors: (a) Whether the offender is indigent as defined in RCW 10.101.010(3) or general rule 34; (b) the offender's available funds, as defined in RCW 10.101.010(2), and other liabilities including child support and other legal financial obligations; (c) whether the offender is homeless; and (d) whether the offender is mentally ill, as defined in RCW 71.24.025. The court shall also consider the victim's input, if any, as it relates to any financial hardship caused to the victim if interest is not imposed. The court may also consider any other information that the court believes, in the interest of justice, relates to not imposing interest on restitution. After consideration of these factors, the court may waive the imposition of restitution interest.

(3) The court may, on motion by the offender, (~~((following the offender's release from total confinement,))~~) reduce or waive the interest on legal financial obligations levied as a result of a criminal conviction as follows:

(a) The court shall waive all interest on the portions of the legal financial obligations that are not restitution that accrued prior to June 7, 2018;

(b) The court may waive or reduce interest on the restitution portion of the legal financial obligations only if the principal has been paid in full (~~((and as an incentive for the offender to meet his or her other legal financial obligations)),~~) except as provided in (c) of this subsection. The court may grant the motion, establish a payment schedule, and retain jurisdiction over the offender for purposes of reviewing and revising the reduction or waiver of interest;

(c) The court may, following the offender's release from total confinement, waive or reduce interest on restitution that accrued during the offender's period of incarceration if the court finds that the offender does not have the current or likely future ability to pay. A person does not have the current ability to pay if the person is indigent as defined in RCW 10.01.160(3). The prosecuting attorney shall make reasonable efforts to notify the victim entitled to restitution of the date and place of the hearing. The court shall also consider the victim's input, if any, as it relates to any financial hardship caused to the victim if interest is reduced or waived.

~~((3))~~ (4) This section only applies to adult offenders.

**Sec. 13.** RCW 9.94A.6333 and 2018 c 269 s 13 are each amended to read as follows:

(1) If an offender violates any condition or requirement of a sentence, and the offender is not being supervised by the department, the court may modify its

order of judgment and sentence and impose further punishment in accordance with this section.

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

(a) 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;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) If the court finds that a violation has been proved, it may impose the sanctions specified in RCW 9.94A.633(1). Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement; or

(ii) Convert community restitution obligation to total or partial confinement;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding community restitution obligations; and

(e) If the violation involves a failure to undergo or comply with a mental health status evaluation and/or outpatient mental health treatment, the court shall seek a recommendation from 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.

(3) If an offender fails to pay legal financial obligations as a requirement of a sentence the following provisions apply:

(a) 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;

(b) The state has the burden of showing noncompliance by a preponderance of the evidence;

(c) The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i) The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;



(e) If the court finds that a failure to pay is willful noncompliance, it may impose the sanctions specified in RCW 9.94A.633(1); and

(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

(4) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

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

**Sec. 14.** RCW 9.94B.040 and 2018 c 269 s 15 are each 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 nonfinancial 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 restitution, 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))~~ 72 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))~~ 15 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)~~) 60 days for each violation, and may (i) convert a term of partial confinement to total confinement, (ii) convert community restitution obligation to total or partial confinement, or (iii) 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;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding community restitution 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) If the violation involves failure to pay legal financial obligations, the following provisions apply:

(a) The department and the offender may enter into a stipulated agreement that the failure to pay was willful noncompliance, according to the provisions and requirements of subsection (3)(a) of this section;

(b) In the absence of a stipulated agreement, or where the court is not satisfied with the department's sanctions as provided in a stipulated agreement under (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. The court may not sanction the offender for failure to pay legal financial obligations unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the offender has the current ability to pay but refuses to do so. In determining whether the offender has the current ability to pay, the court shall inquire into and consider: (i) The offender's income and assets; (ii) the offender's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the offender's bona fide efforts to acquire additional resources. An offender who is indigent as defined by RCW (~~10.101.010(3) (a) through (e))~~) 10.01.160(3) is presumed to lack the current ability to pay;

(d) If the court determines that the offender is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful noncompliance and shall not subject the offender to penalties;

(e) If the court finds that the failure to pay is willful noncompliance, the court may order the offender to be confined for a period not to exceed (~~(sixty)~~)

60 days for each violation or order one or more of the penalties authorized in subsection (3)(a)(i) of this section; and

(f) If the court finds that the violation was not willful, the court may, and if the court finds that the defendant is indigent as defined in RCW ~~((10.101.010(3) (a) through (e)))~~ 10.01.160(3), the court shall modify the terms of payment of the legal financial obligations, reduce or waive nonrestitution legal financial obligations, or convert nonrestitution legal financial obligations to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, waived, or converted to community restitution hours.

(5) 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.

(6) 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.

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

**Sec. 15.** RCW 10.01.180 and 2018 c 269 s 8 are each amended to read as follows:

(1) A defendant sentenced to pay any fine, penalty, assessment, fee, or costs who willfully defaults in the payment thereof or of any installment is in contempt of court as provided in chapter 7.21 RCW. The court may issue a warrant of arrest for his or her appearance.

(2) When any fine, penalty, assessment, fee, or assessment of costs is imposed on a corporation or unincorporated association, it is the duty of the person authorized to make disbursement from the assets of the corporation or association to pay the obligation from those assets, and his or her failure to do so may be held to be contempt.

(3)(a) The court shall not sanction a defendant for contempt based on failure to pay fines, penalties, assessments, fees, or costs unless the court finds, after a hearing and on the record, that the failure to pay is willful. A failure to pay is willful if the defendant has the current ability to pay but refuses to do so.

(b) In determining whether the defendant has the current ability to pay, the court shall inquire into and consider: (i) The defendant's income and assets; (ii) the defendant's basic living costs as defined by RCW 10.101.010 and other liabilities including child support and other legal financial obligations; and (iii) the defendant's bona fide efforts to acquire additional resources. A defendant

who is indigent as defined by RCW (~~(10.101.010(3) (a) through (e))~~) 10.01.160(3) is presumed to lack the current ability to pay.

(c) If the court determines that the defendant is homeless or a person who is mentally ill, as defined in RCW 71.24.025, failure to pay a legal financial obligation is not willful contempt and shall not subject the defendant to penalties.

(4) If a term of imprisonment for contempt for nonpayment of any fine, penalty, assessment, fee, or costs is ordered, the term of imprisonment shall be set forth in the commitment order, and shall not exceed one day for each (~~(twenty-five dollars)~~) \$25 of the amount ordered, (~~(thirty)~~) 30 days if the amount ordered of costs was imposed upon conviction of a violation or misdemeanor, or one year in any other case, whichever is the shorter period. A person committed for nonpayment of any fine, penalty, assessment, fee, or costs shall be given credit toward payment for each day of imprisonment at the rate specified in the commitment order.

(5) If it appears to the satisfaction of the court that the default in the payment of any fine, penalty, assessment, fee, or costs is not willful contempt, the court may, and if the defendant is indigent as defined in RCW (~~(10.101.010(3) (a) through (e))~~) 10.01.160(3), the court shall enter an order: (a) Allowing the defendant additional time for payment; (b) reducing the amount thereof or of each installment; (c) revoking the fine, penalty, assessment, fee, or costs or the unpaid portion thereof in whole or in part; or (d) converting the unpaid fine, penalty, assessment, fee, or costs to community restitution hours, if the jurisdiction operates a community restitution program, at the rate of no less than the state minimum wage established in RCW 49.46.020 for each hour of community restitution. The crime victim penalty assessment under RCW 7.68.035 may not be reduced, revoked, or converted to community restitution hours.

(6) A default in the payment of any fine, penalty, assessment, fee, or costs or any installment thereof may be collected by any means authorized by law for the enforcement of a judgment. The levy of execution for the collection of any fine, penalty, assessment, fee, or costs shall not discharge a defendant committed to imprisonment for contempt until the amount has actually been collected.

**Sec. 16.** RCW 3.62.085 and 2018 c 269 s 16 are each amended to read as follows:

Upon conviction or a plea of guilty in any court organized under this title or Title 35 RCW, a defendant in a criminal case is liable for a fee of (~~(forty-three dollars)~~) \$43, except this fee shall not be imposed on a defendant who is indigent as defined in RCW (~~(10.101.010(3) (a) through (e))~~) 10.01.160(3). This fee shall be subject to division with the state under RCW 3.46.120(2), 3.50.100(2), 3.62.020(2), 3.62.040(2), and 35.20.220(2).

**Sec. 17.** RCW 36.18.020 and 2021 c 303 s 3 and 2021 c 215 s 146 are each reenacted and amended to read as follows:

(1) Revenue collected under this section is subject to division with the state under RCW 36.18.025 and with the county or regional law library fund under RCW 27.24.070, except as provided in subsection (5) of this section.

(2) Clerks of superior courts shall collect the following fees for their official services:

(a) In addition to any other fee required by law, the party filing the first or initial document in any civil action, including, but not limited to an action for restitution, adoption, or change of name, and any party filing a counterclaim, cross-claim, or third-party claim in any such civil action, shall pay, at the time the document is filed, a fee of ~~((two hundred dollars))~~ \$200 except, in an unlawful detainer action under chapter 59.18 or 59.20 RCW for which the plaintiff shall pay a case initiating filing fee of ~~((forty five dollars))~~ \$45, or in proceedings filed under RCW 28A.225.030 alleging a violation of the compulsory attendance laws where the petitioner shall not pay a filing fee. The ~~((forty five dollar))~~ \$45 filing fee under this subsection for an unlawful detainer action shall not include an order to show cause or any other order or judgment except a default order or default judgment in an unlawful detainer action.

(b) Any party, except a defendant in a criminal case, filing the first or initial document on an appeal from a court of limited jurisdiction or any party on any civil appeal, shall pay, when the document is filed, a fee of ~~((two hundred dollars))~~ \$200.

(c) For filing of a petition for judicial review as required under RCW 34.05.514 a filing fee of ~~((two hundred dollars))~~ \$200.

(d) For filing of a petition for an antiharassment protection order under RCW 7.105.100 a filing fee of ~~((fifty three dollars))~~ \$53.

(e) For filing the notice of debt due for the compensation of a crime victim under RCW 7.68.120(2)(a) a fee of ~~((two hundred dollars))~~ \$200.

(f) In probate proceedings, the party instituting such proceedings, shall pay at the time of filing the first document therein, a fee of ~~((two hundred dollars))~~ \$200.

(g) For filing any petition to contest a will admitted to probate or a petition to admit a will which has been rejected, or a petition objecting to a written agreement or memorandum as provided in RCW 11.96A.220, there shall be paid a fee of ~~((two hundred dollars))~~ \$200.

(h) Upon conviction or plea of guilty, upon failure to prosecute an appeal from a court of limited jurisdiction as provided by law, or upon affirmance of a conviction by a court of limited jurisdiction, an adult defendant in a criminal case shall be liable for a fee of two hundred dollars, except this fee shall not be imposed on a defendant who is indigent as defined in RCW ~~((10.101.010(3)-(a) through (e)))~~ 10.01.160(3). Upon motion by the defendant, the court may waive or reduce any fee previously imposed under this subsection if the court finds that the defendant is indigent as defined in RCW 10.01.160(3).

(i) With the exception of demands for jury hereafter made and garnishments hereafter issued, civil actions and probate proceedings filed prior to midnight, July 1, 1972, shall be completed and governed by the fee schedule in effect as of January 1, 1972. However, no fee shall be assessed if an order of dismissal on the clerk's record be filed as provided by rule of the supreme court.

(3) No fee shall be collected when a petition for relinquishment of parental rights is filed pursuant to RCW 26.33.080 or for forms and instructional brochures provided under RCW 7.105.115.

(4) No fee shall be collected when an abstract of judgment is filed by the county clerk of another county for the purposes of collection of legal financial obligations.

(5)(a) In addition to the fees required to be collected under this section, clerks of the superior courts must collect surcharges as provided in this subsection (5) of which (~~(seventy-five)~~) 75 percent must be remitted to the state treasurer for deposit in the judicial stabilization trust account and (~~(twenty-five)~~) 25 percent must be retained by the county.

(b) On filing fees required to be collected under subsection (2)(b) of this section, a surcharge of (~~(thirty dollars)~~) \$30 must be collected.

(c) On all filing fees required to be collected under this section, except for fees required under subsection (2)(b), (d), and (h) of this section, a surcharge of (~~(forty dollars)~~) \$40 must be collected.

**NEW SECTION. Sec. 18.** A new section is added to chapter 3.66 RCW to read as follows:

"Legal financial obligation" means a sum of money that is ordered by a district or municipal court of the state of Washington for legal financial obligations which may include restitution to the victim, 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 conviction. Legal financial obligations may also include payment to a public agency of the expense of an emergency response to the incident resulting in the conviction, subject to RCW 38.52.430.

**Sec. 19.** RCW 10.01.170 and 2018 c 269 s 7 are each amended to read as follows:

(1) When a defendant is sentenced to pay fines, penalties, assessments, fees, restitution, or costs, the court may grant permission for payment to be made within a specified period of time or in specified installments. If the court finds that the defendant is indigent as defined in RCW (~~(10.01.010(3) (a) through (e))~~) 10.01.160(3), the court shall grant permission for payment to be made within a specified period of time or in specified installments. If no such permission is included in the sentence the fine or costs shall be payable forthwith.

(2) An offender's monthly payment shall be applied in the following order of priority until satisfied:

(a) First, proportionally to restitution to victims that have not been fully compensated from other sources;

(b) Second, proportionally to restitution to insurance or other sources with respect to a loss that has provided compensation to victims;

(c) Third, proportionally to crime victims' assessments; and

(d) Fourth, proportionally to costs, fines, and other assessments required by law.

**Sec. 20.** RCW 10.46.190 and 2018 c 269 s 9 are each amended to read as follows:

Every person convicted of a crime or held to bail to keep the peace may be liable to all the costs of the proceedings against him or her, including, when tried by a jury in the superior court or before a committing magistrate, a jury fee as provided for in civil actions for which judgment shall be rendered and collected. The court shall not order a defendant to pay costs, as described in RCW 10.01.160, if the court finds that the person at the time of sentencing is indigent as defined in RCW (~~(10.01.010(3) (a) through (e))~~) 10.01.160(3). The jury fee,

when collected for a case tried by the superior court, shall be paid to the clerk and applied as the jury fee in civil cases is applied.

**Sec. 21.** RCW 9.92.070 and 2018 c 269 s 11 are each amended to read as follows:

Hereafter whenever any judge of any superior court or a district or municipal judge shall sentence any person to pay any fines, penalties, assessments, fees, and costs, the judge may, in the judge's discretion, provide that such fines, penalties, assessments, fees, and costs may be paid in certain designated installments, or within certain designated period or periods. If the court finds that the defendant is indigent as defined in RCW ~~((10.101.010(3)-(a) through (e)))~~ 10.01.160(3), the court shall allow for payment in certain designated installments or within certain designated periods. If such fines, penalties, assessments, fees, and costs shall be paid by the defendant in accordance with such order no commitment or imprisonment of the defendant shall be made for failure to pay such fine or costs. PROVIDED, that the provisions of this section shall not apply to any sentence given for the violation of any of the liquor laws of this state.

**Sec. 22.** RCW 7.68.240 and 2011 c 336 s 249 are each amended to read as follows:

Upon a showing by any convicted person or the state that five years have elapsed from the establishment of such escrow account and further that no actions are pending against such convicted person pursuant to RCW 7.68.200 through 7.68.280, the department shall immediately pay over ~~((fifty))~~ 50 percent of any moneys in the escrow account to such person or his or her legal representatives and ~~((fifty))~~ 50 percent of any moneys in the escrow account to the fund under RCW 7.68.035(4).

**Sec. 23.** RCW 9.94A.505 and 2021 c 242 s 3 are each amended to read as follows:

(1) When a person is convicted of a felony, the court shall impose punishment as provided in this chapter.

(2)(a) The court shall impose a sentence as provided in the following sections and as applicable in the case:

(i) Unless another term of confinement applies, a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) RCW 9.94A.701 and 9.94A.702, relating to community custody;

(iii) RCW 9.94A.570, relating to persistent offenders;

(iv) RCW 9.94A.540, relating to mandatory minimum terms;

(v) RCW 9.94A.650, relating to the first-time offender waiver;

(vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(viii) RCW 9.94A.655, relating to the parenting sentencing alternative;

(ix) RCW 9.94A.695, relating to the mental health sentencing alternative;

(x) RCW 9.94A.507, relating to certain sex offenses;

(xi) RCW 9.94A.535, relating to exceptional sentences;

(xii) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(xiii) RCW 9.94A.603, relating to felony driving while under the influence of intoxicating liquor or any drug and felony physical control of a vehicle while under the influence of intoxicating liquor or any drug;

(xiv) RCW 9.94A.711, relating to the theft or taking of a motor vehicle.

(b) If a standard sentence range has not been established for the offender's crime, the court shall impose a determinate sentence which may include not more than one year of confinement; community restitution work; a term of community custody under RCW 9.94A.702 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 and a community custody term under RCW 9.94A.701 if the court finds reasons justifying an exceptional sentence as provided in RCW 9.94A.535.

(3) If the court imposes a sentence requiring confinement of ~~((thirty))~~ 30 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))~~ 30 days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(4) If a sentence imposed includes payment of a legal financial obligation, it shall be imposed as provided in RCW 9.94A.750, 9.94A.753, and 9.94A.760(~~;~~ and 43.43.7541).

(5) Except as provided under RCW 9.94A.750(4) and 9.94A.753(4), a court may not impose a sentence providing for a term of confinement or community custody that exceeds the statutory maximum for the crime as provided in chapter 9A.20 RCW.

(6) 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.

(7) The sentencing court shall not give the offender credit for any time the offender was required to comply with an electronic monitoring program prior to sentencing if the offender was convicted of one of the following offenses:

(a) A violent offense;

(b) Any sex offense;

(c) Any drug offense;

(d) Reckless burning in the first or second degree as defined in RCW 9A.48.040 or 9A.48.050;

(e) Assault in the third degree as defined in RCW 9A.36.031;

(f) Assault of a child in the third degree;

(g) Unlawful imprisonment as defined in RCW 9A.40.040; or

(h) Harassment as defined in RCW 9A.46.020.

(8) The court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(9) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter. "Crime-related prohibitions" may include a prohibition on the use or possession of alcohol or controlled substances if the court finds that any chemical dependency or substance abuse contributed to the offense.

(10) In any sentence of partial confinement, the court may require the offender 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.

**Sec. 24.** RCW 9.94A.777 and 2010 c 280 s 6 are each amended to read as follows:

(1) Before imposing any legal financial obligations upon a defendant who suffers from a mental health condition, other than restitution (~~(or the victim penalty assessment under RCW 7.68.035)~~), a judge must first determine that the defendant, under the terms of this section, has the means to pay such additional sums.

(2) For the purposes of this section, a defendant suffers from a mental health condition when the defendant has been diagnosed with a mental disorder that prevents the defendant from participating in gainful employment, as evidenced by a determination of mental disability as the basis for the defendant's enrollment in a public assistance program, a record of involuntary hospitalization, or by competent expert evaluation.

NEW SECTION. **Sec. 25.** Nothing in this act requires the courts to refund or reimburse amounts previously paid towards legal financial obligations or interest on legal financial obligations.

NEW SECTION. **Sec. 26.** This act takes effect January 1, 2023.

Passed by the House March 9, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 261

[Engrossed Substitute House Bill 1629]

### AERIAL IMAGING TECHNOLOGY—STUDY OF USES

AN ACT Relating to a comprehensive study of aerial imaging technology uses for state agencies, special purpose districts, and local and tribal governments; and creating new sections.

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

NEW SECTION. **Sec. 1.** The legislature finds that aerial imagery is a critically important tool that has wide applications in making governmental decisions in a variety of settings. For example: (1) The Washington state military department uses aerial imagery for emergency management; (2) the department of transportation uses aerial imagery for constructing roads and tracking culvert replacement and fish migration; (3) the department of ecology uses aerial imagery to create a coastal atlas to monitor oil spills in the ocean and changes to the Washington coastline; (4) agencies that monitor growth management and zoning use aerial imagery to monitor urban density and to designate and protect critical areas; (5) the department of natural resources uses aerial imagery to monitor forest health, riparian buffers, and timber harvest; (6) conservation districts use aerial imagery to plan salmon restoration projects and to assess fire and flood damage; (7) the Nisqually tribe is using aerial imagery to monitor the rerouting of the Nisqually river due to inadequate water passage under the Nisqually bridge; (8) local emergency management agencies use aerial imagery for public safety efforts; (9) county assessors use aerial imagery as an integral

part of their valuation activities; (10) school districts use aerial imagery to develop school safety plans and to site future buildings; (11) state universities use aerial imagery for promotional material and research purposes; (12) the emergency management division could use aerial imagery to locate damaged structures and bridges and track emergency detours; and (13) state parks could use aerial imagery to track structures on park land and for land management.

The legislature also finds that state, local, and tribal governments that currently use aerial imaging data are purchasing it independently, often resulting in multiple payments for the same data to be collected. The legislature intends to commission a study to assess a more cost-effective way to purchase cutting-edge aerial imagery at the state level, which would allow individual jurisdictions that seek aerial imagery to purchase such data from the state. The legislature also intends to identify the myriad uses for which state agencies, special purpose districts, and local and tribal governments could benefit from having aerial imaging data to conduct everyday business, protect property, assist citizens, conduct emergency planning, and respond to disasters.

As the use of aerial imaging by state, local, and tribal governments becomes more prevalent, and pending the results of the study, the legislature finds that it is important for the office of the chief information officer to evaluate how aerial images are protected against data breaches and unauthorized disclosure, as well as how authorized users are identified for various types of aerial imagery used by state agencies, local governments, special purpose districts, and tribal governments. The legislature also finds that it is important for the office of the chief information officer to evaluate the range of privacy issues involved in aerial imaging and how the privacy rights of Washingtonians might best be protected as usage of aerial imaging by government proliferates.

**NEW SECTION. Sec. 2.** (1) Subject to the availability of amounts appropriated for this specific purpose, the department of commerce, in collaboration with the office of the chief information officer, shall conduct a study for the use of aerial imaging technology for state, local, special purpose district, and tribal government purposes, leveraging the state's existing geospatial imaging program.

(2) The study conducted by the department of commerce must, at a minimum:

(a) Include an assessment of:

(i) The ways in which state agencies, local governments, special purpose districts, and tribal governments currently use aerial imaging technology;

(ii) The ways in which state agencies, local governments, special purpose districts, and tribal governments could benefit from having access to aerial imaging technology, as determined by interviewing a sample of state, local, special purpose district, and tribal government officials to assess expectations for aerial imaging data;

(iii) The types of imagery currently used or needed; and

(iv) The frequency with which various types of imagery are currently used or needed;

(b) Determine the minimum resolution level of aerial imaging that would best serve the majority of users statewide;

(c) Estimate the current statewide expenditures by state, local, and tribal governments, and special purpose districts, for aerial image acquisition and organization;

(d) Estimate the cost of procuring, once per biennium, and administering a high-quality aerial imagery program on a statewide basis;

(e) Quantify the economies of scale between individual flights procured by individual jurisdictions as compared to the cost of procuring a single flight to obtain aerial imaging of the entire state;

(f) Determine the best available mechanism for cost sharing between jurisdictions for the acquisition and management of aerial imagery; and

(g) Make recommendations about current sources that provide imaging data, further steps to improve the collection of aerial imaging data, and the steps necessary to implement a comprehensive, cost-efficient, aerial imaging collection and distribution system to serve state, local, special purpose district, and tribal officials statewide through the state's existing geospatial program.

(3) In conducting the study pursuant to this section, the department of commerce must convene and define the scope of the study and assist in the design of information collection.

(4) In conducting the study pursuant to this section, the department of commerce must also seek recommendations from the office of the chief information officer regarding ways in which the use of aerial imaging technology could be limited by state law to strike an appropriate balance between effective and efficient utilization for legitimate government purposes while doing no more imaging than is necessary and at no higher resolution than is necessary.

(5) In implementing this section, the department of commerce may complete the study directly or, at its discretion, contract the study, or portions of the study, to a third party or parties chosen by the department of commerce. However, the final delivered product must be reported by the department of commerce.

(6) Consistent with RCW 43.01.036, the study required by this section must be completed and the results reported to the legislature by June 1, 2023.

Passed by the House February 15, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

## CHAPTER 262

[Substitute House Bill 1655]

### TRANSPORTATION SAFETY REST AREAS—OPEN FOR USE

AN ACT Relating to having safety rest areas open to the public as soon as possible; adding a new section to chapter 47.38 RCW; and creating a new section.

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

**\*NEW SECTION. Sec. 1. Commercial motor vehicle parking shortages are a national safety concern. Washington state has exacerbated the problem in the fall of 2021 by the closure of many state-owned and operated safety rest areas. All vehicle drivers need safe places to stop when they are tired to prevent**

*serious and fatal injuries. Washington's target zero plan reports that drowsy driving was a factor in 44 deaths and 236 serious injuries from 2015-2017. One of the ways Washington's target zero plan addresses this issue is having available rest areas. The closure of state-owned safety rest areas is contrary to state policy to have zero deaths on the roadways.*

*In addition, commercial truck drivers are required to take federally mandated rest breaks that leads to the need for there to be parking available in many locations throughout the highway system. Safety rest areas are important for supply line integrity and the use by the traveling public. The legislature believes it is essential for this public service to be restored and maintained in the future as quickly as possible.*

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

**NEW SECTION. Sec. 2.** A new section is added to chapter 47.38 RCW to read as follows:

(1) Subject to the availability of amounts appropriated for this specific purpose, the department is directed to reconfigure its maintenance operations to assure that its owned and operated safety rest areas are open for use except for seasonal closures or cleaning, maintenance, and repairs.

(2) The department may initiate a strategic planning process that addresses the maintenance, operation, and safety of its owned and operated safety rest areas. At a minimum, this plan shall evaluate operations, maintenance, safety, and commercial motor vehicle parking at safety rest areas. The department must engage members from the freight community and other stakeholders for recommendations and solutions. The department must also coordinate with the office of intergovernmental coordination on public right-of-way homeless encampments established in Engrossed Second Substitute Senate Bill No. 5662 (right-of-way camping/housing). The plan must identify strategies that the department can employ to ensure commercial motor vehicle parking is available at state-owned and operated safety rest areas. The department shall prioritize the planning effort to conclude by the end of the 2021-2023 biennium.

(3) The department must report to the transportation committees of the legislature the changes that have been made to or are planned to be made to operation of the safety rest areas by January 15, 2023, including recommendations related to commercial vehicle parking.

Passed by the House March 8, 2022.

Passed by the Senate March 2, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

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

"I am returning herewith, without my approval as to Section 1, Substitute House Bill No. 1655 entitled:

"AN ACT Relating to having safety rest areas open to the public as soon as possible."

Section 1 describes the important role that rest stops provide to help truck drivers rest and operate safely. However, it overlooks that the rest stop closures were due to a variety of reasons, including the lack of security and safety for truckers, the public, and the employees at those rest stops. A similar budget proviso in Engrossed Substitute Senate Bill 5689 properly reflects the need to address

security at certain rest stops in order for them to ensure the safety of these facilities. In addition, Section 1 is not necessary to implement the policies set forth in the bill.

For these reasons I have vetoed Section 1 of Substitute House Bill No. 1655.

With the exception of Section 1, Substitute House Bill No. 1655 is approved."

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## CHAPTER 263

[Engrossed Second Substitute House Bill 1688]

### OUT-OF-NETWORK HEALTH CARE SERVICES—BALANCE BILLING—VARIOUS PROVISIONS

AN ACT Relating to protecting consumers from charges for out-of-network health care services, by aligning state law and the federal no surprises act and addressing coverage of treatment for emergency conditions; amending RCW 43.371.100, 48.43.005, 48.43.093, 48.43.535, 48.49.003, 48.49.020, 48.49.030, 48.49.040, 48.49.050, 48.49.060, 48.49.070, 48.49.090, 48.49.100, 48.49.130, 48.49.150, and 48.49.110; adding a new section to chapter 48.43 RCW; adding new sections to chapter 48.49 RCW; adding a new section to chapter 71.24 RCW; recodifying RCW 48.49.150; prescribing penalties; providing an expiration date; and declaring an emergency.

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

**Sec. 1.** RCW 43.371.100 and 2019 c 427 s 26 are each amended to read as follows:

(1) The office of the insurance commissioner shall contract with the state agency responsible for administration of the database and the lead organization to establish a data set and business process to provide health carriers, health care providers, hospitals, ambulatory surgical facilities, and arbitrators with data to assist in determining commercially reasonable payments and resolving payment disputes for out-of-network medical services rendered by health care facilities or providers.

(a) The data set and business process must be developed in collaboration with health carriers, health care providers, hospitals, and ambulatory surgical facilities.

(b) The data set must provide the amounts for the services described in RCW 48.49.020. The data used to calculate the median in-network and out-of-network allowed amounts and the median billed charge amounts by geographic area, for the same or similar services, must be drawn from commercial health plan claims, and exclude medicare and medicaid claims as well as claims paid on other than a fee-for-service basis.

(c) The data set and business process must be available beginning November 1, 2019, and must be reviewed by an advisory committee established under (~~chapter 43.371 RCW~~) this chapter that includes representatives of health carriers, health care providers, hospitals, and ambulatory surgical facilities for validation before use.

(2) The 2019 data set must be based upon the most recently available full calendar year of claims data. The data set for each subsequent year must be adjusted by applying the consumer price index-medical component established by the United States department of labor, bureau of labor statistics to the previous year's data set.

(3) Until December 31, 2030, the office of the insurance commissioner shall contract with the state agency responsible for administration of the database or other organizations biennially beginning in 2022, for an analysis of commercial

health plan claims data to assess any impact that chapter 48.49 RCW or P.L. 116-260 have had or may have had on payments to participating and nonparticipating providers and facilities and on the volume and percentage of claims that are provided by participating compared to nonparticipating providers. To the extent that data related to self-funded group health plans is available within funds appropriated for this purpose, the analysis may include such data. The first analysis shall compare 2019 claims data to the most recent full year's claims data. The analysis must be published on the website of the office of the insurance commissioner, with the first analysis published on or before December 15, 2022.

**Sec. 2.** RCW 48.43.005 and 2020 c 196 s 1 are each amended to read as follows:

Unless otherwise specifically provided, the definitions in this section apply throughout this chapter.

(1) "Adjusted community rate" means the rating method used to establish the premium for health plans adjusted to reflect actuarially demonstrated differences in utilization or cost attributable to geographic region, age, family size, and use of wellness activities.

(2) "Adverse benefit determination" means a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit, including a denial, reduction, termination, or failure to provide or make payment that is based on a determination of an enrollee's or applicant's eligibility to participate in a plan, and including, with respect to group health plans, a denial, reduction, or termination of, or a failure to provide or make payment, in whole or in part, for a benefit resulting from the application of any utilization review, as well as a failure to cover an item or service for which benefits are otherwise provided because it is determined to be experimental or investigational or not medically necessary or appropriate.

(3) "Allowed amount" means the maximum portion of a billed charge a health carrier will pay, including any applicable enrollee cost-sharing responsibility, for a covered health care service or item rendered by a participating provider or facility or by a nonparticipating provider or facility.

(4) "Applicant" means a person who applies for enrollment in an individual health plan as the subscriber or an enrollee, or the dependent or spouse of a subscriber or enrollee.

(5) "Balance bill" means a bill sent to an enrollee by ~~((an out-of-network))~~ a nonparticipating provider or facility for health care services provided to the enrollee after the provider or facility's billed amount is not fully reimbursed by the carrier, exclusive of permitted cost-sharing.

(6) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(7) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(8) "Basic health plan services" means that schedule of covered health services, including the description of how those benefits are to be administered, that are required to be delivered to an enrollee under the basic health plan, as revised from time to time.

(9) "Board" means the governing board of the Washington health benefit exchange established in chapter 43.71 RCW.

(10)(a) For grandfathered health benefit plans issued before January 1, 2014, and renewed thereafter, "catastrophic health plan" means:

(i) In the case of a contract, agreement, or policy covering a single enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, one thousand seven hundred fifty dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least three thousand five hundred dollars, both amounts to be adjusted annually by the insurance commissioner; and

(ii) In the case of a contract, agreement, or policy covering more than one enrollee, a health benefit plan requiring a calendar year deductible of, at a minimum, three thousand five hundred dollars and an annual out-of-pocket expense required to be paid under the plan (other than for premiums) for covered benefits of at least six thousand dollars, both amounts to be adjusted annually by the insurance commissioner.

(b) In July 2008, and in each July thereafter, the insurance commissioner shall adjust the minimum deductible and out-of-pocket expense required for a plan to qualify as a catastrophic plan to reflect the percentage change in the consumer price index for medical care for a preceding twelve months, as determined by the United States department of labor. For a plan year beginning in 2014, the out-of-pocket limits must be adjusted as specified in section 1302(c)(1) of P.L. 111-148 of 2010, as amended. The adjusted amount shall apply on the following January 1st.

(c) For health benefit plans issued on or after January 1, 2014, "catastrophic health plan" means:

(i) A health benefit plan that meets the definition of catastrophic plan set forth in section 1302(e) of P.L. 111-148 of 2010, as amended; or

(ii) A health benefit plan offered outside the exchange marketplace that requires a calendar year deductible or out-of-pocket expenses under the plan, other than for premiums, for covered benefits, that meets or exceeds the commissioner's annual adjustment under (b) of this subsection.

(11) "Certification" means a determination by a review organization that an admission, extension of stay, or other health care service or procedure has been reviewed and, based on the information provided, meets the clinical requirements for medical necessity, appropriateness, level of care, or effectiveness under the auspices of the applicable health benefit plan.

(12) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(13) "Covered person" or "enrollee" means a person covered by a health plan including an enrollee, subscriber, policyholder, beneficiary of a group plan, or individual covered by any other health plan.

(14) "Dependent" means, at a minimum, the enrollee's legal spouse and dependent children who qualify for coverage under the enrollee's health benefit plan.

(15) "Emergency medical condition" means a medical, mental health, or substance use disorder condition manifesting itself by acute symptoms of sufficient severity including, but not limited to, severe pain or emotional distress, such that a prudent layperson, who possesses an average knowledge of health and medicine, could reasonably expect the absence of immediate medical, mental health, or substance use disorder treatment attention to result in a

condition (a) placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, (b) serious impairment to bodily functions, or (c) serious dysfunction of any bodily organ or part.

(16) "Emergency services" means ((~~Ⓐ~~));

(a)(i) A medical screening examination, as required under section 1867 of the social security act (42 U.S.C. Sec. 1395dd), that is within the capability of the emergency department of a hospital, including ancillary services routinely available to the emergency department to evaluate that emergency medical condition(~~(-and further medical))~~;

(ii) Medical examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the hospital, as are required under section 1867 of the social security act (42 U.S.C. Sec. 1395dd) to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. Sec. 1395dd(e)(3)); and

(iii) Covered services provided by staff or facilities of a hospital after the enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to medical, mental health, or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part; or

(b)(i) A screening examination that is within the capability of a behavioral health emergency services provider including ancillary services routinely available to the behavioral health emergency services provider to evaluate that emergency medical condition;

(ii) Examination and treatment, to the extent they are within the capabilities of the staff and facilities available at the behavioral health emergency services provider, as are required under section 1867 of the social security act (42 U.S.C. Sec. 1395dd) or as would be required under such section if such section applied to behavioral health emergency services providers, to stabilize the patient. Stabilize, with respect to an emergency medical condition, has the meaning given in section 1867(e)(3) of the social security act (42 U.S.C. Sec. 1395dd(e)(3)); and

(iii) Covered behavioral health services provided by staff or facilities of a behavioral health emergency services provider after the enrollee is stabilized and as part of outpatient observation or an inpatient or outpatient stay with respect to the visit during which screening and stabilization services have been furnished. Poststabilization services relate to mental health or substance use disorder treatment necessary in the short term to avoid placing the health of the individual, or with respect to a pregnant woman, the health of the woman or her unborn child, in serious jeopardy, serious impairment to bodily functions, or serious dysfunction of any bodily organ or part.

(17) "Employee" has the same meaning given to the term, as of January 1, 2008, under section 3(6) of the federal employee retirement income security act of 1974.



(18) "Enrollee point-of-service cost-sharing" or "cost-sharing" means amounts paid to health carriers directly providing services, health care providers, or health care facilities by enrollees and may include copayments, coinsurance, or deductibles.

(19) "Essential health benefit categories" means:

(a) Ambulatory patient services;

(b) Emergency services;

(c) Hospitalization;

(d) Maternity and newborn care;

(e) Mental health and substance use disorder services, including behavioral health treatment;

(f) Prescription drugs;

(g) Rehabilitative and habilitative services and devices;

(h) Laboratory services;

(i) Preventive and wellness services and chronic disease management; and

(j) Pediatric services, including oral and vision care.

(20) "Exchange" means the Washington health benefit exchange established under chapter 43.71 RCW.

(21) "Final external review decision" means a determination by an independent review organization at the conclusion of an external review.

(22) "Final internal adverse benefit determination" means an adverse benefit determination that has been upheld by a health plan or carrier at the completion of the internal appeals process, or an adverse benefit determination with respect to which the internal appeals process has been exhausted under the exhaustion rules described in RCW 48.43.530 and 48.43.535.

(23) "Grandfathered health plan" means a group health plan or an individual health plan that under section 1251 of the patient protection and affordable care act, P.L. 111-148 (2010) and as amended by the health care and education reconciliation act, P.L. 111-152 (2010) is not subject to subtitles A or C of the act as amended.

(24) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding service delivery issues other than denial of payment for medical services or nonprovision of medical services, including dissatisfaction with medical care, waiting time for medical services, provider or staff attitude or demeanor, or dissatisfaction with service provided by the health carrier.

(25) "Health care facility" or "facility" means hospices licensed under chapter 70.127 RCW, hospitals licensed under chapter 70.41 RCW, rural health care facilities as defined in RCW 70.175.020, psychiatric hospitals licensed under chapter 71.12 RCW, nursing homes licensed under chapter 18.51 RCW, community mental health centers licensed under chapter 71.05 or 71.24 RCW, kidney disease treatment centers licensed under chapter 70.41 RCW, ambulatory diagnostic, treatment, or surgical facilities licensed under chapter 70.41 or 70.230 RCW, drug and alcohol treatment facilities licensed under chapter 70.96A RCW, and home health agencies licensed under chapter 70.127 RCW, and includes such facilities if owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations.

(26) "Health care provider" or "provider" means:

(a) A person regulated under Title 18 or chapter 70.127 RCW, to practice health or health-related services or otherwise practicing health care services in this state consistent with state law; or

(b) An employee or agent of a person described in (a) of this subsection, acting in the course and scope of his or her employment.

(27) "Health care service" means that service offered or provided by health care facilities and health care providers relating to the prevention, cure, or treatment of illness, injury, or disease.

(28) "Health carrier" or "carrier" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, a health care service contractor as defined in RCW 48.44.010, or a health maintenance organization as defined in RCW 48.46.020, and includes "issuers" as that term is used in the patient protection and affordable care act (P.L. 111-148).

(29) "Health plan" or "health benefit plan" means any policy, contract, or agreement offered by a health carrier to provide, arrange, reimburse, or pay for health care services except the following:

(a) Long-term care insurance governed by chapter 48.84 or 48.83 RCW;

(b) Medicare supplemental health insurance governed by chapter 48.66 RCW;

(c) Coverage supplemental to the coverage provided under chapter 55, Title 10, United States Code;

(d) Limited health care services offered by limited health care service contractors in accordance with RCW 48.44.035;

(e) Disability income;

(f) Coverage incidental to a property/casualty liability insurance policy such as automobile personal injury protection coverage and homeowner guest medical;

(g) Workers' compensation coverage;

(h) Accident only coverage;

(i) Specified disease or illness-triggered fixed payment insurance, hospital confinement fixed payment insurance, or other fixed payment insurance offered as an independent, noncoordinated benefit;

(j) Employer-sponsored self-funded health plans;

(k) Dental only and vision only coverage;

(l) Plans deemed by the insurance commissioner to have a short-term limited purpose or duration, or to be a student-only plan that is guaranteed renewable while the covered person is enrolled as a regular full-time undergraduate or graduate student at an accredited higher education institution, after a written request for such classification by the carrier and subsequent written approval by the insurance commissioner;

(m) Civilian health and medical program for the veterans affairs administration (CHAMPVA); and

(n) Stand-alone prescription drug coverage that exclusively supplements medicare part D coverage provided through an employer group waiver plan under federal social security act regulation 42 C.F.R. Sec. 423.458(c).

(30) "Individual market" means the market for health insurance coverage offered to individuals other than in connection with a group health plan.

(31) "In-network" or "participating" means a provider or facility that has contracted with a carrier or a carrier's contractor or subcontractor to provide

health care services to enrollees and be reimbursed by the carrier at a contracted rate as payment in full for the health care services, including applicable cost-sharing obligations.

(32) "Material modification" means a change in the actuarial value of the health plan as modified of more than five percent but less than fifteen percent.

(33) "Open enrollment" means a period of time as defined in rule to be held at the same time each year, during which applicants may enroll in a carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(34) "Out-of-network" or "nonparticipating" means a provider or facility that has not contracted with a carrier or a carrier's contractor or subcontractor to provide health care services to enrollees.

(35) "Out-of-pocket maximum" or "maximum out-of-pocket" means the maximum amount an enrollee is required to pay in the form of cost-sharing for covered benefits in a plan year, after which the carrier covers the entirety of the allowed amount of covered benefits under the contract of coverage.

(36) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(37) "Premium" means all sums charged, received, or deposited by a health carrier as consideration for a health plan or the continuance of a health plan. Any assessment or any "membership," "policy," "contract," "service," or similar fee or charge made by a health carrier in consideration for a health plan is deemed part of the premium. "Premium" shall not include amounts paid as enrollee point-of-service cost-sharing.

(38)(a) "Protected individual" means:

(i) An adult covered as a dependent on the enrollee's health benefit plan, including an individual enrolled on the health benefit plan of the individual's registered domestic partner; or

(ii) A minor who may obtain health care without the consent of a parent or legal guardian, pursuant to state or federal law.

(b) "Protected individual" does not include an individual deemed not competent to provide informed consent for care under RCW 11.88.010(1)(e).

(39) "Review organization" means a disability insurer regulated under chapter 48.20 or 48.21 RCW, health care service contractor as defined in RCW 48.44.010, or health maintenance organization as defined in RCW 48.46.020, and entities affiliated with, under contract with, or acting on behalf of a health carrier to perform a utilization review.

(40) "Sensitive health care services" means health services related to reproductive health, sexually transmitted diseases, substance use disorder, gender dysphoria, gender affirming care, domestic violence, and mental health.

(41) "Small employer" or "small group" means any person, firm, corporation, partnership, association, political subdivision, sole proprietor, or self-employed individual that is actively engaged in business that employed an average of at least one but no more than fifty employees, during the previous calendar year and employed at least one employee on the first day of the plan year, is not formed primarily for purposes of buying health insurance, and in which a bona fide employer-employee relationship exists. In determining the number of employees, companies that are affiliated companies, or that are

eligible to file a combined tax return for purposes of taxation by this state, shall be considered an employer. Subsequent to the issuance of a health plan to a small employer and for the purpose of determining eligibility, the size of a small employer shall be determined annually. Except as otherwise specifically provided, a small employer shall continue to be considered a small employer until the plan anniversary following the date the small employer no longer meets the requirements of this definition. A self-employed individual or sole proprietor who is covered as a group of one must also: (a) Have been employed by the same small employer or small group for at least twelve months prior to application for small group coverage, and (b) verify that he or she derived at least seventy-five percent of his or her income from a trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, schedule C or F, for the previous taxable year, except a self-employed individual or sole proprietor in an agricultural trade or business, must have derived at least fifty-one percent of his or her income from the trade or business through which the individual or sole proprietor has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form 1040, for the previous taxable year.

(42) "Special enrollment" means a defined period of time of not less than thirty-one days, triggered by a specific qualifying event experienced by the applicant, during which applicants may enroll in the carrier's individual health benefit plan without being subject to health screening or otherwise required to provide evidence of insurability as a condition for enrollment.

(43) "Standard health questionnaire" means the standard health questionnaire designated under chapter 48.41 RCW.

(44) (~~"Surgical or ancillary services" means surgery, anesthesiology, pathology, radiology, laboratory, or hospitalist services.~~

~~(45))~~ "Utilization review" means the prospective, concurrent, or retrospective assessment of the necessity and appropriateness of the allocation of health care resources and services of a provider or facility, given or proposed to be given to an enrollee or group of enrollees.

~~((46))~~ (45) "Wellness activity" means an explicit program of an activity consistent with department of health guidelines, such as, smoking cessation, injury and accident prevention, reduction of alcohol misuse, appropriate weight reduction, exercise, automobile and motorcycle safety, blood cholesterol reduction, and nutrition education for the purpose of improving enrollee health status and reducing health service costs.

(46) "Nonemergency health care services performed by nonparticipating providers at certain participating facilities" means covered items or services other than emergency services with respect to a visit at a participating health care facility, as provided in section 2799A-1(b) of the public health service act (42 U.S.C. Sec. 300gg-111(b)), 45 C.F.R. Sec. 149.30, and 45 C.F.R. Sec. 149.120 as in effect on the effective date of this section.

(47) "Air ambulance service" has the same meaning as defined in section 2799A-2 of the public health service act (42 U.S.C. Sec. 300gg-112) and implementing federal regulations in effect on the effective date of this section.

(48) "Behavioral health emergency services provider" means emergency services provided in the following settings:

(a) A crisis stabilization unit as defined in RCW 71.05.020;

(b) An evaluation and treatment facility that can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is licensed or certified as such by the department of health;

(c) An agency certified by the department of health under chapter 71.24 RCW to provide outpatient crisis services;

(d) A triage facility as defined in RCW 71.05.020;

(e) An agency certified by the department of health under chapter 71.24 RCW to provide medically managed or medically monitored withdrawal management services; or

(f) A mobile rapid response crisis team as defined in RCW 71.24.025 that is contracted with a behavioral health administrative services organization operating under RCW 71.24.045 to provide crisis response services in the behavioral health administrative services organization's service area.

**Sec. 3.** RCW 48.43.093 and 2019 c 427 s 3 are each amended to read as follows:

~~(1) ((When conducting a review of the necessity and appropriateness of emergency services or making a benefit determination for emergency services:))~~

~~(a) A health carrier shall cover emergency services ((necessary to screen and stabilize)) provided to a covered person if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. In addition, a health carrier shall not require prior authorization of emergency services ((provided prior to the point of stabilization)) if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. With respect to care obtained from ((an out-of-network)) a nonparticipating hospital emergency department or behavioral health emergency services provider, a health carrier shall cover emergency services ((necessary to screen and stabilize a covered person)). In addition, a health carrier shall not require prior authorization of ((the)) emergency services ((provided prior to the point of stabilization)).~~

~~(b) ((If an authorized representative of a health carrier authorizes coverage of emergency services, the health carrier shall not subsequently retract its authorization after the emergency services have been provided, or reduce payment for an item or service furnished in reliance on approval, unless the approval was based on a material misrepresentation about the covered person's health condition made by the provider of emergency services)) A health carrier shall cover emergency services without limiting what constitutes an emergency medical condition solely on the basis of diagnosis codes. Any determination of whether the prudent layperson standard has been met must be based on all pertinent documentation and be focused on the presenting symptoms and not solely on the final diagnosis.~~

~~((e)) (2) Coverage of emergency services may be subject to applicable in-network copayments, coinsurance, and deductibles, as provided in chapter 48.49 RCW.~~

~~((2) If a health carrier requires preauthorization for postevaluation or poststabilization services, the health carrier shall provide access to an authorized representative twenty-four hours a day, seven days a week, to facilitate review.~~

~~In order for postevaluation or poststabilization services to be covered by the health carrier, the provider or facility must make a documented good faith effort to contact the covered person's health carrier within thirty minutes of stabilization, if the covered person needs to be stabilized. The health carrier's authorized representative is required to respond to a telephone request for preauthorization from a provider or facility within thirty minutes. Failure of the health carrier to respond within thirty minutes constitutes authorization for the provision of immediately required medically necessary postevaluation and poststabilization services, unless the health carrier documents that it made a good faith effort but was unable to reach the provider or facility within thirty minutes after receiving the request.~~

~~(3) A health carrier shall immediately arrange for an alternative plan of treatment for the covered person if an out-of-network emergency provider and health carrier cannot reach an agreement on which services are necessary beyond those immediately necessary to stabilize the covered person consistent with state and federal laws.~~

~~(4)) (3) Nothing in this section is to be construed as prohibiting ((the)) a health carrier from ((requiring)):~~

~~(a) Requiring notification of stabilization or inpatient admission within the time frame specified in ((the)) its contract ((for inpatient admission)) with the hospital or behavioral health emergency services provider or as soon thereafter as medically possible but no less than twenty-four hours((- Nothing in this section is to be construed as preventing the health carrier from reserving the right to require transfer of a hospitalized covered person upon stabilization. Follow-up)); or~~

~~(b) Requiring a hospital or emergency behavioral health emergency services provider to make a documented good faith effort to notify the covered person's health carrier within 48 hours of stabilization, or by the end of the business day following the day the stabilization occurs, whichever is later, if the covered person needs to be stabilized. If a health carrier requires such notification, the health carrier shall provide access to an authorized representative seven days a week to receive notifications.~~

~~(4) Except to the extent provided otherwise in this section, follow-up care that is a direct result of the emergency must be obtained in accordance with the health plan's usual terms and conditions of coverage. All other terms and conditions of coverage may be applied to emergency services.~~

**Sec. 4.** RCW 48.43.535 and 2012 c 211 s 21 are each amended to read as follows:

(1) There is a need for a process for the fair consideration of disputes relating to decisions by carriers that offer a health plan to deny, modify, reduce, or terminate coverage of or payment for health care services for an enrollee. For purposes of this section, "carrier" also applies to a health plan if the health plan administers the appeal process directly or through a third party.

(2) An enrollee may seek review by a certified independent review organization of a carrier's decision to deny, modify, reduce, or terminate coverage of or payment for a health care service or of any adverse determination made by a carrier under RCW 48.49.020, 48.49.030, or sections 2799A-1 or 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 or 300gg-112) and implementing federal regulations in effect as of the effective date of

this section, after exhausting the carrier's grievance process and receiving a decision that is unfavorable to the enrollee, or after the carrier has exceeded the timelines for grievances provided in RCW 48.43.530, without good cause and without reaching a decision.

(3) The commissioner must establish and use a rotational registry system for the assignment of a certified independent review organization to each dispute. The system should be flexible enough to ensure that an independent review organization has the expertise necessary to review the particular medical condition or service at issue in the dispute, and that any approved independent review organization does not have a conflict of interest that will influence its independence.

(4) Carriers must provide to the appropriate certified independent review organization, not later than the third business day after the date the carrier receives a request for review, a copy of:

(a) Any medical records of the enrollee that are relevant to the review;

(b) Any documents used by the carrier in making the determination to be reviewed by the certified independent review organization;

(c) Any documentation and written information submitted to the carrier in support of the appeal; and

(d) A list of each physician or health care provider who has provided care to the enrollee and who may have medical records relevant to the appeal. Health information or other confidential or proprietary information in the custody of a carrier may be provided to an independent review organization, subject to rules adopted by the commissioner.

(5) Enrollees must be provided with at least five business days to submit to the independent review organization in writing additional information that the independent review organization must consider when conducting the external review. The independent review organization must forward any additional information submitted by an enrollee to the plan or carrier within one business day of receipt by the independent review organization.

(6) The medical reviewers from a certified independent review organization will make determinations regarding the medical necessity or appropriateness of, and the application of health plan coverage provisions to, health care services for an enrollee. The medical reviewers' determinations must be based upon their expert medical judgment, after consideration of relevant medical, scientific, and cost-effectiveness evidence, and medical standards of practice in the state of Washington. Except as provided in this subsection, the certified independent review organization must ensure that determinations are consistent with the scope of covered benefits as outlined in the medical coverage agreement. Medical reviewers may override the health plan's medical necessity or appropriateness standards if the standards are determined upon review to be unreasonable or inconsistent with sound, evidence-based medical practice.

(7) Once a request for an independent review determination has been made, the independent review organization must proceed to a final determination, unless requested otherwise by both the carrier and the enrollee or the enrollee's representative.

(a) An enrollee or carrier may request an expedited external review if the adverse benefit determination or internal adverse benefit determination concerns an admission, availability of care, continued stay, or health care service for

which the claimant received emergency services but has not been discharged from a facility; or involves a medical condition for which the standard external review time frame would seriously jeopardize the life or health of the enrollee or jeopardize the enrollee's ability to regain maximum function. The independent review organization must make its decision to uphold or reverse the adverse benefit determination or final internal adverse benefit determination and notify the enrollee and the carrier or health plan of the determination as expeditiously as possible but within not more than seventy-two hours after the receipt of the request for expedited external review. If the notice is not in writing, the independent review organization must provide written confirmation of the decision within forty-eight hours after the date of the notice of the decision.

(b) For claims involving experimental or investigational treatments, the independent review organization must ensure that adequate clinical and scientific experience and protocols are taken into account as part of the external review process.

(8) Carriers must timely implement the certified independent review organization's determination, and must pay the certified independent review organization's charges.

(9) When an enrollee requests independent review of a dispute under this section, and the dispute involves a carrier's decision to modify, reduce, or terminate an otherwise covered health service that an enrollee is receiving at the time the request for review is submitted and the carrier's decision is based upon a finding that the health service, or level of health service, is no longer medically necessary or appropriate, the carrier must continue to provide the health service if requested by the enrollee until a determination is made under this section. If the determination affirms the carrier's decision, the enrollee may be responsible for the cost of the continued health service.

(10) Each certified independent review organization must maintain written records and make them available upon request to the commissioner.

(11) A certified independent review organization may notify the office of the insurance commissioner if, based upon its review of disputes under this section, it finds a pattern of substandard or egregious conduct by a carrier.

(12)(a) The commissioner shall adopt rules to implement this section after considering relevant standards adopted by national managed care accreditation organizations and the national association of insurance commissioners.

(b) This section is not intended to supplant any existing authority of the office of the insurance commissioner under this title to oversee and enforce carrier compliance with applicable statutes and rules.

**NEW SECTION. Sec. 5.** A new section is added to chapter 48.43 RCW to read as follows:

The commissioner is authorized to enforce provisions of P.L. 116-260 (enacted December 27, 2020, as the consolidated appropriations act of 2021) and implementing federal regulations in effect on the effective date of this section, that are applicable to or regulate the conduct of carriers issuing health plans or grandfathered health plans to residents of Washington state on or after January 1, 2022. In addition to the enforcement actions authorized under RCW 48.02.080, the commissioner may impose a civil monetary penalty in an amount not to exceed \$100 for each day for each individual with respect to which a failure to comply with these provisions occurs.



**Sec. 6.** RCW 48.49.003 and 2019 c 427 s 1 are each amended to read as follows:

(1) The legislature finds that:

(a) Consumers receive surprise bills or balance bills for services provided at ~~((out of network))~~ nonparticipating facilities or by ~~((out of network))~~ nonparticipating health care providers at in-network facilities;

(b) Consumers must not be placed in the middle of contractual disputes between providers and health insurance carriers; and

(c) Facilities, providers, and health insurance carriers all share responsibility to ensure consumers have transparent information on network providers and benefit coverage, and the insurance commissioner is responsible for ensuring that provider networks include sufficient numbers and types of contracted providers to reasonably ensure consumers have in-network access for covered benefits.

(2) It is the intent of the legislature to:

(a) Ban balance billing of consumers enrolled in fully insured, regulated insurance plans and plans offered to public employees under chapter 41.05 RCW for the services described in RCW 48.49.020, and to provide self-funded group health plans with an option to elect to be subject to the provisions of this chapter ((427, Laws of 2019));

(b) Remove consumers from balance billing disputes and require that ~~((out of network))~~ nonparticipating providers and carriers negotiate ~~((out of network))~~ nonparticipating provider payments in good faith under the terms of this chapter ((427, Laws of 2019)); ~~((and))~~

(c) Align Washington state law with the federal balance billing prohibitions and transparency protections in sections 2799A-1 et seq. of the public health service act (P.L. 116-260) and implementing federal regulations in effect on the effective date of this section, while maintaining provisions of this chapter that provide greater protection for consumers; and

(d) Provide an environment that encourages self-funded groups to negotiate ~~((out of network))~~ payments in good faith with nonparticipating providers and facilities in return for balance billing protections.

**Sec. 7.** RCW 48.49.020 and 2019 c 427 s 6 are each amended to read as follows:

(1) ~~((An out of network))~~ A nonparticipating provider or facility may not balance bill an enrollee for the following health care services as provided in section 2799A-1(b) of the public health service act (42 U.S.C. Sec. 300gg-111(b)) and implementing federal regulations in effect on the effective date of this section:

(a) Emergency services provided to an enrollee; ~~((or))~~

(b) Nonemergency health care services ~~((provided to an enrollee at an in-network hospital licensed under chapter 70.41 RCW or an in network ambulatory surgical facility licensed under chapter 70.230 RCW if the services:~~

(i) ~~Involve surgical or ancillary services; and~~

(ii) ~~Are provided by an out-of-network provider))~~ performed by nonparticipating providers at certain participating facilities; or

(c) Air ambulance services.

(2) Payment for services described in subsection (1) of this section is subject to the provisions of ~~((RCW 48.49.030 and 48.49.040.~~

~~(3)(a) Except to the extent provided in (b) of this subsection, the carrier must hold an enrollee harmless from balance billing when emergency services described in subsection (1)(a) of this section are provided by an out-of-network hospital in a state that borders Washington state.~~

~~(b)(i) Upon the effective date of federal legislation prohibiting balance billing when emergency services described in subsection (1)(a) of this section are provided by a hospital, the carrier no longer has a duty to hold enrollees harmless from balance billing under (a) of this subsection; or~~

~~(ii) Upon the effective date of an interstate compact with a state bordering Washington state or enactment of legislation by a state bordering Washington state prohibiting balance billing when emergency services described in subsection (1)(a) of this section are provided by a hospital located in that border state to a Washington state resident, the carrier no longer has a duty to hold enrollees harmless from balance billing under (a) of this subsection for services provided by a hospital in that border state. The commissioner shall engage with border states on appropriate means to prohibit balance billing by out-of-state hospitals of Washington state residents)) sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section, except that:~~

(a) Until July 1, 2023, or a later date determined by the commissioner, section 9 of this act and RCW 48.49.040 apply to the nonparticipating provider or facility payment standard and dispute resolution process for services described in subsection (1) of this section, other than air ambulance services;

(b) A health care provider, health care facility, or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the public health service act (P.L. 116-260) and implementing federal regulations in effect on the effective date of this section;

(c) If the enrollee pays a nonparticipating provider, nonparticipating facility, or nonparticipating air ambulance service provider an amount that exceeds the in-network cost-sharing amount determined under sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations as in effect on the effective date of this section, the provider or facility must refund any amount in excess of the in-network cost-sharing amount to the enrollee within 30 business days of receipt. Interest must be paid to the enrollee for any unrefunded payments at a rate of 12 percent beginning on the first calendar day after the 30 business days; and

(d) Carriers must make available through electronic and other methods of communication generally used by a provider to verify enrollee eligibility and benefits information regarding whether an enrollee's health plan is subject to the requirements of this chapter or section 2799A-1 et seq. of the public health service act (42 U.S.C. Sec. 300gg-111 et seq.) and implementing federal regulations in effect on the effective date of this section.

(3) A behavioral health emergency services provider may not balance bill an enrollee for emergency services provided to an enrollee.

(4) Payment for emergency services provided by behavioral health emergency services providers under subsection (3) of this section is subject to RCW 48.49.030, section 9 of this act, and RCW 48.49.040.

~~((4))~~ (5) This section applies to health care providers ~~((or)), facilities, or behavioral health emergency services providers~~ providing services to members of entities administering a self-funded group health plan and its plan members only if the entity has elected to participate in this section and RCW 48.49.030, section 9 of this act, and RCW 48.49.040 as provided in RCW 48.49.130.

**Sec. 8.** RCW 48.49.030 and 2019 c 427 s 7 are each amended to read as follows:

(1) If an enrollee receives emergency ~~((or nonemergency health care))~~ services from a behavioral health emergency services provider under the circumstances described in RCW 48.49.020(3):

(a) The enrollee satisfies his or her obligation to pay for the health care services if he or she pays the in-network cost-sharing amount specified in the enrollee's or applicable group's health plan contract. The enrollee's obligation must be determined using the ~~((carrier's median in-network contracted rate for the same or similar service in the same or similar geographical area))~~ methodology for calculating the qualifying payment amount as described in 45 C.F.R. Sec. 149.140 as in effect on the effective date of this section. The carrier must provide an explanation of benefits to the enrollee and the ~~((out-of-network))~~ nonparticipating provider that reflects the cost-sharing amount determined under this subsection.

(b) The carrier, ~~((out-of-network provider, or out-of-network facility))~~ nonparticipating behavioral health emergency services provider, and an agent, trustee, or assignee of the carrier~~((, or out-of-network provider,))~~ or ~~((out-of-network facility))~~ nonparticipating behavioral health emergency services provider must ensure that the enrollee incurs no greater cost than the amount determined under (a) of this subsection.

(c) The ~~((out-of-network provider or out-of-network facility,))~~ nonparticipating behavioral health emergency services provider and an agent, trustee, or assignee of the ~~((out-of-network provider or out-of-network facility))~~ nonparticipating behavioral health emergency services provider may not balance bill or otherwise attempt to collect from the enrollee any amount greater than the amount determined under (a) of this subsection. This does not impact the behavioral health emergency services provider's ability to collect a past due balance for that cost-sharing amount with interest.

(d) The carrier must treat any cost-sharing amounts determined under (a) of this subsection paid by the enrollee for ~~((an out-of-network provider or facility's))~~ a nonparticipating behavioral health emergency services provider's services in the same manner as cost-sharing for health care services provided by an in-network ~~((provider or facility))~~ behavioral health emergency services provider and must apply any cost-sharing amounts paid by the enrollee for such services toward the enrollee's maximum out-of-pocket payment obligation.

(e) If the enrollee pays the ~~((out-of-network provider or out-of-network facility))~~ nonparticipating behavioral health emergency services provider an amount that exceeds the in-network cost-sharing amount determined under (a) of this subsection, the ~~((provider or facility))~~ behavioral health emergency services provider must refund any amount in excess of the in-network cost-sharing

amount to the enrollee within thirty business days of receipt. Interest must be paid to the enrollee for any unrefunded payments at a rate of twelve percent beginning on the first calendar day after the thirty business days.

~~(2) ((The allowed amount paid to an out-of-network provider for health care services described under RCW 48.49.020 shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area. Within thirty calendar days of receipt of a claim from an out-of-network provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. If the out-of-network provider or facility wants to dispute the carrier's payment, the provider or facility must notify the carrier no later than thirty calendar days after receipt of payment or payment notification from the carrier. If the out-of-network provider or facility disputes the carrier's initial offer, the carrier and provider or facility have thirty calendar days from the initial offer to negotiate in good faith. If the carrier and the out-of-network provider or facility do not agree to a commercially reasonable payment amount within thirty calendar days, and the carrier, out-of-network provider or out-of-network facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved through arbitration, as provided in RCW 48.49.040.~~

~~(3) The carrier must make payments for health care services described in RCW 48.49.020 provided by out-of-network providers or facilities directly to the provider or facility, rather than the enrollee.~~

~~(4) Carriers must make available through electronic and other methods of communication generally used by a provider to verify enrollee eligibility and benefits information regarding whether an enrollee's health plan is subject to the requirements of chapter 427, Laws of 2019.~~

~~(5) A health care provider, hospital, or ambulatory surgical facility may not require a patient at any time, for any procedure, service, or supply, to sign or execute by electronic means, any document that would attempt to avoid, waive, or alter any provision of this section.~~

~~(6)) This section shall only apply to health care providers ((~~or~~))<sub>2</sub> facilities<sub>2</sub> or behavioral health emergency services providers providing services to members of entities administering a self-funded group health plan and its plan members if the entity has elected to participate in this section and RCW 48.49.020 ((through)), section 9 of this act, and RCW 48.49.040 as provided in RCW 48.49.130.~~

NEW SECTION. Sec. 9. A new section is added to chapter 48.49 RCW to read as follows:

(1)(a) Until July 1, 2023, or a later date determined by the commissioner under RCW 48.49.040, the allowed amount paid to a nonparticipating provider for health care services described under RCW 48.49.020(1) other than air ambulance services shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area. Within 30 calendar days of receipt of a claim from a nonparticipating provider or facility, the carrier shall offer to pay the provider or facility a commercially reasonable amount. If the nonparticipating provider or facility wants to dispute the carrier's payment, the provider or facility must notify the carrier no later than 30 calendar days after receipt of payment or payment notification from the carrier. If the nonparticipating provider or facility disputes the carrier's initial offer, the carrier and provider or facility have 30 calendar days from the initial

offer to negotiate in good faith. If the carrier and the nonparticipating provider or facility do not agree to a commercially reasonable payment amount within 30 calendar days, and the carrier or nonparticipating provider or facility chooses to pursue further action to resolve the dispute, the dispute shall be resolved as provided in RCW 48.49.040.

(b) The carrier must make payments for health care services described in RCW 48.49.020(1) provided by nonparticipating providers or facilities directly to the provider or facility, rather than the enrollee.

(2)(a) The allowed amount paid to a nonparticipating behavioral health emergency services provider for behavioral health emergency services shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area. Within 30 calendar days of receipt of a claim from a nonparticipating behavioral health emergency services provider, the carrier shall offer to pay the behavioral health emergency services provider a commercially reasonable amount. If the nonparticipating behavioral health emergency services provider wants to dispute the carrier's payment, the behavioral health emergency services provider must notify the carrier no later than 30 calendar days after receipt of payment or payment notification from the carrier. If the nonparticipating behavioral health emergency services provider disputes the carrier's initial offer, the carrier and behavioral health emergency services provider have 30 calendar days from the initial offer to negotiate in good faith. If the carrier and the nonparticipating behavioral health emergency services provider do not agree to a commercially reasonable payment amount within 30 calendar days, and the carrier or nonparticipating behavioral health emergency services provider chooses to pursue further action to resolve the dispute, the dispute shall be resolved as provided in RCW 48.49.040.

(b) The carrier must make payments for behavioral health emergency services provided by nonparticipating behavioral health emergency services providers directly to the provider, rather than the enrollee.

(3) This section shall only apply to health care providers, facilities, or behavioral health emergency services providers providing services to members of entities administering a self-funded group health plan and its plan members if the entity has elected to participate in RCW 48.49.020, 48.49.030, and 48.49.040, and this section as provided in RCW 48.49.130.

**NEW SECTION. Sec. 10.** A new section is added to chapter 48.49 RCW to read as follows:

(1) Carriers must make available through electronic and other methods of communication generally used by a provider or facility to verify enrollee eligibility and benefits information regarding whether an enrollee's health plan is subject to the requirements of this chapter or section 2799A-1 et seq. of the public health service act (42 U.S.C. Sec. 300gg-111 et seq.) and implementing federal regulations in effect on the effective date of this section.

(2) A health care provider, health care facility, behavioral health emergency services provider, or air ambulance service provider may not request or require a patient at any time, for any procedure, service, or supply, to sign or otherwise execute by oral, written, or electronic means, any document that would attempt to avoid, waive, or alter any provision of RCW 48.49.020 and 48.49.030 or sections 2799A-1 et seq. of the public health service act (P.L. 116-260) and implementing federal regulations in effect on the effective date of this section.

(3) This section shall only apply to health care providers, facilities, or behavioral health emergency services providers providing services to members of entities administering a self-funded group health plan and its plan members if the entity has elected to participate in RCW 48.49.020, 48.49.030, section 9 of this act, and RCW 48.49.040 as provided in RCW 48.49.130.

**Sec. 11.** RCW 48.49.040 and 2019 c 427 s 8 are each amended to read as follows:

(1) Effective July 1, 2023, or a later date determined by the commissioner, services described in RCW 48.49.020(1) other than air ambulance services are subject to the independent dispute resolution process established in sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on July 1, 2023, or a later date determined by the commissioner. Until July 1, 2023, or a later date determined by the commissioner, the arbitration process in this section governs the dispute resolution process for those services.

(2) Effective July 1, 2023, or a later date determined by the commissioner, services described in RCW 48.49.020(3) are subject to the independent dispute resolution process established in section 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on July 1, 2023, or a later date determined by the commissioner. Until July 1, 2023, or a later date determined by the commissioner or if the federal independent dispute resolution process is not available to the state for resolution of these disputes, the arbitration process in this section governs the dispute resolution process for those services.

(3)(a) Notwithstanding RCW 48.43.055 and 48.18.200, if good faith negotiation, as described in RCW 48.49.030, does not result in resolution of the dispute, and the carrier(~~(-out of network provider)~~) or (~~(out of network facility)~~) nonparticipating provider, facility, or behavioral health emergency services provider chooses to pursue further action to resolve the dispute, the carrier(~~(-out of network provider)~~) or (~~(out of network facility)~~) nonparticipating provider, facility, or behavioral health emergency services provider shall initiate arbitration to determine a commercially reasonable payment amount. To initiate arbitration, the carrier(~~(-provider)~~) or (~~(facility)~~) nonparticipating provider, facility, or behavioral health emergency services provider must provide written notification to the commissioner and the noninitiating party no later than ten calendar days following completion of the period of good faith negotiation under RCW 48.49.030. The notification to the noninitiating party must state the initiating party's final offer. No later than thirty calendar days following receipt of the notification, the noninitiating party must provide its final offer to the initiating party. The parties may reach an agreement on reimbursement during this time and before the arbitration proceeding.

(b) Notwithstanding (a) of this subsection (3), where a dispute resolution matter initiated under sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section, results in a determination by a certified independent dispute resolution entity that such process does not apply to the dispute or to portions thereof, a carrier, provider, facility, or behavioral health emergency services provider may initiate arbitration described in this section for such dispute:

(i) Without completing good faith negotiation under section 9 of this act if the open negotiation period required under sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section, has been completed; and

(ii) By providing written notification to the commissioner and the noninitiating party no later than 10 calendar days following the date notice is received by the parties from the certified independent dispute resolution entity that the federal independent dispute resolution process is not applicable to the dispute.

(4) Multiple claims may be addressed in a single arbitration proceeding if the claims at issue:

~~((i))~~ (a) Involve identical carrier and provider ~~((or facility)), provider group, facility, or behavioral health emergency services provider~~ parties;

~~((ii))~~ (b) Involve claims with the same ~~((or related current procedural terminology codes relevant to a particular procedure))~~ procedural code, or a comparable code under a different procedural code system; and

~~((iii))~~ (c) Occur within ~~((a))~~ the same 30 business day period ~~((of two months of one another)).~~

~~((2))~~ (5) Within seven calendar days of receipt of notification from the initiating party, the commissioner must provide the parties with a list of approved arbitrators or entities that provide arbitration. The arbitrators on the list must be trained by the American arbitration association or the American health lawyers association and ~~((should))~~ must have experience in matters related to medical or health care services. The parties may agree on an arbitrator from the list provided by the commissioner. If the parties do not agree on an arbitrator, they must notify the commissioner who must provide them with the names of five arbitrators from the list. Each party may veto two of the five named arbitrators. If one arbitrator remains, that person is the chosen arbitrator. If more than one arbitrator remains, the commissioner must choose the arbitrator from the remaining arbitrators. The parties and the commissioner must complete this selection process within twenty calendar days of receipt of the original list from the commissioner.

~~((3(a)))~~ (6) Each party must make written submissions to the arbitrator in support of its position no later than thirty calendar days after the final selection of the arbitrator. ~~((The initiating))~~ Each party must include in ~~((its))~~ their written submission the evidence and methodology for asserting that the amount proposed to be paid is or is not commercially reasonable. A party that fails to make timely written submissions under this section without good cause shown shall be considered to be in default and the arbitrator shall require the party in default to pay the final offer amount submitted by the party not in default and may require the party in default to pay expenses incurred to date in the course of arbitration, including the arbitrator's expenses and fees and the reasonable attorneys' fees of the party not in default.

(7) If the parties agree on an out-of-network rate for the services at issue after providing the arbitration initiation notice to the commissioner but before the arbitrator has made their decision, the amount agreed to by the parties for the service will be treated as the out-of-network rate for the service. The initiating party must send a notification to the commissioner and to the arbitrator, as soon

as possible, but no later than three business days after the date of the agreement. The notification must include the out-of-network rate for the service and signatures from authorized signatories for both parties.

(8)(a) No later than thirty calendar days after the receipt of the parties' written submissions, the arbitrator must: Issue a written decision requiring payment of the final offer amount of either the initiating party or the noninitiating party; notify the parties of its decision; and provide the decision and the information described in RCW 48.49.050 regarding the decision to the commissioner. The arbitrator's decision must include an explanation of the elements of the parties' submissions the arbitrator relied upon to make their decision and why those elements were relevant to their decision.

(b) In reviewing the submissions of the parties and making a decision related to whether payment should be made at the final offer amount of the initiating party or the noninitiating party, the arbitrator must consider the following factors:

(i) The evidence and methodology submitted by the parties to assert that their final offer amount is reasonable; and

(ii) Patient characteristics and the circumstances and complexity of the case, including time and place of service and whether the service was delivered at a level I or level II trauma center or a rural facility, that are not already reflected in the provider's billing code for the service.

(c) The arbitrator may not require extrinsic evidence of authenticity for admitting data from the Washington state all-payer claims database data set developed under RCW 43.371.100 into evidence.

(d) The arbitrator may also consider other information that a party believes is relevant to the factors included in (b) of this subsection or other factors the arbitrator requests and information provided by the parties that is relevant to such request, including the Washington state all-payer claims database data set developed under RCW 43.371.100.

~~((4))~~ (9) Expenses incurred in the course of arbitration, including the arbitrator's expenses and fees, but not including attorneys' fees, must be divided equally among the parties to the arbitration. The commissioner may establish allowable arbitrator fee ranges or an arbitrator fee schedule by rule. Arbitrator fees must be paid to the arbitrator by a party within 30 calendar days following receipt of the arbitrator's decision by the party. The enrollee is not liable for any of the costs of the arbitration and may not be required to participate in the arbitration proceeding as a witness or otherwise.

~~((5))~~ (10) Within ~~((ten))~~ 10 business days of a party notifying the commissioner and the noninitiating party of intent to initiate arbitration, both parties shall agree to and execute a nondisclosure agreement. The nondisclosure agreement must not preclude the arbitrator from submitting the arbitrator's decision to the commissioner under subsection ~~((3))~~ (6) of this section or impede the commissioner's duty to prepare the annual report under RCW 48.49.050.

~~((6))~~ (11) The decision of the arbitrator is final and binding on the parties to the arbitration and is not subject to judicial review.

(12) Chapter 7.04A RCW applies to arbitrations conducted under this section, but in the event of a conflict between this section and chapter 7.04A RCW, this section governs.



((7)) (13) For dispute resolution proceedings initiated under RCW 48.49.150(2)(b) (as recodified by this act), the arbitration provisions of this section apply except that:

(a) The issue before the arbitrator will be the commercially reasonable payment for applicable services addressed in the alternate access delivery request rather than the commercially reasonable payment for single or multiple claims under subsection (4) of this section. The arbitrator shall issue a decision related to whether payment for the applicable services should be made at the final offer amount of the carrier or the final offer amount of the provider or facility. The arbitrator's decision is final and binding on the parties for services rendered to enrollees from the effective date of the amended alternate access delivery request approved under RCW 48.49.150(2)(b) (as recodified by this act) to either the expiration date of the amended alternate access delivery request, or at the time that a provider contract and provider compensation agreement are executed between the parties, whichever occurs first;

(b) During the period from the effective date of the amended alternate access delivery request to issuance of the arbitrator's decision, the allowed amount paid to providers or facilities for the applicable services addressed in the amended alternate access delivery request shall be a commercially reasonable amount, based on payments for the same or similar services provided in a similar geographic area; and

(c) The proceedings are subject to the arbitration process described in this section, and not to the independent dispute resolution process established in sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section.

(14) Air ambulance services are subject to the independent dispute resolution process established in sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section.

(15) This section applies to health care providers ~~((or))~~, facilities, or behavioral health emergency services providers providing services to members of entities administering a self-funded group health plan and its plan members only if the entity has elected to participate in RCW 48.49.020 and 48.49.030, section 9 of this act, and this section as provided in RCW 48.49.130.

((8)) (16) An entity administering a self-funded group health plan that has elected to participate in this section pursuant to RCW 48.49.130 shall comply with the provisions of this section.

**Sec. 12.** RCW 48.49.050 and 2019 c 427 s 9 are each amended to read as follows:

(1) The commissioner must prepare an annual report summarizing the dispute resolution information provided by arbitrators under RCW 48.49.040. The report must include summary information related to the matters decided through arbitration, as well as the following information for each dispute resolved through arbitration: The name of the carrier; the name of the health care provider; the health care provider's employer or the business entity in which the provider has an ownership interest; the health care facility where the services were provided; and the type of health care services at issue.

(2) The commissioner must post the report on the office of the insurance commissioner's website and submit the report in compliance with RCW 43.01.036 to the appropriate committees of the legislature, annually by July 1st.

(3) This section expires January 1, ~~((2024))~~ 2023.

**Sec. 13.** RCW 48.49.060 and 2019 c 427 s 10 are each amended to read as follows:

(1) The commissioner, in consultation with health carriers, health care providers, health care facilities, and consumers, must develop standard template language for a notice of consumer rights notifying consumers ~~((that:~~

~~(a) The prohibition against balance billing in this chapter is applicable to health plans issued by carriers in Washington state and self-funded group health plans that elect to participate in RCW 48.49.020 through 48.49.040 as provided in RCW 48.49.130;~~

~~(b) They cannot be balance billed for the health care services described in RCW 48.49.020 and will receive the protections provided by RCW 48.49.030; and~~

~~(c) They may be balance billed for health care services under circumstances other than those described in RCW 48.49.020 or if they are enrolled in a health plan to which chapter 427, Laws of 2019 does not apply, and steps they can take if they are balance billed) of their rights under this chapter, and sections 2799A-1 and 2799A-2 of the public health service act (42 U.S.C. Secs. 300gg-111 and 300gg-112) and implementing federal regulations in effect on the effective date of this section.~~

(2) The standard template language must include contact information for the office of the insurance commissioner so that consumers may contact the office of the insurance commissioner if they believe they have received a balance bill in violation of this chapter.

(3) The office of the insurance commissioner shall determine by rule when and in what format health carriers, health care providers, and health care facilities must provide consumers with the notice developed under this section.

**Sec. 14.** RCW 48.49.070 and 2019 c 427 s 11 are each amended to read as follows:

(1)(a) A hospital ~~((or)),~~ ambulatory surgical facility, or behavioral health emergency services provider must post the following information on its website, if one is available:

(i) The listing of the carrier health plan provider networks with which the hospital ~~((or)),~~ ambulatory surgical facility, or behavioral health emergency services provider is an in-network provider, based upon the information provided by the carrier pursuant to RCW 48.43.730(7); and

(ii) The notice of consumer rights developed under RCW 48.49.060.

(b) If the hospital ~~((or)),~~ ambulatory surgical facility, or behavioral health emergency services provider does not maintain a website, this information must be provided to consumers upon an oral or written request.

(2) Posting or otherwise providing the information required in this section does not relieve a hospital ~~((or)),~~ ambulatory surgical facility, or behavioral health emergency services provider of its obligation to comply with the provisions of this chapter.

(3) Not less than thirty days prior to executing a contract with a carrier, a hospital or ambulatory surgical facility must provide the carrier with a list of the nonemployed providers or provider groups contracted to provide ~~((surgical or ancillary))~~ emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist and diagnostic services, including radiology and laboratory services at the hospital or ambulatory surgical facility. The hospital or ambulatory surgical facility must notify the carrier within thirty days of a removal from or addition to the nonemployed provider list. A hospital or ambulatory surgical facility also must provide an updated list of these providers within fourteen calendar days of a request for an updated list by a carrier.

**Sec. 15.** RCW 48.49.090 and 2019 c 427 s 13 are each amended to read as follows:

(1) A carrier must update its website and provider directory no later than thirty days after the addition or termination of a facility or provider.

(2) A carrier must provide an enrollee with:

(a) A clear description of the health plan's out-of-network health benefits; ~~((and))~~

(b) The notice of consumer rights developed under RCW 48.49.060;

(c) Notification that if the enrollee receives services from an out-of-network provider ~~((or))~~ facility, or behavioral health emergency services provider, under circumstances other than those described in RCW 48.49.020, the enrollee will have the financial responsibility applicable to services provided outside the health plan's network in excess of applicable cost-sharing amounts and that the enrollee may be responsible for any costs in excess of those allowed by the health plan;

(d) Information on how to use the carrier's member transparency tools under RCW 48.43.007;

(e) Upon request, information regarding whether a health care provider is in-network or out-of-network, and whether there are in-network providers available to provide ~~((surgical or ancillary))~~ emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist and diagnostic services, including radiology and laboratory services at specified in-network hospitals or ambulatory surgical facilities; and

(f) Upon request, an estimated range of the out-of-pocket costs for an out-of-network benefit.

**Sec. 16.** RCW 48.49.100 and 2019 c 427 s 14 are each amended to read as follows:

(1) If the commissioner has cause to believe that any health care provider, hospital, ~~((or))~~ ambulatory surgical facility, or behavioral health emergency services provider, has engaged in a pattern of unresolved violations of RCW 48.49.020 or 48.49.030, the commissioner may submit information to the department of health or the appropriate disciplining authority for action. Prior to submitting information to the department of health or the appropriate disciplining authority, the commissioner may provide the health care provider, hospital, ~~((or))~~ ambulatory surgical facility, or behavioral health emergency services provider, with an opportunity to cure the alleged violations or explain why the actions in question did not violate RCW 48.49.020 or 48.49.030.

(2) If any health care provider, hospital, ~~((or))~~ ambulatory surgical facility, or behavioral health emergency services provider, has engaged in a pattern of unresolved violations of RCW 48.49.020 or 48.49.030, the department of health or the appropriate disciplining authority may levy a fine or cost recovery upon the health care provider, hospital, ~~((or))~~ ambulatory surgical facility, or behavioral health emergency services provider in an amount not to exceed the applicable statutory amount per violation and take other action as permitted under the authority of the department or disciplining authority. Upon completion of its review of any potential violation submitted by the commissioner or initiated directly by an enrollee, the department of health or the disciplining authority shall notify the commissioner of the results of the review, including whether the violation was substantiated and any enforcement action taken as a result of a finding of a substantiated violation.

(3) If a carrier has engaged in a pattern of unresolved violations of any provision of this chapter, the commissioner may levy a fine or apply remedies authorized under this chapter, chapter 48.02 RCW, RCW 48.44.166, 48.46.135, or 48.05.185.

(4) For purposes of this section, "disciplining authority" means the agency, board, or commission having the authority to take disciplinary action against a holder of, or applicant for, a professional or business license upon a finding of a violation of chapter 18.130 RCW or a chapter specified under RCW 18.130.040.

**Sec. 17.** RCW 48.49.130 and 2019 c 427 s 23 are each amended to read as follows:

~~((The))~~ As authorized in 45 C.F.R. Sec. 149.30 as in effect on the effective date of this section, the provisions of this chapter apply to a self-funded group health plan whether governed by or exempt from the provisions of the federal employee retirement income security act of 1974 (29 U.S.C. Sec. 1001 et seq.) only if the self-funded group health plan elects to participate in the provisions of RCW 48.49.020 ~~((through))~~ and 48.49.030, section 9 of this act, and RCW 48.49.040. To elect to participate in these provisions, the self-funded group health plan shall provide notice, on an annual basis, to the commissioner in a manner prescribed by the commissioner, attesting to the plan's participation and agreeing to be bound by RCW 48.49.020 ~~((through))~~ and 48.49.030, section 9 of this act, and RCW 48.49.040. An entity administering a self-funded health benefits plan that elects to participate under this section, shall comply with the provisions of RCW 48.49.020 ~~((through))~~ and 48.49.030, section 9 of this act, and RCW 48.49.040.

**Sec. 18.** RCW 48.49.150 and 2019 c 427 s 25 are each amended to read as follows:

(1) When determining the adequacy of a proposed provider network or the ongoing adequacy of an in-force provider network, the commissioner must ~~((consider whether))~~ review the carrier's proposed provider network or in-force provider network to determine whether the network includes a sufficient number of contracted providers of ~~((emergency and surgical or ancillary))~~ emergency medicine, anesthesiology, pathology, radiology, neonatology, surgery, hospitalist, intensivist and diagnostic services, including radiology and laboratory services at or for the carrier's contracted in-network hospitals or

ambulatory surgical facilities to reasonably ensure enrollees have in-network access to covered benefits delivered at that facility.

(2)(a) When determining the adequacy of a proposed provider network or the ongoing adequacy of an in-force provider network, the commissioner may allow a carrier to submit an alternate access delivery request. The commissioner shall define the circumstances under which a carrier may submit an alternate access delivery request and the requirements for submission and approval of such a request in rule. To submit an alternate access delivery request, a carrier shall:

(i) Ensure that enrollees will not bear any greater cost of receiving services under the alternate access delivery request than if the provider or facility was contracted with the carrier or make other arrangements acceptable to the commissioner;

(ii) Provide substantial evidence of good faith efforts on its part to contract with providers or facilities. If a carrier is submitting an alternate access delivery request for the same service and geographic area as a previously approved request, the carrier shall provide new or additional evidence of good faith efforts to contract associated with the current request;

(iii) Demonstrate that there is not an available provider or facility with which the carrier can contract to meet the commissioner's provider network standards; and

(iv) For services for which balance billing is prohibited under RCW 48.49.020, notify out-of-network providers or facilities that deliver the services referenced in the alternate access delivery request within five days of submitting the request to the commissioner. Any notification provided under this subsection shall include contact information for carrier staff who can provide detailed information to the affected provider or facility regarding the submitted alternate access delivery request.

(b) For services for which balance billing is prohibited under RCW 48.49.020, a carrier may not treat its payment of nonparticipating providers or facilities under this chapter or P.L. 116-260 (enacted December 27, 2020) as a means to satisfy network access standards established by the commissioner unless all requirements of this subsection are met.

(i) If a carrier is unable to obtain a contract with a provider or facility delivering services addressed in an alternate access delivery request to meet network access requirements, the carrier may ask the commissioner to amend the alternate access delivery request if the carrier's communication to the commissioner occurs at least three months after the effective date of the alternate access delivery request and demonstrates substantial evidence of good faith efforts on its part to contract for delivery of services during that three-month time period. If the carrier has demonstrated substantial evidence of good faith efforts on its part to contract, the commissioner shall allow a carrier to use the dispute resolution process provided in RCW 48.49.040 to determine the amount that will be paid to providers or facilities for services referenced in the alternate access delivery request. The commissioner may determine by rule the associated processes for use of the dispute resolution process under this subsection.

(ii) Once notification is provided by the carrier to a provider or facility under (a) of this subsection, a carrier is not responsible for reimbursing a provider's or facility's charges in excess of the amount charged by the provider

or facility for the same or similar service at the time the notification was provided. The provider or facility shall accept this reimbursement as payment in full.

(3) When determining the adequacy of a carrier's proposed provider network or the ongoing adequacy of an in-force provider network, beginning January 1, 2023, the commissioner shall require that the carrier's proposed provider network or in-force provider network include a sufficient number of contracted behavioral health emergency services providers.

**NEW SECTION. Sec. 19.** A new section is added to chapter 48.49 RCW to read as follows:

The commissioner is authorized to enforce provisions of P.L. 116-260 (enacted December 27, 2020, as the consolidated appropriations act of 2021) that are applicable to or regulate the conduct of carriers issuing health plans or grandfathered health plans to residents of Washington state on or after January 1, 2022. In addition to the enforcement actions authorized under RCW 48.02.080, the commissioner may impose a civil monetary penalty in an amount not to exceed \$100 for each day for each individual with respect to which a failure to comply with these provisions occurs.

**Sec. 20.** RCW 48.49.110 and 2019 c 427 s 15 are each amended to read as follows:

(1) The commissioner may adopt rules to implement and administer this chapter, including rules governing the dispute resolution process established in RCW 48.49.040.

(2) The commissioner may adopt rules to adopt or incorporate by reference without material change federal regulations adopted on or after the effective date of this section that implement P.L. 116-260 (enacted December 27, 2020).

**NEW SECTION. Sec. 21.** A new section is added to chapter 48.49 RCW to read as follows:

(1) On or before October 1, 2023, the commissioner, in collaboration with the health care authority and the department of health, must submit a report and any recommendations to the appropriate policy and fiscal committees of the legislature as to how balance billing for ground ambulance services can be prevented and whether ground ambulance services should be subject to the balance billing restrictions of this chapter. In developing the report and any recommendations, the commissioner must:

(a) Consider any recommendations made to congress by the advisory committee established in section 117 of P.L. 116-260 to review options to improve the disclosure of charges and fees for ground ambulance services, better inform consumers of insurance options for such services, and protect consumers from balance billing; and

(b) Consult with the department of health, the health care authority, the state auditor, consumers, hospitals, carriers, private ground ambulance service providers, fire service agencies, and local governmental entities that operate ground ambulance services, and include their perspectives in the final report.

(2) For purposes of this section, "ground ambulance services" means organizations licensed by the department of health that operate one or more ground vehicles designed and used to transport the ill and injured and to provide

personnel, facilities, and equipment to treat patients before and during transportation.

**NEW SECTION. Sec. 22.** A new section is added to chapter 71.24 RCW to read as follows:

If the insurance commissioner reports to the department that he or she has cause to believe that a provider licensed under this chapter has engaged in a pattern of violations of RCW 48.49.020 or 48.49.030, and the report is substantiated after investigation, the department may levy a fine upon the provider in an amount not to exceed \$1,000 per violation and take other formal or informal disciplinary action as permitted under the authority of the department.

**NEW SECTION. Sec. 23.** RCW 48.49.150 is recodified as a section in chapter 48.49 RCW, to be codified before RCW 48.49.140.

**NEW SECTION. Sec. 24.** 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. 25.** This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately.

Passed by the House March 7, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

## CHAPTER 264

[Engrossed Substitute House Bill 1694]

### PRIORITY CHEMICALS IN CONSUMER PRODUCTS—PFAS CHEMICALS

AN ACT Relating to logistical processes for the regulation of priority chemicals in consumer products; amending RCW 70A.350.050, 70A.350.030, 70A.350.020, and 70A.350.040; and adding a new section to chapter 70A.350 RCW.

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

**NEW SECTION. Sec. 1.** A new section is added to chapter 70A.350 RCW to read as follows:

(1) For purposes of the regulatory process established in this chapter, the department may consider any product identified in the department's final PFAS chemical action plan dated November 2021 as a source of or use of PFAS chemicals to be a priority consumer product under this chapter. No additional action, including publication in the Washington State Register, is required for the department to designate such a product as a priority consumer product for purposes of this chapter. For such products, the department may, under the process established in RCW 70A.350.040, determine regulatory actions and adopt rules to implement those regulatory determinations.

(2) Firefighting personal protective equipment, as defined in RCW 70A.400.005, is established as a priority consumer product for PFAS chemicals.

(3) For the products identified in this section, the department is directed to:

(a) Determine an initial set of regulatory actions under this chapter by June 1, 2024; and

(b) Adopt rules to implement the initial set of determinations of regulatory actions under (a) of this subsection by December 1, 2025.

**Sec. 2.** RCW 70A.350.050 and 2020 c 20 s 1455 are each amended to read as follows:

(1)(a) By June 1, 2020, and consistent with RCW 70A.350.030, the department shall identify priority consumer products that are a significant source of or use of priority chemicals specified in RCW 70A.350.010(12) (a) through (f).

(b) By June 1, 2022, and consistent with RCW 70A.350.040, the department must determine regulatory actions regarding the priority chemicals and priority consumer products identified in (a) of this subsection. The deadline of June 1, 2022, does not apply to the priority consumer products identified in section 1 of this act.

(c) By June 1, 2023, the department must adopt rules to implement regulatory actions determined under (b) of this subsection.

(2)(a) By June 1, 2024, and every five years thereafter, the department shall select at least five priority chemicals specified in RCW 70A.350.010(12) (a) through (g) that are identified consistent with RCW 70A.350.020.

(b) By June 1, 2025, and every five years thereafter, the department must identify priority consumer products that contain any new priority chemicals after notifying the appropriate committees of the legislature, consistent with RCW 70A.350.030.

(c) By June 1, 2027, and every five years thereafter, the department must determine regulatory actions for any priority chemicals in priority consumer products identified under (b) of this subsection, consistent with RCW 70A.350.040.

(d) By June 1, 2028, and every five years thereafter, the department must adopt rules to implement regulatory actions identified under (c) of this subsection.

(3)(a) The designation of priority chemicals by the department does not take effect until the adjournment of the regular legislative session immediately following the identification of chemicals, in order to allow an opportunity for the legislature to add to, limit, or otherwise amend the list of priority chemicals to be considered by the department.

(b) The designation of priority consumer products by the department does not take effect until the adjournment of the regular legislative session immediately following the identification of priority consumer products, in order to allow an opportunity for the legislature to add to, limit, or otherwise amend the list of priority consumer products to be considered by the department.

(c) The determination of regulatory actions by the department does not take effect until the adjournment of the regular legislative session immediately following the determination by the department, in order to allow an opportunity for the legislature to add to, limit, or otherwise amend the regulatory determinations by the department.

(d) Nothing in this subsection (3) limits the authority of the department to:

(i) Begin to identify priority consumer products for a priority chemical prior to the effective date of the designation of a priority chemical;



(ii) Begin to consider possible regulatory actions prior to the effective date of the designation of a priority consumer product; or

(iii) Initiate a rule-making process prior to the effective date of a determination of a regulatory action.

(4)(a) When identifying priority chemicals and priority consumer products under this chapter, the department must notify the public of the selection, including the identification of the peer-reviewed science and other sources of information that the department relied upon, the basis for the selection, and a draft schedule for making determinations. The notice must be published in the Washington State Register. The department shall provide the public with an opportunity for review and comment on the regulatory determinations.

(b)(i) By June 1, 2020, the department must create a stakeholder advisory process to provide expertise, input, and a review of the department's rationale for identifying priority chemicals and priority consumer products and proposed regulatory determinations. The input received from a stakeholder process must be considered and addressed when adopting rules.

(ii) The stakeholder process must include, but is not limited to, representatives from: Large and small business sectors; community, environmental, and public health advocacy groups; local governments; affected and interested businesses; an expert in scientific data analysis; and public health agencies.

**Sec. 3.** RCW 70A.350.030 and 2020 c 20 s 1453 are each amended to read as follows:

(1) Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, shall identify priority consumer products that are a significant source of or use of priority chemicals. The department must submit a report to the appropriate committees of the legislature at the time that it identifies a priority consumer product.

(2) When identifying priority consumer products under this section, the department must consider, at a minimum, the following criteria:

(a) The estimated volume of a priority chemical or priority chemicals added to, used in, or present in the consumer product;

(b) The estimated volume or number of units of the consumer product sold or present in the state;

(c) The potential for exposure to priority chemicals by sensitive populations or sensitive species when the consumer product is used, disposed of, or has decomposed;

(d) The potential for priority chemicals to be found in the outdoor environment, with priority given to surface water, groundwater, marine waters, sediments, and other ecologically sensitive areas, when the consumer product is used, disposed of, or has decomposed;

(e) If another state or nation has identified or taken regulatory action to restrict or otherwise regulate the priority chemical in the consumer product;

(f) The availability and feasibility of safer alternatives; and

(g) Whether the department has already identified the consumer product in a chemical action plan completed under chapter 70A.300 RCW as a source of a priority chemical or other reports or information gathered under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340, 70A.230, or 70A.400 RCW.

(3) The department is not required to give equal weight to each of the criteria in subsection (2)(a) through (g) of this section when identifying priority consumer products that use or are a significant source of priority chemicals.

(4) To assist with identifying priority consumer products under this section and making determinations as authorized under RCW 70A.350.040, the department may ~~((request))~~ order a manufacturer to submit a notice to the department that contains the information specified in RCW 70A.430.060 (1) through (6) or other information relevant to subsection (2)(a) through (d) of this section. The manufacturer must provide the notice to the department no later than six months after receipt of such a demand by the department.

(5)(a) Except as provided in (b) of this subsection, the department may not identify the following as priority consumer products under this section:

- (i) Plastic shipping pallets manufactured prior to 2012;
- (ii) Food or beverages;
- (iii) Tobacco products;
- (iv) Drug or biological products regulated by the United States food and drug administration;
- (v) Finished products certified or regulated by the federal aviation administration or the department of defense, or both, when used in a manner that was certified or regulated by such agencies, including parts, materials, and processes when used to manufacture or maintain such regulated or certified finished products;
- (vi) Motorized vehicles, including on and off-highway vehicles, such as all-terrain vehicles, motorcycles, side-by-side vehicles, farm equipment, and personal assistive mobility devices; and
- (vii) Chemical products used to produce an agricultural commodity, as defined in RCW 17.21.020.

(b) The department may identify the packaging of products listed in (a) of this subsection as priority consumer products.

(6) For an electronic product identified by the department as a priority consumer product under this section, the department may not make a regulatory determination under RCW 70A.350.040 to restrict or require the disclosure of a priority chemical in an inaccessible electronic component of the electronic product.

***\*Sec. 4. RCW 70A.350.020 and 2020 c 20 s 1452 are each amended to read as follows:***

***Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, must report to the appropriate committees of the legislature its decision to designate at least five priority chemicals that meet at least one of the following:***

***(1) The chemical or a member of a class of chemicals are identified by the department as a:***

***(a) High priority chemical of high concern for children under chapter 70A.430 RCW; or***

***(b) Persistent, bioaccumulative toxin under chapter 70A.300 RCW;***

***(2) The chemical or members of a class of chemicals are regulated:***

***(a) In consumer products under chapter 70A.430, 70A.405, 70A.222, 70A.335, 70A.340, 70A.230, or 70A.400 RCW; or***

(b) *As a hazardous substance under chapter 70A.300 or 70A.305 RCW; or*  
 (3) *The department determines the chemical or members of a class of chemicals are a concern for sensitive populations and sensitive species after considering the following factors:*

(a) *A chemical's or members of a class of chemicals' hazard traits or environmental or toxicological endpoints;*

(b) *A chemical's or members of a class of chemicals' aggregate effects;*

(c) *A chemical's or members of a class of chemicals' cumulative effects with other chemicals with the same or similar hazard traits or environmental or toxicological endpoints;*

(d) *A chemical's or members of a class of chemicals' environmental fate;*

(e) *The potential for a chemical or members of a class of chemicals to degrade, form reaction products, or metabolize into another chemical or a chemical that exhibits one or more hazard traits or environmental or toxicological endpoints, or both;*

(f) *The potential for the chemical or class of chemicals to contribute to or cause adverse health or environmental impacts;*

(g) *The chemical's or class of chemicals' potential impact on sensitive populations, sensitive species, or environmentally sensitive habitats;*

(h) *Potential exposures to the chemical or members of a class of chemicals based on:*

(i) *Reliable information regarding potential exposures to the chemical or members of a class of chemicals; and*

(ii) *Reliable information demonstrating occurrence, or potential occurrence, of multiple exposures to the chemical or members of a class of chemicals.*

*\*Sec. 4 was vetoed. See message at end of chapter.*

*\*Sec. 5. RCW 70A.350.040 and 2020 c 20 s 1454 are each amended to read as follows:*

(1) *Every five years, and consistent with the timeline established in RCW 70A.350.050, the department, in consultation with the department of health, must determine regulatory actions to increase transparency and to reduce the use of priority chemicals in priority consumer products. The department must submit a report to the appropriate committees of the legislature at the time that it determines regulatory actions. The department may:*

(a) *Determine that no regulatory action is currently required;*

(b) *Require a manufacturer to provide notice of the use of a priority chemical or class of priority chemicals consistent with RCW 70A.430.060; or*

(c) *Restrict or prohibit the manufacture, wholesale, distribution, sale, retail sale, or use, or any combination thereof, of a priority chemical or class of priority chemicals in a consumer product.*

(2)(a) *The department may order a manufacturer to submit information consistent with RCW 70A.350.030(4).*

(b) *The department may require a manufacturer to provide:*

(i) *A list of products containing priority chemicals;*

(ii) *Product ingredients;*

(iii) *Information regarding exposure and chemical hazard; and*

(iv) *A description of the amount and the function of the high priority chemical in the product.*

***(3) The department may restrict or prohibit a priority chemical or members of a class of priority chemicals in a priority consumer product when it determines:***

***(a) Safer alternatives are feasible and available; and***

***(b)(i) The restriction will reduce a significant source of or use of a priority chemical; or***

***(ii) The restriction is necessary to protect the health of sensitive populations or sensitive species.***

***(4) When determining regulatory actions under this section, the department may consider, in addition to the criteria pertaining to the selection of priority chemicals and priority consumer products that are specified in RCW 70A.350.020 and 70A.350.030, whether:***

***(a) The priority chemical or members of a class of priority chemicals are functionally necessary in the priority consumer product; and***

***(b) A restriction would be consistent with regulatory actions taken by another state or nation on a priority chemical or members of a class of priority chemicals in a product.***

***(5) A restriction or prohibition on a priority chemical in a consumer product may include exemptions or exceptions, including exemptions to address existing stock of a product in commerce at the time that a restriction takes effect.***

*\*Sec. 5 was vetoed. See message at end of chapter.*

Passed by the House March 10, 2022.

Passed by the Senate March 9, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

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

"I am returning herewith, without my approval as to Sections 4 and 5, Engrossed Substitute House Bill No. 1694 entitled:

"AN ACT Relating to logistical processes for the regulation of priority chemicals in consumer products."

Sections 4 and 5 of this bill are existing statutes related to two different reports that must be provided to the Legislature regarding priority chemicals. However, the proposed changes that were made to these statutes in the original bill were removed as this bill moved through the legislative process, leaving the current statutes unchanged. I am vetoing sections 4 and 5 of this bill because they do not make any amendments to the underlying statutes in question.

For these reasons I have vetoed Sections 4 and 5 of Engrossed Substitute House Bill No. 1694.

With the exception of Sections 4 and 5, Engrossed Substitute House Bill No. 1694 is approved."

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## CHAPTER 265

[Engrossed Second Substitute House Bill 1723]

### DIGITAL EQUITY—TELECOMMUNICATIONS SERVICES, DEVICES, AND TRAINING

AN ACT Relating to closing the digital equity divide by increasing the accessibility and affordability of telecommunications services, devices, and training; amending RCW 43.330.530, 43.330.532, 43.330.534, and 43.330.412; adding new sections to chapter 43.330 RCW; adding a new section to chapter 80.36 RCW; creating new sections; and providing an effective date.

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

PART 1

INTRODUCTION

NEW SECTION. Sec. 101. This act may be known and cited as the digital equity act.

NEW SECTION. Sec. 102. (1) The legislature finds that:

(a) Access to the internet is essential to participating in modern day society including, but not limited to, attending school and work, accessing health care, paying for basic services, connecting with family and friends, civic participation, and economic survival.

(b) For too many people in both rural and urban areas, the cost of being online is unaffordable. The legislature recognizes that building the last mile of broadband to the home is prohibitively expensive and that urban areas that are home to people earning low incomes continue to face digital redlining. Across the state there is a lack of affordable plans, barriers to enrolling in appropriate broadband plans, and barriers to fully utilize the opportunities that broadband offers.

(c) The COVID-19 pandemic has further highlighted the need for affordable access, devices, and skills to use the internet.

(d) The need for more accessible and affordable internet is felt more acutely among specific sectors of the population, especially Washington residents in rural areas, people who are currently earning low incomes, seniors and others who lack the skills necessary to get online, people with first languages other than English, immigrant communities, and people with disabilities.

(e) The federal government is allocating considerable sums for investment in digital equity that the state broadband office will help to leverage for residents across Washington. Continued comprehensive efforts, including coordination with tribal partners, are needed to ensure truly equitable access. The legislature recognizes that there will be a need for ongoing development and maintenance of broadband infrastructure. The legislature also recognizes that there is a need for ongoing outreach by community-based partnerships to provide enrollment assistance to lower the cost of internet subscriptions and devices.

(2) Therefore, the legislature intends to broaden access to the internet, the appropriate devices, and the skills to operate online safely and effectively so that all people in Washington can fully participate in our society, democracy, and economy by expanding assistance and support programs offered in the state and establishing the governor's statewide broadband office as a central access point to such programs.

PART 2

STATE DIGITAL EQUITY PLAN

NEW SECTION. Sec. 201. A new section is added to chapter 43.330 RCW to read as follows:

(1) The office, in consultation with the digital equity forum, the utilities and transportation commission, and the department of social and health services, must develop a state digital equity plan.

(a) The office must seek any available federal funding for purposes of developing and implementing the state digital equity plan.

(b) The state digital equity plan must include such elements as the office determines are necessary to leverage federal funding.

(2) In developing the plan, the office must identify measurable objectives for documenting and promoting digital equity among underserved communities located in the state.

(3) By December 1, 2023, the office must submit a report to the governor and the appropriate committees of the legislature, including the following:

(a) The digital equity plan described in subsection (1) of this section and measurable objectives described in subsection (2) of this section;

(b) A description of how the office collaborated with the membership of the digital equity forum, state agencies, and key stakeholders to develop the plan including, but not limited to, the following:

(i) Community anchor institutions;

(ii) Local governments;

(iii) Local educational agencies;

(iv) Entities that carry out workforce development programs; and

(v) Broadband service providers;

(c) A description of federal funding available to advance digital equity in the state, including any available information on the extent to which state residents have enrolled in the affordable connectivity program through an approved provider; and

(d) Recommendations of additional state law or policy that can be targeted to help improve broadband adoption and affordability for state residents. This may include recommendations of ongoing subsidies that the state can provide to low-income individuals and anchor institutions, as well as identification of revenue sources that other states or jurisdictions have developed to fund such subsidies or discounted rates.

(4) For the purpose of this section, "office" means the statewide broadband office established in RCW 43.330.532.

### PART 3

#### DIGITAL EQUITY OPPORTUNITY PROGRAM

**Sec. 301.** RCW 43.330.530 and 2019 c 365 s 2 are each amended to read as follows:

The definitions in this section apply throughout this section and RCW 43.330.532 through 43.330.538, 43.330.412, and sections 305 and 306 of this act unless the context clearly requires otherwise.

(1) "Board" means the public works board established in RCW 43.155.030.

(2) "Broadband" or "broadband service" means any service providing advanced telecommunications capability and internet access with transmission speeds that, at a minimum, provide twenty-five megabits per second download and three megabits per second upload.

(3) "Broadband infrastructure" means networks of deployed telecommunications equipment and technologies necessary to provide high-speed internet access and other advanced telecommunications services to end users.

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

(5) "Last mile infrastructure" means broadband infrastructure that serves as the final connection from a broadband service provider's network to the end-use customer's on-premises telecommunications equipment.

(6) "Local government" includes cities, towns, counties, municipal corporations, public port districts, public utility districts, quasi-municipal corporations, special purpose districts, and multiparty entities comprised of public entity members.

(7) "Middle mile infrastructure" means broadband infrastructure that links a broadband service provider's core network infrastructure to last mile infrastructure.

(8) "Office" means the governor's statewide broadband office established in RCW 43.330.532.

(9) "Tribe" means any federally recognized Indian tribe whose traditional lands and territories included parts of Washington.

(10) "Unserved areas" means areas of Washington in which households and businesses lack access to broadband service, as defined by the office, except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload.

(11)(a) "Advanced telecommunications capability" means, without regard to any transmission media or technology, high-speed, switched, broadband telecommunications capability that enables users to originate and receive high quality voice, data, graphics, and video telecommunications using any technology.

(b) "Advanced telecommunications capability" does not include access to a technology that delivers transmission speeds below the minimum download and upload speeds provided in the definition of broadband in this section.

(12) "Aging individual" means an individual 55 years of age or older.

(13) "Broadband adoption" means the process by which an individual obtains daily access to the internet:

(a) At a speed, quality, price, and capacity necessary for the individual to accomplish common tasks, such that the access qualifies as an advanced telecommunications capability;

(b) Providing individuals with the digital skills necessary to participate online;

(c) On a device connected to the internet and other advanced telecommunications services via a secure and convenient network, with associated end-user broadband infrastructure equipment such as wifi mesh router or repeaters to enable the device to adequately use the internet network; and

(d) With technical support and digital navigation assistance to enable continuity of service and equipment use and utilization.

(14) "Digital equity" means the condition in which individuals and communities in Washington have the information technology capacity that is needed for full participation in society and the economy.

(15)(a) "Digital inclusion" means the activities that are necessary to ensure that all individuals in Washington have access to, and the use of, affordable information and communication technologies including, but not limited to:

(i) Reliable broadband internet service;

(ii) Internet-enabled devices that meet the needs of the user; and

(iii) Applications and online content designed to enable and encourage self-sufficiency, participation, and collaboration.

(b) "Digital inclusion" also includes obtaining access to digital literacy training, the provision of quality technical support, and obtaining basic awareness of measures to ensure online privacy and cybersecurity.

(16) "Digital literacy" means the skills associated with using technology to enable users to use information and communications technologies to find, evaluate, organize, create, and communicate information.

(17) "Low-income" means households as defined by the department of social and health services, provided that the definition may not exceed the higher of 80 percent of area median household income or the self-sufficiency standard as determined by the University of Washington's self-sufficiency calculator.

(18) "Underserved population" means any of the following:

(a) Individuals who live in low-income households;

(b) Aging individuals;

(c) Incarcerated individuals;

(d) Veterans;

(e) Individuals with disabilities;

(f) Individuals with a language barrier, including individuals who are English learners or who have low levels of literacy;

(g) Individuals who are members of a racial or ethnic minority group;

(h) Individuals who primarily reside in a rural area;

(i) Children and youth in foster care; or

(j) Individuals experiencing housing instability.

**Sec. 302.** RCW 43.330.532 and 2021 c 258 s 2 are each amended to read as follows:

(1) The governor's statewide broadband office is established. The director of the office must be appointed by the governor. The office may employ staff necessary to carry out the office's duties as prescribed by chapter 365, Laws of 2019, subject to the availability of amounts appropriated for this specific purpose.

(2) The purpose of the office is to encourage, foster, develop, and improve affordable, quality broadband within the state in order to:

(a) Drive job creation, promote innovation, improve economic vitality, and expand markets for Washington businesses;

(b) Serve the ongoing and growing needs of Washington's education systems, health care systems, public safety systems, transportation systems, industries and business, governmental operations, and citizens; and

(c) Improve broadband accessibility and adoption for unserved and underserved communities and populations.

**Sec. 303.** RCW 43.330.534 and 2021 c 258 s 3 are each amended to read as follows:

(1) The office has the power and duty to:

(a) Serve as the central broadband planning body for the state of Washington;

(b) Coordinate with local governments, tribes, public and private entities, public housing agencies, nonprofit organizations, and consumer-owned and investor-owned utilities to develop strategies and plans promoting deployment of broadband infrastructure and greater broadband access, while protecting proprietary information;



(c) Review existing broadband initiatives, policies, and public and private investments;

(d) Develop, recommend, and implement a statewide plan to encourage cost-effective broadband access and to make recommendations for increased usage, particularly in rural and other unserved areas;

(e) Update the state's broadband goals and definitions for broadband service in unserved areas as technology advances, except that the state's definition for broadband service may not be actual speeds less than twenty-five megabits per second download and three megabits per second upload; and

(f) Encourage public-private partnerships to increase deployment and adoption of broadband services and applications.

(2) When developing plans or strategies for broadband deployment, the office must consider:

(a) Partnerships between communities, tribes, nonprofit organizations, local governments, consumer-owned and investor-owned utilities, and public and private entities;

(b) Funding opportunities that provide for the coordination of public, private, state, and federal funds for the purposes of making broadband infrastructure or broadband services available to rural and unserved areas of the state;

(c) Barriers to the deployment, adoption, and utilization of broadband service, including affordability of service and project coordination logistics; and

(d) Requiring minimum broadband service of twenty-five megabits per second download and three megabits per second upload speed, that is scalable to faster service.

(3) The office may assist applicants for the grant and loan program created in RCW 43.155.160, the digital equity opportunity program created in RCW 43.330.412, and the digital equity planning grant program created in section 305 of this act with seeking federal funding or matching grants and other grant opportunities for deploying or increasing adoption of broadband services.

(4) The office may take all appropriate steps to seek and apply for federal funds for which the office is eligible, and other grants, and accept donations, and must deposit these funds in the statewide broadband account created in RCW 43.155.165.

(5) The office shall coordinate an outreach effort to hard-to-reach communities and low-income communities across the state to provide information about broadband programs available to consumers of these communities. The outreach effort must include, but is not limited to, providing information to applicable communities about the federal lifeline program and other low-income broadband benefit programs. The outreach effort must be reviewed by the office of equity annually. The office may contract with other public or private entities to conduct outreach to communities as provided under this subsection.

(6) In carrying out its purpose, the office may collaborate with the utilities and transportation commission, the office of the chief information officer, the department of commerce, the community economic revitalization board, the department of transportation, the public works board, the state librarian, and all other relevant state agencies.

**Sec. 304.** RCW 43.330.412 and 2011 1st sp.s. c 43 s 607 are each amended to read as follows:

The ~~((community technology opportunity program is created to support the efforts of community technology programs throughout the state. The community technology))~~ digital equity opportunity program is created to advance broadband adoption and digital equity and inclusion throughout the state. The digital equity opportunity program must be administered by the department. The department may contract for services in order to carry out the department's obligations under this section.

(1) In implementing the ~~((community technology))~~ digital equity opportunity program the director must, to the extent funds are appropriated for this purpose:

(a) Provide organizational and capacity building support to ~~((community technology))~~ digital equity programs throughout the state~~((, and identify and facilitate the availability of other public and private sources of funds to enhance the purposes of the program and the work of community technology programs. No more than fifteen))~~ and additional support for the purpose of:

(i) Evaluating the impact and efficacy of activities supported by grants awarded under the covered programs; and

(ii) Developing, cataloging, disseminating, and promoting the exchange of best practices, with respect to and independent of the covered programs, in order to achieve digital equity. After July 1, 2024, no more than 15 percent of funds received by the director for the program may be expended on these functions;

(b) Establish a competitive grant program and provide grants to community technology programs to ~~((provide training and skill-building opportunities; access to hardware and software; internet connectivity; digital media literacy; assistance in the adoption of information and communication technologies in low-income and underserved areas of the state; and development of locally relevant content and delivery of vital services through))~~ advance digital equity and digital inclusion by providing:

(i) Training and skill-building opportunities;

(ii) Access to hardware and software, including online service costs such as application and software;

(iii) Internet connectivity;

(iv) Digital media literacy and cybersecurity training;

(v) Assistance in the adoption of information and communication technologies for low-income and underserved populations of the state;

(vi) Development of locally relevant content and delivery of vital services through technology; and

(vii) Technical support;

(c) Collaborate with broadband stakeholders, including broadband action teams across the state, in implementing the program as provided under this subsection; and

(d) For the purposes of this section, include wireless meshed network technology.

(2) Grant applicants must:

(a) Provide evidence that the applicant is a nonprofit entity or a public entity that is working in partnership with a nonprofit entity;

(b) Define the geographic area or population to be served;

(c) Include in the application the results of a needs assessment addressing, in the geographic area or among the population to be served: The impact of inadequacies in technology access or knowledge, barriers faced, and services needed;

(d) Explain in detail the strategy for addressing the needs identified and an implementation plan including objectives, tasks, and benchmarks for the applicant and the role that other organizations will play in assisting the applicant's efforts;

~~(e) ((Provide evidence of matching funds and resources, which are equivalent to at least one quarter of the grant amount committed to the applicant's strategy;~~

~~(f))~~ Provide evidence that funds applied for, if received, will be used to provide effective delivery of community technology services in alignment with the goals of this program and to increase the applicant's level of effort beyond the current level; and

~~((g))~~ (f) Comply with such other requirements as the director establishes.

(3) The digital equity forum shall review grant applications and provide input to the director regarding the prioritization of applications in awarding grants among eligible applicants under the program.

(4) In awarding grants under the digital equity opportunity program created in this section, the director must:

(a) Consider the input provided by the digital equity forum, as provided in subsection (3) of this section, in awarding grants; and

(b) Consider the extent to which the mix of grants awarded would increase in the number of prekindergarten through 12th grade students gaining access to greater levels of digital inclusion as a factor in awarding grants.

(5) The director may use no more than ~~((ten))~~ 10 percent of funds received for the ~~((community technology))~~ digital equity opportunity program to cover administrative expenses.

~~((4))~~ (6) The director must establish expected program outcomes for each grant recipient and must require grant recipients to provide an annual accounting of program outcomes.

**NEW SECTION. Sec. 305.** A new section is added to chapter 43.330 RCW to read as follows:

(1) Subject to the availability of funds appropriated for this specific purpose, the department shall establish a digital equity planning grant program.

(2)(a) This program must provide grants to local governments, institutions of higher education, workforce development councils, or other entities to fund the development of a digital equity plan for a discrete geographic region of the state. Only the director or the director's designee may authorize expenditures.

(b) Priority must be given for grant applications:

(i) Accompanied by express support from community or neighborhood-based nonprofit organizations, public development authorities, federally recognized Indian tribes in the state, or other community partners and partners from the categories of institutions identified in RCW 43.330.421; and

(ii) That intend to use community-based participatory action research methods as a part of the proposed plan.

(3) An applicant must submit an application to the department in order to be eligible for funding under this section.

(4) The digital equity forum shall review grant applications and provide input to the department regarding the prioritization of applications in awarding grants among eligible applicants under the program.

(5) The department must:

(a) Pursuant to subsection (2)(b) of this section, evaluate and rank applications using objective criteria such as the number of underserved populations served and subjective criteria such as the degree of support and engagement evidenced by the community who will be served;

(b) Consider the input provided by the forum, as provided in subsection (4) of this section, in awarding grants under the digital equity planning grant program; and

(c) Consider the extent to which the mix of grants awarded would increase in the number of prekindergarten through 12th grade students gaining access to greater levels of digital inclusion as a factor in awarding grants under the digital equity planning grant program.

(6) The department shall develop criteria for what the digital equity plans must include.

(7) The department may adopt rules to implement this section.

**NEW SECTION. Sec. 306.** A new section is added to chapter 43.330 RCW to read as follows:

(1) The Washington digital equity forum is established for the purpose of developing recommendations to advance digital connectivity in Washington state and advising the statewide broadband office on the digital equity opportunity program as provided under RCW 43.330.412 and the digital equity planning grant program as provided under section 305 of this act.

(2) In developing its recommendations to advance digital connectivity, the forum must:

(a) Develop goals that are consistent with the goals of the governor's statewide broadband office, as provided in RCW 43.330.536;

(b) Strengthen public-private partnerships;

(c) Solicit public input through public hearings or informational sessions;

(d) Work to increase collaboration and communication between local, state, and federal governments and agencies; and

(e) Recommend reforms to current universal service mechanisms.

(3) The directors of the governor's statewide broadband office and the Washington state office of equity are responsible for appointing participating members of the digital equity forum and no appointment may be made unless each director concurs in the appointment. In making appointments, the directors must prioritize appointees representing:

(a) Federally recognized tribes;

(b) State agencies involved in digital equity; and

(c) Underserved and unserved communities, including historically disadvantaged communities.

(4) A majority of the participating members appointed by the directors must appoint an administrative chair for the forum.

(5) In addition to members appointed by the directors, four legislators may serve on the digital equity forum in an ex officio capacity. Legislative participants must be appointed as follows:

(a) The speaker of the house of representatives must appoint one member from each of the two largest caucuses of the house of representatives; and

(b) The president of the senate must appoint one member from each of the two largest caucuses of the senate.

(6)(a) Funds appropriated to the forum may be used to compensate, for any work done in connection with the forum, additional persons who have lived experience navigating barriers to digital connectivity and digital equity.

(b) Each member of the digital equity forum shall serve without compensation but may be reimbursed for travel expenses as authorized in RCW 43.03.050 and 43.03.060.

(7) Staff for the digital equity forum must be provided by the governor's statewide broadband office and the Washington state office of equity. The governor's statewide broadband office and the Washington state office of equity are jointly responsible for transmitting the recommendations of the digital equity forum to the legislature, consistent with RCW 43.01.036, by October 28, 2025, and every odd-numbered year thereafter.

#### PART 4 DIGITAL EQUITY ACCOUNT

**NEW SECTION. Sec. 401.** A new section is added to chapter 80.36 RCW to read as follows:

(1) The digital equity account is created in the state treasury. Moneys in the account may be spent only after appropriation.

(2) Any amounts appropriated by the legislature to the account, private contributions, or any other source directed to the account, must be deposited into the account. Funds from sources outside the state, from private contributions, federal or other sources may be directed to the specific purposes of the digital equity opportunity program or digital equity planning grant program.

(3) The legislature may appropriate moneys in the account only for the purposes of:

(a) RCW 43.330.412, the digital equity opportunity program; and

(b) Section 305 of this act, the digital equity planning grant program.

#### PART 5 MISCELLANEOUS PROVISIONS

**NEW SECTION. Sec. 501.** The director of the department of commerce or the director's designee, and the director of the statewide broadband office or the director's designee, may take any actions necessary to ensure that the provisions of this act are implemented on the date identified in section 502 of this act.

**NEW SECTION. Sec. 502.** Sections 101, 102, 301 through 305, and 401 of this act take effect July 1, 2023.

**NEW SECTION. Sec. 503.** 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. 504.** If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2022, in the omnibus appropriations act, this act is null and void.

Passed by the House March 7, 2022.

Passed by the Senate March 4, 2022.

Approved by the Governor March 31, 2022.  
Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 266

[Substitute House Bill 1724]

### PERMANENT SUPPORTIVE HOUSING—OVERSIGHT AND COORDINATION

AN ACT Relating to ensuring oversight and coordination of permanent supportive housing resources to maximize the creation of high quality housing opportunities for people living with disabling conditions in communities across Washington; amending RCW 43.185B.020; adding a new section to chapter 43.330 RCW; and creating a new section.

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

**NEW SECTION. Sec. 1.** The legislature recognizes permanent supportive housing as an evidence-based practice to ending the cycle of chronic homelessness and creating affordable housing for people living with behavioral health conditions, other disabling conditions, and extremely low incomes. The legislature finds that as greater investment has been allocated for permanent supportive housing capital, operations, maintenance, and services in order to meet the need in communities across the state, greater coordination of state and local resources is required to ensure these resources are being leveraged effectively so that the maximum number of high quality permanent supportive housing units are created each year. Therefore, the legislature intends to create a permanent supportive housing advisory committee to provide advice, recommendations, and stakeholder engagement of resource coordination to bring high quality permanent supportive housing to scale as efficiently as possible and to add a permanent supportive housing representative to the affordable housing advisory board.

**NEW SECTION. Sec. 2.** A new section is added to chapter 43.330 RCW to read as follows:

(1) An advisory committee on permanent supportive housing is established with members as provided in this section.

(a) One representative of the aging and long-term support administration at the department of social and health services;

(b) One representative of the health care authority;

(c) One representative of the developmental disabilities administration;

(d) One representative from a city that invests resources in permanent supportive housing;

(e) One representative from a city with the largest number of chronically homeless households;

(f) One representative from a county that invests resources in permanent supportive housing;

(g) One representative from a county with the largest number of chronically homeless households;

(h) One representative of public housing authorities as created under chapter 35.82 RCW;

(i) One permanent supportive housing service provider;

(j) One permanent supportive housing developer;

(k) One permanent supportive housing building operator;

(l) One permanent supportive housing resident;

- (m) One permanent supportive housing researcher;
- (n) One permanent supportive housing advocate;
- (o) One representative from the behavioral health sector;
- (p) One representative of the health care sector; and
- (q) One representative of each of the following permanent supportive housing populations:

- (i) Single adults;
- (ii) Older adults over age 55;
- (iii) Families with children;
- (iv) The American Indian and Alaska Native community;
- (v) Communities of color;
- (vi) The LGBTQIA+ community;
- (vii) The intellectual and developmental disability community;
- (viii) The mental health disability community;
- (ix) The substance use disorder community; and
- (x) The physical disability community.

(2)(a) The members of the advisory committee shall be appointed by the director. Members must reflect the geographic, racial, and ethnic diversity of the state of Washington and be inclusive of historically marginalized communities.

(b) The members of the advisory committee must be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) The advisory committee shall:

- (a) Select a chair from among its membership;
- (b) Meet quarterly;
- (c) Provide guidance and recommendations on the administration of permanent supportive housing resources managed by the department, including recommendations to ensure alignment of capital, services, and operating investments and fidelity with the provision of permanent supportive housing as defined in RCW 36.70A.030; and

(d) Until December 31, 2027, report its recommendations to enhance the coordination and availability of permanent supportive housing to the appropriate committees of the legislature and the governor by December 1st of each year.

(4) The director and the director of the office of supportive housing shall regularly consult with the advisory committee. The department shall convene the advisory committee for its initial meeting no later than November 1, 2022. The advisory committee shall be staffed by the department.

**Sec. 3.** RCW 43.185B.020 and 2003 c 40 s 1 are each amended to read as follows:

(1) The department shall establish the affordable housing advisory board to consist of (~~(twenty-two)~~) 23 members.

(a) The following (~~(nineteen)~~) 20 members shall be appointed by the governor:

- (i) Two representatives of the residential construction industry;
- (ii) Two representatives of the home mortgage lending profession;
- (iii) One representative of the real estate sales profession;
- (iv) One representative of the apartment management and operation industry;
- (v) One representative of the for-profit housing development industry;
- (vi) One representative of for-profit rental housing owners;

(vii) One representative of the nonprofit housing development industry;  
(viii) One representative of homeless shelter operators;  
(ix) One representative of lower-income persons;  
(x) One representative of special needs populations;  
(xi) One representative of public housing authorities as created under chapter 35.82 RCW;

(xii) Two representatives of the Washington association of counties, one representative shall be from a county that is located east of the crest of the Cascade mountains;

(xiii) Two representatives of the association of Washington cities, one representative shall be from a city that is located east of the crest of the Cascade mountains;

(xiv) One representative to serve as chair of the affordable housing advisory board;

(xv) One representative of organizations that operate site-based permanent supportive housing and deliver onsite supportive housing services; and

(xvi) One representative at large.

(b) The following three members shall serve as ex officio, nonvoting members:

(i) The director or the director's designee;

(ii) The executive director of the Washington state housing finance commission or the executive director's designee; and

(iii) The secretary of social and health services or the secretary's designee.

(2)(a) The members of the affordable housing advisory board appointed by the governor shall be appointed for four-year terms, except that the chair shall be appointed to serve a two-year term. The terms of five of the initial appointees shall be for two years from the date of appointment and the terms of six of the initial appointees shall be for three years from the date of appointment. The governor shall designate the appointees who will serve the two-year and three-year terms. The members of the advisory board shall serve without compensation, but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(b) The governor, when making appointments to the affordable housing advisory board, shall make appointments that reflect the cultural diversity of the state of Washington.

(3) The affordable housing advisory board shall serve as the department's principal advisory body on housing and housing-related issues, and replaces the department's existing boards and task forces on housing and housing-related issues.

(4) The affordable housing advisory board shall meet regularly and may appoint technical advisory committees, which may include members of the affordable housing advisory board, as needed to address specific issues and concerns.

(5) The department, in conjunction with the Washington state housing finance commission and the department of social and health services, shall supply such information and assistance as are deemed necessary for the advisory board to carry out its duties under this section.

(6) The department shall provide administrative and clerical assistance to the affordable housing advisory board.



Passed by the House February 12, 2022.  
Passed by the Senate March 2, 2022.  
Approved by the Governor March 31, 2022.  
Filed in Office of Secretary of State April 1, 2022.

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## CHAPTER 267

[Engrossed Substitute House Bill 1846]

### DATA CENTERS—TAX PREFERENCES

AN ACT Relating to providing a tax preference for rural and nonrural data centers; amending RCW 82.08.986 and 82.12.986; adding new sections to chapter 82.08 RCW; adding a new section to chapter 82.12 RCW; creating new sections; and providing expiration dates.

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

**NEW SECTION. Sec. 1.** (1) The legislature finds that data centers are a cornerstone for strong internet infrastructure that is critical to the continuing prosperity of Washington's vibrant digital economy.

(2) The legislature further finds that the data center industry is experiencing explosive growth across the nation and the competition among states for data center investments has increased dramatically. A department of commerce study, *2018 State of the Data Center Industry, An Analysis of Washington's Competitiveness*, found that data center growth in rural Washington is at the lower end of the growth rate experienced by other major competitive markets.

(3) The legislature recognizes that rural county data center investments are necessary but insufficient for the state's total economy and competitiveness. Washington is the only state that restricts incentives geographically. As a result, data centers serving urban counties requiring higher performance and that offer colocation services for multiple tenants that foster technology ecosystems are lost to other states, particularly neighboring Oregon.

(4) The legislature further finds that data centers are one of the most energy-intensive building types, consuming 10 to 50 times the energy per floor space of a typical commercial office building. In addition, the legislature finds that it is imperative that the economic expansion of data centers not result in negative environmental impacts to the communities in which the data centers are located. To this end, the legislature encourages data centers to be good environmental stewards for their community through adopting practices to mitigate negative environmental impacts of data centers, such as the use of energy derived from renewable resources, redirecting waste heat for alternative uses, or other industrial symbiosis practices.

(5) The legislature therefore intends to encourage additional investments in data technology facilities through expanding and extending the current sales and use tax exemption for rural county data centers and establishing a sales and use tax exemption pilot program for data centers in counties with populations over 800,000, which will in turn incentivize local economic development, increased local tax revenues, and construction and trade jobs across Washington through the development of additional data center facilities.

**NEW SECTION. Sec. 2.** (1) This section is the tax preference performance statement for the tax preferences contained in sections 3, 4, 5, and 6, chapter . . . , Laws of 2022 (sections 3, 4, 5, and 6 of this act). This performance statement is

only intended to be used for subsequent evaluation of the tax preferences. It is not intended to create a private right of action by any party or be used to determine eligibility for preferential tax treatment.

(2) The legislature categorizes these sales and use tax exemptions on eligible server equipment and eligible power infrastructure equipment at eligible computer data centers as ones intended to: Induce certain designated behavior by taxpayers as indicated in RCW 82.32.808(2)(a); improve industry competitiveness as indicated in RCW 82.32.808(2)(b); create or retain jobs as indicated in RCW 82.32.808(2)(c); and reduce structural inefficiencies in the tax structure as indicated in RCW 82.32.808(2)(d).

(3) It is the legislature's specific public policy objective to:

(a) Maintain and grow the existing data center sector in Washington state, and encourage development of new data center facilities and refurbishment of existing data centers, thereby increasing the competitiveness of Washington's tax structure, which will increase or maintain construction and trade job growth in rural areas, and increase local tax revenue streams.

(b) Improve industry competitiveness and to increase, create, or retain jobs in computer data centers in counties with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates, thereby increasing family wage jobs. It is the legislature's intent to establish a pilot program that would provide a sales and use tax exemption on eligible server equipment and power infrastructure installed in eligible computer data centers, charges made for labor and services rendered in respect to installing eligible server equipment, and for construction, installation, repair, alteration, or improvement of eligible power infrastructures in order to increase investment in data center construction, leasing, and other investment throughout rural counties and counties with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates, thereby growing employment in the technology industry while adding real and personal property to state and local property tax rolls, thereby increasing the county tax base.

(4) The legislature intends to extend the expiration date of the tax preference. The joint legislative audit and review committee shall conduct a review and determine if the tax preference is (a) generating capital investment in new computer data centers, refurbished data centers, or existing data centers (e.g., replacement server equipment), (b) generating state and local tax collections from data center investment and operations, and (c) generating or maintaining construction and trade jobs in the state. The review must factor in changing economic conditions.

(5) In order to obtain the data necessary to perform the review in subsection (4) of this section, the joint legislative audit and review committee may refer to any available data source, including data available from the department of revenue regarding rural county property tax assessments and employment data from the employment security department.

**Sec. 3.** RCW 82.08.986 and 2017 c 135 s 26 are each amended to read as follows:

(1)(a) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center to which a valid exemption certificate applies, and to charges made for

labor and services rendered in respect to installing eligible server equipment. ~~((Until January 1, 2026, the))~~

(b) This exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure at an eligible computer data center for which an exemption certificate has been issued.

(c) No new exemption certificates may be issued on or after July 1, 2036.

(d) The exemptions provided in this section expire July 1, 2048.

(e) Each calendar year, the department may issue no more than six certificates for data centers which qualify through refurbishment. Certificates are available for refurbished data centers on a first-in-time basis based on the date the application required under this section is received by the department. Each qualifying business may apply for only one certificate for a refurbished data center each calendar year.

~~(2)(a) In order to ((claim the exemption))~~ obtain an exemption certificate under this section, a qualifying business or a qualifying tenant must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(b) A qualifying business or a qualifying tenant claiming the exemption under this section must present the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(c) With respect to computer data centers for which the commencement of construction occurs after July 1, 2015, but before July 1, 2019, the exemption provided in this section is limited to no more than eight computer data centers, with total eligible data centers provided under this section limited to twelve from July 1, 2015, through ~~((July 1, 2025))~~ the effective date of this section. Tenants of qualified data centers do not constitute additional data centers under the limit. The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department.

(d) The exemption certificate is effective on the date the application is received by the department, which is deemed to be the date of issuance. Only purchases on or after the date of issuance qualify for the exemption under this section. No tax refunds are authorized for purchases made before the effective date of the exemption certificate.

(e) Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(3)(a)(i) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment ~~((at the))~~ assigned to an eligible computer data center has increased by a minimum of:

~~((+))~~ (A) Thirty-five family wage employment positions; or, if lower

~~((#))~~ (B) Three family wage employment positions for each twenty thousand square feet of space or less that is newly dedicated to housing working servers at the eligible computer data center. For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3)(a)~~((#))~~ (i)(B) is based only on the space occupied by the qualifying tenant in the eligible computer data center.

(ii) After the minimum number of family wage employment positions as required under (a)(i) of this subsection (3) is established, a qualifying business or a qualifying tenant must maintain the minimum family wage employment positions required under (a)(i) of this subsection (3) while the exemption certificate is valid.

(b) In calculating the net increase in family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase, since the date of issuance of the qualifying business's exemption certificate, in family wage employment positions employed by qualifying tenants; and

(B) The net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(ii)(A) Qualifying tenants, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant ~~((must be in proportion to the amount of space in the eligible computer data center occupied by the qualifying tenant compared to the total amount of space in the eligible computer data center occupied by all qualifying tenants))~~ is equal to the net increase in family wage employment positions assigned to an eligible computer data center as described in (b)(ii)(A)(I) and (II) of this subsection (3), multiplied by the percentage of total space within the eligible computer data center occupied by the qualifying tenant. Any combination of qualifying business and qualifying tenant family wage employment positions may meet this requirement.

(C)(I) In the instance of an existing data center facility that was ineligible, regardless of the date of commencement of construction, that later obtains an exemption certificate under this section, the data center may count the existing employment positions that are dedicated to the data center toward the family wage employment position requirements if the employment positions meet the requirements of a family wage employment position as described in (c)(i)(B) and (C) of this subsection (3).

(II) In the instance of the refurbishment of an existing data center that previously qualified under the data center program, the data center may count the existing employment positions dedicated to the data center toward the family wage employment position requirements if the employment positions meet the requirements of a family wage employment position as described in (c)(i)(B) and (C) of this subsection (3).

(c)(i) For purposes of this subsection~~((;))~~:

(A) For exemption certificates issued before the effective date of this section, family wage employment positions are new permanent employment positions requiring forty hours of weekly work, or their equivalent, on a full-time basis ((at the)) assigned to an eligible computer data center and receiving a wage equivalent to or greater than one hundred fifty percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(B) For exemption certificates issued on or after the effective date of this section, family wage employment positions are new permanent employment positions requiring 40 hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(C) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position. ((For purposes of this subsection (3)(c), "new"))

(D) "New permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the ((owner)) qualifying business or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the ((owner of the eligible computer data center)) qualifying business and by employees of qualifying tenants.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the applicable requirements in (c)(i) of this subsection (3) are met.

(d) ((A)) (i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (3), previously exempted sales and use taxes are immediately due and payable ((for a qualifying business or qualifying tenant that does not meet the requirements of this subsection)) and any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, except as described in (d)(iii) of this subsection (3).

(ii) The department of labor and industries must, at the request of the department, assist in determining whether the requirements of this subsection (3) have been met.

(iii) If the department, with the assistance of the department of labor and industries, finds that a failure to meet the requirements of this subsection (3) is due to circumstances beyond the control of the qualifying business or qualifying

tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may provide exceptions or extensions to the requirements of this subsection (3).

(iv) Any repayment of taxes triggered by the failure of a qualifying business or qualifying tenant to meet the requirements of this subsection (3) must be calculated in proportion to the duration of time for which any applicable requirement was not met.

(v) If the department is notified that a qualifying business or qualifying tenant fails to meet the requirements of this subsection (3), the department may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met.

(4) For exemption certificates issued on or after the effective date of this section:

(a) Within three years after being placed in service, the qualifying business operating a newly constructed data center must certify to the department that it has attained certification under one or more of the following sustainable design or green building standards:

(i) BREEAM for new construction or BREEAM in-use;

(ii) Energy star;

(iii) Envision;

(iv) ISO 50001-energy management;

(v) LEED for building design and construction or LEED for operations and maintenance;

(vi) Green globes for new construction or green globes for existing buildings;

(vii) UL 3223; or

(viii) Other reasonable standards approved by the department.

(b) The department may require qualifying businesses and qualifying tenants to submit records necessary to verify the requirements under (a) of this subsection have been met.

(c)(i) For a qualifying business or qualifying tenant that does not meet the requirements of (a) of this subsection (4), all previously exempted sales and use taxes may be immediately due and payable, any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, and an additional 10 percent penalty is assessed, except as described in (c)(ii) of this subsection (4).

(ii) If the department finds that a failure to meet the requirements of this subsection (4) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may, at its discretion, provide exceptions or extensions to the requirements of this subsection (4). The department may, at its discretion, coordinate with agencies with relevant expertise to assist in determining whether the requirements have been met.

(5) A qualifying business or a qualifying tenant claiming the exemption under this section is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through:

(a) Coordinating with the industrial waste coordination program established under RCW 43.31.625 to identify and provide technical assistance in implementing industrial symbiosis projects;

(b) To the extent possible, procuring or contracting for power from renewable sources;

(c) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems; and

(d) Taking actions to conserve, reuse, and replace water. This includes using water efficient fixtures and practices; treating, infiltrating, and harvesting rainwater; recycling water before discharging; partnering with local water utilities to use discharged water for irrigation and other water conservation purposes; using reclaimed water where possible for data center operations; and supporting water restoration in local watersheds.

(6) A qualifying business or a qualifying tenant claiming an exemption under this section or RCW 82.12.986 must complete an annual tax performance report with the department as required under RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

~~((5)) (7)(a) ((The exemption provided in this section does not apply to:~~

~~(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and~~

~~(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (5).~~

~~(b) If a person claims an exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this section until paid in full.~~

(6)) The certificate holder may not at any time assign or transfer a certificate without the prior written consent of the department. The department must allow certificate transfers if the certificate holder meets the following requirements:

(i) The certificate assignee or transferee is qualified to do business in the state;

(ii) The assignee or transferee acknowledges the transfer of the certificate in writing;

(iii) The assignee or transferee agrees to keep and perform all the terms of the certificates; and

(iv) An assignment or transfer of the certificate is to an entity that:

(A) Controls, is controlled by, or under common control with, the certificate holder;

(B) Acquires all or substantially all of the stock or assets of the certificate holder; or

(C) Is the resulting entity of a merger or consolidation with the certificate holder.

(b) In the event the assignee or transferee acquires eligible server equipment in a qualifying asset sale under (a)(iv)(B) of this subsection, the purchaser shall be deemed to purchase the eligible server equipment pursuant to the transferred certificate.

(8) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliated" means that one person has a direct or indirect ownership interest of at least twenty percent in another person.

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW. This definition of "building" only applies to computer data centers for which commencement of construction occurs on or after July 1, 2015.

(c) "Certificate of occupancy" means:

(i) For a newly constructed eligible computer data center, the certificate of occupancy issued by a local governing authority for the structure or structures which comprise the eligible computer data center; or

(ii) For renovations of an eligible computer data center, the certificate of occupancy issued by a local governing authority for the renovated structure or structures that comprise the eligible computer data center.

(d)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; permanent security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in ~~((e))~~ (d)(i)(A) through (C) of this subsection ~~((f))~~ (8).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least one hundred thousand square feet.

~~((d))~~ (e) "Electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

~~((e))~~ (f)(i) "Eligible computer data center" means a computer data center:

(A) Located in a rural county as defined in RCW 82.14.370 at the time an application for an exemption under this section is received;



(B) Having at least twenty thousand square feet dedicated to housing working servers (~~(, where the server space has not previously been dedicated to housing working servers)~~); and

(C) For which the commencement of construction occurs:

(I) After March 31, 2010, and before July 1, 2011;

(II) After March 31, 2012, and before July 1, 2015; or

(III) After June 30, 2015, and before July 1, ~~((2025))~~ 2035.

(i) For purposes of this section, "commencement of construction" means the date that a building permit is issued under the building code adopted under RCW 19.27.031 for construction of the computer data center. The construction of a computer data center includes the expansion, renovation, or ~~((other improvements made to))~~ refurbishment of existing facilities regardless of whether the existing facility was previously ineligible and regardless of whether commencement of construction of the existing facility occurred outside of the dates listed in (f)(i)(C)(I) through (III) of this subsection, including leased or rented space. "Commencement of construction" does not include soil testing, site clearing and grading, site preparation, or any other related activities that are initiated before the issuance of a building permit for the construction of the foundation of a computer data center. If no building permit is required for renovation or refurbishment, then the date that renovation or refurbishment begins is the "commencement of construction."

~~((iii) With respect to facilities in existence on April 1, 2010, that are expanded, renovated, or otherwise improved after March 31, 2010, or facilities in existence on April 1, 2012, that are expanded, renovated, or otherwise improved after March 31, 2012, or facilities in existence on July 1, 2015, that are expanded, renovated, or otherwise improved after June 30, 2015, an eligible computer data center includes only the portion of the computer data center meeting the requirements in (e)(i)(B) of this subsection (6).~~

~~(f))~~ (g) "Eligible power infrastructure" means all fixtures and equipment owned by a qualifying business or qualifying tenant and necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes generators; wiring; cogeneration equipment; and associated fixtures and equipment, such as electrical switches, batteries, and distribution, testing, and monitoring equipment. The term does not include substations.

~~((g))~~ (h) "Eligible server equipment" means:

(i) For a qualifying business whose computer data center qualifies as an eligible computer data center under ~~((e))~~ (f)(i)(C)(I) of this subsection ~~((6))~~ (8), the original server equipment installed in an eligible computer data center on or after April 1, 2010, and before January 1, 2026, and replacement server equipment. For purposes of this subsection ~~((6)(g))~~ (8)(h)(i), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, 2018.

(ii) For a qualifying business whose computer data center qualifies as an eligible computer data center under ~~((e))~~ (f)(i)(C)(II) of this subsection ~~((6))~~ (8), "eligible server equipment" means the original server equipment installed in

an eligible computer data center on or after April 1, 2012, and before January 1, 2026, and replacement server equipment. For purposes of this subsection ~~((6)(g))~~ (8)(h)(ii), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; and

(B) Is installed and put into regular use before April 1, 2024.

~~iii((A))~~ For a qualifying business whose computer data center qualifies as an eligible computer data center under ~~((e))~~ (f)(i)(C)(III) of this subsection ~~((6))~~ (8), "eligible server equipment" means the original server equipment installed in a building within an eligible computer data center on or after July 1, 2015, and replacement server equipment. Server equipment installed in movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping containers, is not "directly installed in a building." For purposes of this subsection ~~((6)(g))~~ (8)(h)(iii)~~((A))~~, "replacement server equipment" means server equipment that ~~((replaces))~~:

(A)(I) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; or

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before the effective date of this section for the exemptions provided under this section and RCW 82.12.986; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than twelve years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

(iv) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center with an exemption certificate on or after April 1, 2010, ~~((and before January 1, 2026,))~~ and replacement server equipment. For purposes of this subsection ~~((6)(g))~~ (8)(h)(iv), "replacement server equipment" means server equipment that:

(A)(I) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or RCW 82.12.986; or

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before the effective date of this section for the exemptions provided under this section and RCW 82.12.986; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use ~~((before April 1, 2024; and~~

(C) For tenants leasing space in an eligible computer data center built after July 1, 2015, is installed and put into regular use no later than twelve years after the date of the certificate of occupancy) no later than 12 years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

~~((H))~~ (i) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does not include the state or

federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

((+)) (j) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state. The term also does not include a lessee of space in an eligible computer data center under ((+)) (f)(i)(C)(I) of this subsection ((+)) (8), if the lessee and lessor are affiliated and:

(i) That space will be used by the lessee to house server equipment that replaces server equipment previously installed and operated in that eligible computer data center by the lessor or another person affiliated with the lessee; or

(ii) Prior to May 2, 2012, the primary use of the server equipment installed in that eligible computer data center was to provide electronic data storage and data management services for the business purposes of either the lessor, persons affiliated with the lessor, or both.

((+)) (k)(i) "Refurbished" or "refurbishment" means a substantial improvement to an eligible computer data center to update or modernize servers, server space, ventilation, or power infrastructure in an eligible computer data center.

(ii) For a qualifying computer data center to be considered refurbished, the qualifying business must certify, in a form and manner prescribed by the department, that the refurbishment of an eligible computer data center is complete. The refurbishment is considered complete on the date that the improved portion of the computer data center is operationally complete and able to be used for its intended purpose.

(l) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services, including cloud services, for internal use by the owner or lessee of the computer data center, for clients of the owner or lessee of the computer data center, or both. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards, monitors, printers, and mice.

(9) This section expires July 1, 2048.

**Sec. 4.** RCW 82.12.986 and 2015 3rd sp.s. c 6 s 303 are each amended to read as follows:

(1)(a) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses or qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center for which an exemption certificate under RCW 82.08.986 has been

issued, and to the use of labor and services rendered in respect to installing such server equipment.

~~((The))~~ (b) Until July 1, 2048, this exemption also applies to the use by a qualifying business or qualifying tenant of eligible power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure at an eligible computer data center for which an exemption certificate under RCW 82.08.986 has been issued.

(c) The exemptions provided in this section expire July 1, 2048.

(2) A qualifying business or a qualifying tenant is not eligible for the exemption under this section unless the department issued an exemption certificate to the qualifying business or a qualifying tenant for the exemption provided in RCW 82.08.986.

~~(3)((a) The exemption provided in this section does not apply to:~~

~~(i) Any person who has received the benefit of the deferral program under chapter 82.60 RCW on: (A) The construction, renovation, or expansion of a structure or structures used as a computer data center; or (B) machinery or equipment used in a computer data center; and~~

~~(ii) Any person affiliated with a person within the scope of (a)(i) of this subsection (3).~~

~~(b) If a person has received the benefit of the exemption under this section and subsequently receives the benefit of the deferral program under chapter 82.60 RCW on either the construction, renovation, or expansion of a structure or structures used as a computer data center or machinery or equipment used in a computer data center, the person must repay the amount of taxes exempted under this section. Interest as provided in chapter 82.32 RCW applies to amounts due under this subsection (3)(b) until paid in full. A person is not required to repay taxes under this subsection with respect to property and services for which the person is required to repay taxes under RCW 82.08.986(5).~~

~~(4))~~ The definitions and requirements in RCW 82.08.986 apply to this section.

(4) The exemption provided in subsection (1) of this section does not apply to the use of eligible server equipment and eligible power infrastructure, and the labor and services provided in subsection (1) of this section, if first used by qualifying businesses or qualifying tenants on or after July 1, 2048.

(5) This section expires July 1, 2053.

NEW SECTION. Sec. 5. A new section is added to chapter 82.08 RCW to read as follows:

(1)(a) An exemption from the tax imposed by RCW 82.08.020 is provided for sales to qualifying businesses and to qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center to which a valid exemption certificate applies, and to charges made for labor and services rendered in respect to installing eligible server equipment.

(b) The exemption also applies to sales to qualifying businesses and to qualifying tenants of eligible power infrastructure, including labor, material, equipment, and services rendered in respect to constructing, installing, repairing, altering, or improving eligible power infrastructure at an eligible computer data center for which an exemption certificate has been issued.

(c) No new exemption certificates may be issued on or after July 1, 2028.

(d) The exemptions provided in this section expire July 1, 2038.

(2)(a)(i) In order to obtain an exemption, a qualifying business must be located in a county with a population over 800,000, as determined by the April 1, 2021, office of financial management population estimates and must submit an application to the department for an exemption certificate. The application must include the information necessary, as required by the department, to determine that a business or tenant qualifies for the exemption under this section. The department must issue exemption certificates to qualifying businesses and qualifying tenants. The department may assign a unique identification number to each exemption certificate issued under this section.

(ii) For the purposes of demonstrating that the requirements of this subsection (2)(a) are met, a qualifying business must submit records of available power for customers at the time of the application for the exemption under this section. The qualifying business must demonstrate that it has a minimum of 1.5 megawatts of available power. The qualifying business must provide requests for proposals, pricing offered, and marketing materials associated with the requirements of this subsection, as required by the department, as supporting documentation that the requirements of this subsection (2)(a) have been met.

(b) A qualifying business or a qualifying tenant claiming the exemption under this section must present the seller with an exemption certificate in a form and manner prescribed by the department. The seller must retain a copy of the certificate for the seller's files.

(c)(i) The exemptions provided in this section are limited to qualifying businesses or tenants, and the department is authorized to approve:

(A) Six applications to obtain the exemptions for qualifying businesses in the first calendar year of the exemption; and

(B) Six applications to obtain the exemptions for qualifying businesses in each year, calendar year three through calendar year six, of the exemption.

(ii) The exemption is available on a first-in-time basis based on the date the application required under this section is received by the department.

(d) The exemption certificate is effective on the date the application is received by the department, which is deemed to be the date of issuance. Only purchases on or after the date of issuance qualify for the exemption under this section. No tax refunds are authorized for purchases made before the effective date of the exemption certificate.

(e) Exemption certificates expire two years after the date of issuance, unless construction has been commenced.

(f) A qualifying tenant must contract for a minimum electrical capacity of 150 kilowatts for server and computer equipment in a qualifying business. Tenants that previously qualified under RCW 82.08.986 or 82.12.986 must reapply if they intend to expand into a qualifying business.

(3)(a)(i) Within six years of the date that the department issued an exemption certificate under this section to a qualifying business or a qualifying tenant with respect to an eligible computer data center, the qualifying business or qualifying tenant must establish that net employment assigned to an eligible computer data center has increased by a minimum of three family wage employment positions for each incremental increase of 20,000 square feet of space that is newly dedicated to housing working servers at the eligible computer data center. For qualifying tenants, the number of family wage employment positions that must be increased under this subsection (3)(a)(i) is

based only on the space occupied by the qualifying tenant in the eligible computer data center.

(ii) After the minimum number of family wage employment positions as required under (a)(i) of this subsection (3) is established, a qualifying business or a qualifying tenant must maintain the minimum family wage employment positions required under (a)(i) of this subsection (3) while the exemption certificate is valid.

(b) In calculating the number of family wage employment positions:

(i) The owner of an eligible computer data center, in addition to its own net increase in family wage employment positions, may include:

(A) The net increase, since the date of issuance of the qualifying business's exemption certificate, in family wage employment positions employed by qualifying tenants; and

(B) The net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(ii)(A) Qualifying tenants, in addition to their own net increase in family wage employment positions, may include:

(I) A portion of the net increase in family wage employment positions employed by the owner; and

(II) A portion of the net increase in family wage employment positions described in (c)(ii)(B) of this subsection (3).

(B) The portion of the net increase in family wage employment positions to be counted under this subsection (3)(b)(ii) by each qualifying tenant is equal to the net increase in family wage employment positions assigned to an eligible computer data center as described in (b)(ii)(A)(I) and (II) of this subsection (3), multiplied by the percentage of total space within the eligible computer data center occupied by the qualifying tenant. Any combination of qualifying business and qualifying tenant family wage employment positions may meet this requirement.

(c)(i) For purposes of this subsection:

(A) For exemption certificates issued on or after the effective date of this section, family wage employment positions are new permanent employment positions requiring 40 hours of weekly work, or their equivalent, on a full-time basis assigned to an eligible computer data center and receiving a wage equivalent to or greater than 125 percent of the per capita personal income of the county in which the qualified project is located as published by the employment security department. The per capita personal income to be used to determine qualification for any year is the amount that was established for the immediate prior year.

(B) An employment position may not be counted as a family wage employment position unless the employment position is entitled to health insurance coverage provided by the employer of the employment position.

(C) "New permanent employment position" means an employment position that did not exist or that had not previously been filled as of the date that the department issued an exemption certificate to the qualifying business or qualifying tenant of an eligible computer data center, as the case may be.

(ii)(A) Family wage employment positions include positions filled by employees of the qualifying business and by employees of qualifying tenants.

(B) Family wage employment positions also include individuals performing work at an eligible computer data center as an independent contractor hired by the owner of the eligible computer data center or as an employee of an independent contractor hired by the owner of the eligible computer data center, if the work is necessary for the operation of the computer data center, such as security and building maintenance, and provided that all of the requirements in (c)(i) of this subsection (3) are met.

(d)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (3), all previously exempted sales and use taxes immediately due and payable, and any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, except as described in (d)(iii) of this subsection (3).

(ii) The department of labor and industries must, at the request of the department, assist in determining whether the requirements of this subsection (3) have been met.

(iii) If the department, with the assistance of the department of labor and industries, finds that a failure to meet the requirements of this subsection (3) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may provide exceptions or extensions to the requirements of this subsection (3).

(iv) Any repayment of taxes triggered by the failure of a qualifying business or qualifying tenant to meet the requirements of this subsection (3) must be calculated in proportion to the duration of time for which any applicable requirement was not met.

(v) If the department is notified that a qualifying business or qualifying tenant fails to meet the requirements of this subsection (3), the department may require a qualifying business or qualifying tenant to submit records necessary to determine whether the requirements have been met.

(4) For exemption certificates issued on or after the effective date of this section:

(a) Within three years after being placed in service, the qualifying business operating a newly constructed data center must certify to the department that it has attained certification under one or more of the following sustainable design or green building standards:

(i) BREEAM for new construction or BREEAM in-use;

(ii) Energy star;

(iii) Envision;

(iv) ISO 50001-energy management;

(v) LEED for building design and construction or LEED for operations and maintenance;

(vi) Green globes for new construction or green globes for existing buildings;

(vii) UL 3223; or

(viii) Other reasonable standards approved by the department.

(b) The department may require qualifying businesses and qualifying tenants to submit records necessary to verify the requirements under this subsection (4) have been met.

(c)(i) For a qualifying business or qualifying tenant that does not meet the requirements of this subsection (4), all previously exempted sales and use taxes are immediately due and payable, any exemption certificate issued to that qualifying business or qualifying tenant under this section is canceled, and an additional 10 percent penalty is assessed, except as described in (c)(ii) of this subsection (4).

(ii) If the department finds that a failure to meet the requirements of this subsection (4) is due to circumstances beyond the control of the qualifying business or qualifying tenant including, but not limited to, a declaration of an economic recession, pandemic, or natural disaster affecting data center operations, the department may, at its discretion, provide exceptions or extensions to the requirements of this subsection (4). The department may, at its discretion, coordinate with agencies with relevant expertise to assist in determining whether the requirements of this subsection (4) have been met.

(5) A qualifying business or a qualifying tenant claiming the exemption under this section is encouraged to take direct steps to adopt practices to mitigate negative environmental impacts resulting from expanded use of data centers, including through:

(a) Coordinating with the industrial waste coordination program established under RCW 43.31.625 to identify and provide technical assistance in implementing industrial symbiosis projects;

(b) To the extent possible, procuring or contracting for power from renewable sources;

(c) Adopting practices to improve the energy efficiency of existing data centers, including through upgrading and consolidating technology, managing data center airflow, and adjusting and improving heating, ventilation, and air conditioning systems; and

(d) Taking actions to conserve, reuse, and replace water. This includes using water efficient fixtures and practices; treating, infiltrating, and harvesting rainwater; recycling water before discharging; partnering with local water utilities to use discharged water for irrigation and other water conservation purposes; using reclaimed water where possible for data center operations; and supporting water restoration in local watersheds.

(6) Qualifying businesses and tenants must claim an exemption under this section in the current tax year when the taxes would have been due unless an extension is filed with the department.

(7) A qualifying business or a qualifying tenant claiming an exemption under this section must complete an annual tax performance report as required in RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(8)(a) The certificate holder may not at any time assign or transfer a certificate without the prior written consent of the department. The department must allow certificate transfers if the certificate holder meets the following requirements:

(i) The certificate assignee or transferee is qualified to do business in the state;

(ii) The assignee or transferee acknowledges the transfer of the certificate in writing;



(iii) The assignee or transferee agrees to keep and perform all the terms of the certificates; and

(iv) An assignment or transfer of the certificate is to an entity that:

(A) Controls, is controlled by, or under common control with, the certificate holder;

(B) Acquires all or substantially all of the stock or assets of the certificate holder; or

(C) Is the resulting entity of a merger or consolidation with the certificate holder.

(b) Information submitted on the tax performance report is not subject to the confidentiality provisions of RCW 82.32.330 and may be disclosed to the public upon request, except as provided otherwise in RCW 82.32.330.

(9) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Affiliated" means that one person has a direct or indirect ownership interest of at least 20 percent in another person.

(b) "Building" means a fully enclosed structure with a weather resistant exterior wall envelope or concrete or masonry walls designed in accordance with the requirements for structures under chapter 19.27 RCW.

(c) "Certificate of occupancy" means:

(i) For a newly constructed eligible computer data center, the certificate of occupancy issued by a local governing authority for the structure or structures which comprise the eligible computer data center; or

(ii) For renovations of an eligible computer data center, the certificate of occupancy issued by a local governing authority for the renovated structure or structures that comprise the eligible computer data center.

(d)(i) "Computer data center" means a facility comprised of one or more buildings, which may be comprised of multiple businesses, constructed or refurbished specifically, and used primarily, to house working servers, where the facility has the following characteristics: (A) Uninterruptible power supplies, generator backup power, or both; (B) sophisticated fire suppression and prevention systems; and (C) enhanced physical security, such as: Restricted access to the facility to selected personnel; continuous on-site security guards; video camera surveillance; an electronic system requiring passcodes, keycards, or biometric scans, such as hand scans and retinal or fingerprint recognition; or similar security features.

(ii) For a computer data center comprised of multiple buildings, each separate building constructed or refurbished specifically, and used primarily, to house working servers is considered a computer data center if it has all of the characteristics listed in (d)(i)(A) through (C) of this subsection (9).

(iii) A facility comprised of one building or more than one building must have a combined square footage of at least 100,000 square feet.

(e) "Electronic data storage and data management services" includes, but is not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services.

(f) "Eligible computer data center" means a computer data center having at least 20,000 square feet dedicated for housing working servers. Movable or fixed stand-alone, prefabricated, or modular units, including intermodal shipping containers, do not qualify as "eligible computer data centers."

(g) "Eligible power infrastructure" means all fixtures and equipment owned by a qualifying business or qualifying tenant and necessary for the transformation, distribution, or management of electricity that is required to operate eligible server equipment within an eligible computer data center. The term includes generators; wiring; cogeneration equipment; and associated fixtures and equipment, such as electrical switches, batteries, and distribution, testing, and monitoring equipment. The term does not include substations.

(h)(i) "Eligible server equipment" means for a qualifying business whose computer data center qualifies as an eligible computer data center, the original server equipment installed in an eligible computer data center on or after the effective date of this section, and replacement server equipment.

(ii) For purposes of this subsection (9)(h), "replacement server equipment" means server equipment that:

(A) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or section 6 of this act; and

(B) Is installed and put into regular use within 10 years of the effective date of this section.

(iii) For a qualifying tenant who leases space within an eligible computer data center, "eligible server equipment" means the original server equipment installed within the space it leases from an eligible computer data center with an exemption certificate on or within 10 years of the effective date of this section, and replacement server equipment. For purposes of this subsection (9)(h)(iii), "replacement server equipment" means server equipment that:

(A)(I) Replaces existing server equipment, if the sale or use of the server equipment to be replaced qualified for an exemption under this section or section 6 of this act and is installed and put into regular use before July 1, 2027; or

(II) Replaces existing server equipment in a computer data center that meets the following requirements: Was ineligible before the effective date of this section for the exemptions provided under this section and section 6 of this act; has been refurbished; and to which a valid exemption certificate applies; and

(B) Is installed and put into regular use no later than 12 years after the date of the certificate of occupancy or completion of refurbishment of the computer data center.

(i) "Qualifying business" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that is the owner of an eligible computer data center. The term does not include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(j) "Qualifying tenant" means a business entity that exists for the primary purpose of engaging in commercial activity for profit and that leases space from a qualifying business within an eligible computer data center. The term does not

include the state or federal government or any of their departments, agencies, and institutions; tribal governments; political subdivisions of this state; or any municipal, quasi-municipal, public, or other corporation created by the state or federal government, tribal government, municipality, or political subdivision of the state.

(k)(i) "Refurbished" or "refurbishment" means a substantial improvement to an eligible computer data center for which a certificate of occupancy is not issued. Such an improvement must update or modernize servers, server space, ventilation, or power infrastructure in an eligible computer data center.

(ii) For a qualifying computer data center to be considered refurbished, the qualifying business must certify, in a form and manner prescribed by the department, that the refurbishment of an eligible computer data center is complete. The refurbishment is considered complete on the date that the improved portion of the computer data center is operationally complete and able to be used for its intended purpose.

(l) "Server equipment" means the computer hardware located in an eligible computer data center and used exclusively to provide electronic data storage and data management services for internal use by the owner or lessee of the computer data center, for clients of the owner. For the purposes of this subsection, "electronic data storage and data management services" include, but are not limited to: Providing data storage and backup services, providing computer processing power, hosting enterprise software applications, and hosting websites. The term also includes providing services such as email, web browsing and searching, media applications, and other online services, regardless of whether a charge is made for such services. "Server equipment" also includes computer software necessary to operate the computer hardware. "Server equipment" does not include personal computers, the racks upon which the server equipment is installed, and computer peripherals such as keyboards, monitors, printers, and mice, unless used within the eligible computer data center.

(10) This section expires July 1, 2038.

**NEW SECTION, Sec. 6.** A new section is added to chapter 82.12 RCW to read as follows:

(1) An exemption from the tax imposed by RCW 82.12.020 is provided for the use by qualifying businesses or qualifying tenants of eligible server equipment to be installed, without intervening use, in an eligible computer data center, and to the use of labor and services rendered in respect to installing such server equipment. The exemption also applies to the use by a qualifying business or qualifying tenant of eligible power infrastructure, including labor and services rendered in respect to installing, repairing, altering, or improving such infrastructure.

(2) The exemption provided in this section does not apply to any person for whom the exemption under section 5 of this act does not apply.

(3) A qualifying business or a qualifying tenant claiming an exemption under this section must complete an annual tax performance report as required in RCW 82.32.534. The report must identify construction firm names and employment levels used for constructing, renovating, refurbishing, or remodeling the data centers.

(4) The definitions and requirements in section 5 of this act apply to this section.

(5) The exemption provided in subsection (1) of this section does not apply to the use of eligible server equipment and eligible power infrastructure, and the labor and services provided in subsection (1) of this section, if first used by qualifying businesses or qualifying tenants on or after July 1, 2038.

(6) This section expires July 1, 2043.

**NEW SECTION. Sec. 7.** A new section is added to chapter 82.08 RCW to read as follows:

From the effective date of this section, in order to obtain the exemption provided in RCW 82.08.986 or section 5 of this act, a qualifying business or qualifying tenant must certify to the department that, for new construction work to be performed on the site of the computer data center, the computer data center receiving an exemption under RCW 82.08.986 or section 5 of this act will be constructed by the prime contractor and its subcontractors in a way that includes community workforce agreements or project labor agreements and the payment of area standard prevailing wages and apprenticeship utilization requirements, provided the following apply:

(1) The owner and the prime contractor and all of its subcontractors regardless of tier have the absolute right to select any qualified and responsible bidder for the award of contracts on a specified project without reference to the existence or nonexistence of any agreements between such bidder and any party to such project labor agreement, and only when such bidder is willing, ready, and able to become a party to, signs a letter of assent, and complies with such agreement or agreements, should it be designated the successful bidder; and

(2) It is understood that this is a self-contained, stand-alone agreement, and that by virtue of having become bound to such agreement or agreements, neither the project contractor nor the subcontractors are obligated to sign any other local, area, or national agreement.

**\*NEW SECTION. Sec. 8.** *(1) The department of commerce shall contract with the Pacific Northwest national laboratory to:*

*(a) Evaluate Washington's current and future electric grid resilience and reliability based on current and projected electric energy production, the state's ability to produce energy in state, Washington's reliance on energy production outside of the state, and its energy grid interdependence with other western states;*

*(b) Identify key grid resilience and reliability challenges that could emerge under multiple future scenarios given adoption of new energy technologies, changes in residential and industrial energy demand, and changes in energy production and availability from both in and out-of-state sources;*

*(c) Study the impact to the future electric grid resulting from the growth of the information technology sector, including the impact of increased data center energy demand from the tax exemptions provided in RCW 82.08.986 or section 5 of this act;*

*(d) Review and incorporate existing models, data, and study findings including, but not limited to, the "Washington 2021 state energy strategy and the 2021 northwest power plan," to ensure a duplication of efforts does not*

*occur and to highlight modeling gaps related to regional grid resilience planning;*

*(e) Convene an advisory group to inform scenario development and review results, which may include representatives from the Washington State University Pacific Northwest national laboratory advanced grid institute, utilities and transportation commission, relevant legislative committees, energy producers, utilities, labor, environmental organizations, tribes, and communities at high risk of rolling blackouts and power supply inadequacy; and*

*(f) Develop recommendations for enhancing electric grid reliability and resiliency for Washington that includes considerations of affordability, equity, and federal funding opportunities.*

*(2) The department of commerce shall report by December 1, 2022, in compliance with RCW 43.01.036, the Pacific Northwest national laboratory's findings and recommendations to the appropriate committees of the legislature concerning electric grid resilience and reliability evaluated in subsection (1) of this section.*

*(3) This section expires December 1, 2023.*

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

***\*NEW SECTION. Sec. 9. If specific funding for the purposes of section 8 of this act, referencing section 8 of this act by bill or chapter number and section number, is not provided by June 30, 2022, in the omnibus appropriations act, section 8 of this act is null and void.***

*\*Sec. 9 was vetoed. See message at end of chapter.*

Passed by the House March 4, 2022.

Passed by the Senate March 10, 2022.

Approved by the Governor March 31, 2022, with the exception of certain items that were vetoed.

Filed in Office of Secretary of State April 1, 2022.

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

"I am returning herewith, without my approval as to Sections 8 and 9, Engrossed Substitute House Bill No. 1846 entitled:

"AN ACT Relating to providing a tax preference for rural and nonrural data centers."

Section 8 of Engrossed Substitute House Bill 1846 directs the Department of Commerce to contract with the Pacific Northwest National Laboratory to evaluate Washington's current and future grid resilience and reliability. Ensuring that our electricity grid continues to reliably provide power to Washingtonians is a priority, which is why we have multiple state agencies already working on this issue. The requirements established in Section 8 are redundant to resource adequacy planning efforts already underway at the Utilities and Transportation Commission, the Department of Commerce, and the Northwest Power and Conservation Council. And while we welcome additional resources for scenario planning and modeling, that work should be undertaken by the Northwest Power and Conservation Council, as it aligns with their existing forecasting and modeling work. Section 9 of this bill is a null and void clause that would nullify Section 8 if no funding is provided for the purposes of Section 8. Although no funding was provided for Section 8, Section 9 is no longer relevant or necessary because I am vetoing Section 8.

For these reasons I have vetoed Sections 8 and 9 of Engrossed Substitute House Bill No. 1846.

With the exception of Sections 8 and 9, Engrossed Substitute House Bill No. 1846 is approved."

## CHAPTER 268

[Substitute House Bill 1901]

## CIVIL PROTECTION ORDERS—VARIOUS PROVISIONS

AN ACT Relating to updating laws concerning civil protection orders to further enhance and improve their efficacy and accessibility; amending RCW 7.105.010, 7.105.050, 7.105.070, 7.105.075, 7.105.100, 7.105.105, 7.105.115, 7.105.120, 7.105.150, 7.105.155, 7.105.165, 7.105.200, 7.105.205, 7.105.250, 7.105.255, 7.105.305, 7.105.310, 7.105.320, 7.105.340, 7.105.400, 7.105.450, 7.105.460, 7.105.500, 7.105.510, 7.105.555, 7.105.902, 9.41.040, 9.41.800, 9.41.801, 42.56.240, 4.08.050, 9.41.042, 12.04.140, 12.04.150, 13.40.0357, 13.40.0357, 13.40.160, 13.40.193, 13.40.265, and 26.28.015; amending 2021 c 215 s 87 (uncodified); reenacting and amending RCW 70.02.240; reenacting RCW 50.20.050 and 70.02.230; creating a new section; repealing RCW 7.105.055, 7.105.060, 7.105.170, and 7.105.901; providing effective dates; providing expiration dates; and declaring an emergency.

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

**Sec. 1.** RCW 7.105.010 and 2021 c 215 s 2 are each amended to read as follows:

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable adult without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse," for the purposes of a vulnerable adult protection order, means intentional, willful, or reckless action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. "Abuse" includes sexual abuse, mental abuse, physical abuse, personal exploitation, and improper use of restraint against a vulnerable adult, which have the following meanings:

(a) "Improper use of restraint" means the inappropriate use of chemical, physical, or mechanical restraints for convenience or discipline, or in a manner that: (i) Is inconsistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW; (ii) is not medically authorized; or (iii) otherwise constitutes abuse under this section.

(b) "Mental abuse" means an intentional, willful, or reckless verbal or nonverbal action that threatens, humiliates, harasses, coerces, intimidates, isolates, unreasonably confines, or punishes a vulnerable adult. "Mental abuse" may include ridiculing, yelling, swearing, or withholding or tampering with prescribed medications or their dosage.

(c) "Personal exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(d) "Physical abuse" means the intentional, willful, or reckless action of inflicting bodily injury or physical mistreatment. "Physical abuse" includes, but is not limited to, striking with or without an object, slapping, pinching, strangulation, suffocation, kicking, shoving, or prodding.

(e) "Sexual abuse" means any form of nonconsensual sexual conduct including, but not limited to, unwanted or inappropriate touching, rape,

molestation, indecent liberties, sexual coercion, sexually explicit photographing or recording, voyeurism, indecent exposure, and sexual harassment. "Sexual abuse" also includes any sexual conduct between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not the sexual conduct is consensual.

(3) "Chemical restraint" means the administration of any drug to manage a vulnerable adult's behavior in a way that reduces the safety risk to the vulnerable adult or others, has the temporary effect of restricting the vulnerable adult's freedom of movement, and is not standard treatment for the vulnerable adult's medical or psychiatric condition.

(4) "Consent" in the context of sexual acts means that at the time of sexual contact, there are actual words or conduct indicating freely given agreement to that sexual contact. Consent must be ongoing and may be revoked at any time. Conduct short of voluntary agreement does not constitute consent as a matter of law. Consent cannot be freely given when a person does not have capacity due to disability, intoxication, or age. Consent cannot be freely given when the other party has authority or control over the care or custody of a person incarcerated or detained.

(5)(a) "Course of conduct" means a pattern of conduct composed of a series of acts over a period of time, however short, evidencing a continuity of purpose. "Course of conduct" includes any form of communication, contact, or conduct, including the sending of an electronic communication, but does not include constitutionally protected free speech. Constitutionally protected activity is not included within the meaning of "course of conduct."

(b) In determining whether the course of conduct serves any legitimate or lawful purpose, a court should consider whether:

(i) Any current contact between the parties was initiated by the respondent only or was initiated by both parties;

(ii) The respondent has been given clear notice that all further contact with the petitioner is unwanted;

(iii) The respondent's course of conduct appears designed to alarm, annoy, or harass the petitioner;

(iv) The respondent is acting pursuant to any statutory authority including, but not limited to, acts which are reasonably necessary to:

(A) Protect property or liberty interests;

(B) Enforce the law; or

(C) Meet specific statutory duties or requirements;

(v) The respondent's course of conduct has the purpose or effect of unreasonably interfering with the petitioner's privacy or the purpose or effect of creating an intimidating, hostile, or offensive living environment for the petitioner; or

(vi) Contact by the respondent with the petitioner or the petitioner's family has been limited in any manner by any previous court order.

(6) "Court clerk" means court administrators in courts of limited jurisdiction and elected court clerks.

(7) "Dating relationship" means a social relationship of a romantic nature. Factors that the court may consider in making this determination include: (a)

The length of time the relationship has existed; (b) the nature of the relationship; and (c) the frequency of interaction between the parties.

(8) "Domestic violence" means:

(a) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one intimate partner by another intimate partner; or

(b) Physical harm, bodily injury, assault, or the infliction of fear of physical harm, bodily injury, or assault; nonconsensual sexual conduct or nonconsensual sexual penetration; coercive control; unlawful harassment; or stalking of one family or household member by another family or household member.

(9) "Electronic monitoring" has the same meaning as in RCW 9.94A.030.

(10) "Essential personal effects" means those items necessary for a person's immediate health, welfare, and livelihood. "Essential personal effects" includes, but is not limited to, clothing, cribs, bedding, medications, personal hygiene items, cellular phones and other electronic devices, and documents, including immigration, health care, financial, travel, and identity documents.

(11) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, assisted living facilities; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed or certified by the department of social and health services.

(12) "Family or household members" means: (a) Persons related by blood, marriage, domestic partnership, or adoption; (b) persons who currently or formerly resided together; (c) persons who have a biological or legal parent-child relationship, including stepparents and stepchildren and grandparents and grandchildren, or a parent's intimate partner and children; and (d) a person who is acting or has acted as a legal guardian.

(13) "Financial exploitation" means the illegal or improper use of, control over, or withholding of, the property, income, resources, or trust funds of the vulnerable adult by any person or entity for any person's or entity's profit or advantage other than for the vulnerable adult's profit or advantage. "Financial exploitation" includes, but is not limited to:

(a) The use of deception, intimidation, or undue influence by a person or entity in a position of trust and confidence with a vulnerable adult to obtain or use the property, income, resources, government benefits, health insurance benefits, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult;

(b) The breach of a fiduciary duty, including, but not limited to, the misuse of a power of attorney, trust, or a guardianship or conservatorship appointment, that results in the unauthorized appropriation, sale, or transfer of the property, income, resources, or trust funds of the vulnerable adult for the benefit of a person or entity other than the vulnerable adult; or

(c) Obtaining or using a vulnerable adult's property, income, resources, or trust funds without lawful authority, by a person or entity who knows or clearly should know that the vulnerable adult lacks the capacity to consent to the release or use of the vulnerable adult's property, income, resources, or trust funds.

(14) "Firearm" means a weapon or device from which a projectile or projectiles may be fired by an explosive such as gunpowder. "Firearm" does not



include a flare gun or other pyrotechnic visual distress signaling device, or a powder-actuated tool or other device designed solely to be used for construction purposes. "Firearm" also includes parts that can be assembled to make a firearm.

(15) "Full hearing" means a hearing where the court determines whether to issue a full protection order.

(16) "Full protection order" means a protection order that is issued by the court after notice to the respondent and where the parties had the opportunity for a full hearing by the court. "Full protection order" includes a protection order entered by the court by agreement of the parties to resolve the petition for a protection order without a full hearing.

(17) "Hospital" means a facility licensed under chapter 70.41 or 71.12 RCW or a state hospital defined in chapter 72.23 RCW and any employee, agent, officer, director, or independent contractor thereof.

(18) "Interested person" means a person who demonstrates to the court's satisfaction that the person is interested in the welfare of a vulnerable adult, that the person has a good faith belief that the court's intervention is necessary, and that the vulnerable adult is unable, due to incapacity, undue influence, or duress at the time the petition is filed, to protect his or her own interests.

(19) "Intimate partner" means: (a) Spouses or domestic partners; (b) former spouses or former domestic partners; (c) persons who have a child in common regardless of whether they have been married or have lived together at any time, unless the child is conceived through sexual assault; or (d) persons who have or have had a dating relationship where both persons are at least 13 years of age or older.

(20)(a) "Isolate" or "isolation" means to restrict a person's ability to communicate, visit, interact, or otherwise associate with persons of his or her choosing. Isolation may be evidenced by acts including, but not limited to:

(i) Acts that prevent a person from sending, making, or receiving his or her personal mail, electronic communications, or telephone calls; or

(ii) Acts that prevent or obstruct a person from meeting with others, such as telling a prospective visitor or caller that the person is not present or does not wish contact, where the statement is contrary to the express wishes of the person.

(b) The term "isolate" or "isolation" may not be construed in a manner that prevents a guardian or limited guardian from performing his or her fiduciary obligations under chapter 11.92 RCW or prevents a hospital or facility from providing treatment consistent with the standard of care for delivery of health services.

(21) "Judicial day" means days of the week other than Saturdays, Sundays, or legal holidays.

(22) "Mechanical restraint" means any device attached or adjacent to a vulnerable adult's body that the vulnerable adult cannot easily remove that restricts freedom of movement or normal access to the vulnerable adult's body. "Mechanical restraint" does not include the use of devices, materials, or equipment that are (a) medically authorized, as required, and (b) used in a manner that is consistent with federal or state licensing or certification requirements for facilities, hospitals, or programs authorized under chapter 71A.12 RCW.

(23) "Minor" means a person who is under 18 years of age.

(24) "Neglect" means: (a) A pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain the physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission by a person or entity with a duty of care that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety including, but not limited to, conduct prohibited under RCW 9A.42.100.

(25) "Nonconsensual" means a lack of freely given consent.

(26) "Nonphysical contact" includes, but is not limited to, written notes, mail, telephone calls, email, text messages, contact through social media applications, contact through other technologies, ((and)) or contact through third parties.

(27) "Petitioner" means any named petitioner or any other person identified in the petition on whose behalf the petition is brought.

(28) "Physical restraint" means the application of physical force without the use of any device, for the purpose of restraining the free movement of a vulnerable adult's body. "Physical restraint" does not include (a) briefly holding, without undue force, a vulnerable adult in order to calm or comfort him or her, or (b) holding a vulnerable adult's hand to safely escort him or her from one area to another.

(29) "Possession" means having an item in one's custody or control. Possession may be either actual or constructive. Actual possession occurs when the item is in the actual physical custody of the person charged with possession. Constructive possession occurs when there is no actual physical possession, but there is dominion and control over the item.

(30) "Respondent" means the person who is identified as the respondent in a petition filed under this chapter.

(31) "Sexual conduct" means any of the following:

(a) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing;

(b) Any intentional or knowing display of the genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent;

(c) Any intentional or knowing touching or fondling of the genitals, anus, or breasts, directly or indirectly, including through clothing, that the petitioner is forced to perform by another person or the respondent;

(d) Any forced display of the petitioner's genitals, anus, or breasts for the purposes of arousal or sexual gratification of the respondent or others;

(e) Any intentional or knowing touching of the clothed or unclothed body of a child under the age of 16, if done for the purpose of sexual gratification or arousal of the respondent or others; or

(f) Any coerced or forced touching or fondling by a child under the age of 16, directly or indirectly, including through clothing, of the genitals, anus, or breasts of the respondent or others.

(32) "Sexual penetration" means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person

including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration.

(33) "Stalking" means any of the following:

- (a) Any act of stalking as defined under RCW 9A.46.110;
- (b) Any act of cyberstalking as defined under RCW 9.61.260; or
- (c) Any course of conduct involving repeated or continuing contacts, attempts to contact, monitoring, tracking, surveillance, keeping under observation, disrupting activities in a harassing manner, or following of another person that:

(i) Would cause a reasonable person to feel intimidated, frightened, under duress, significantly disrupted, or threatened and that actually causes such a feeling;

(ii) Serves no lawful purpose; and

(iii) The respondent knows, or reasonably should know, threatens, frightens, or intimidates the person, even if the respondent did not intend to intimidate, frighten, or threaten the person.

(34) "Temporary protection order" means a protection order that is issued before the court has decided whether to issue a full protection order. "Temporary protection order" includes ex parte temporary protection orders, as well as temporary protection orders that are reissued by the court pending the completion of a full hearing to decide whether to issue a full protection order. An "ex parte temporary protection order" means a temporary protection order that is issued without prior notice to the respondent.

(35) "Unlawful harassment" means:

(a) A knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner; or

(b) A single act of violence or threat of violence directed at a specific person that seriously alarms, annoys, harasses, or is detrimental to such person, and that serves no legitimate or lawful purpose, which would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner. A single threat of violence must include: (i) A malicious and intentional threat as described in RCW 9A.36.080(1)(c); or (ii) the presence of a firearm or other weapon.

(36) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Subject to a guardianship under RCW 11.130.265 or adult subject to conservatorship under RCW 11.130.360; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from a person under contract with the department of social and health services to provide services in the home under chapter 74.09 or 74.39A RCW; or

(g) Who self-directs his or her own care and receives services from a personal aide under chapter 74.39 RCW.

(37)(a) "Coercive control" means a pattern of behavior that is used to cause another to suffer physical, emotional, or psychological harm, and in purpose or effect unreasonably interferes with a person's free will and personal liberty. In determining whether the interference is unreasonable, the court shall consider the context and impact of the pattern of behavior from the perspective of a similarly situated person. Examples of coercive control include, but are not limited to, engaging in any of the following:

(i) Intimidation or controlling or compelling conduct by:

(A) Damaging, destroying, or threatening to damage or destroy, or forcing the other party to relinquish, goods, property, or items of special value;

(B) Using technology to threaten, humiliate, harass, stalk, intimidate, exert undue influence over, or abuse the other party, including by engaging in cyberstalking, monitoring, surveillance, impersonation, manipulation of electronic media, or distribution of or threats to distribute actual or fabricated intimate images;

(C) Carrying, exhibiting, displaying, drawing, or threatening to use, any firearm or any other weapon apparently capable of producing bodily harm, in a manner, under circumstances, and at a time and place that either manifests an intent to intimidate the other party or that warrants alarm by the other party for their safety or the safety of other persons;

(D) Driving recklessly with the other party or minor children in the vehicle;

(E) Communicating, directly or indirectly, the intent to:

(I) Harm the other party's children, family members, friends, or pets, including by use of physical forms of violence;

(II) Harm the other party's career;

(III) Attempt suicide or other acts of self-harm; or

(IV) Contact local or federal agencies based on actual or suspected immigration status;

(F) Exerting control over the other party's identity documents;

(G) Making, or threatening to make, private information public, including the other party's sexual orientation or gender identity, medical or behavioral health information, or other confidential information that jeopardizes safety; or

(H) Engaging in sexual or reproductive coercion;

(ii) Causing dependence, confinement, or isolation of the other party from friends, relatives, or other sources of support, including schooling and employment, or subjecting the other party to physical confinement or restraint;

(iii) Depriving the other party of basic necessities or committing other forms of financial exploitation;

(iv) Controlling, exerting undue influence over, interfering with, regulating, or monitoring the other party's movements, communications, daily behavior, finances, economic resources, or employment, including but not limited to interference with or attempting to limit access to services for children of the other party, such as health care, medication, child care, or school-based extracurricular activities;

(v) Engaging in vexatious litigation or abusive litigation as defined in RCW 26.51.020 against the other party to harass, coerce, or control the other party, to

diminish or exhaust the other party's financial resources, or to compromise the other party's employment or housing; or

(vi) Engaging in psychological aggression, including inflicting fear, humiliating, degrading, or punishing the other party.

(b) "Coercive control" does not include protective actions taken by a party in good faith for the legitimate and lawful purpose of protecting themselves or children from the risk of harm posed by the other party.

**Sec. 2.** RCW 7.105.050 and 2021 c 215 s 4 are each amended to read as follows:

(1) The superior~~(;)~~ and district~~(; and municipal)~~ courts have jurisdiction over domestic violence protection order proceedings ~~((and)),~~ sexual assault protection order proceedings, stalking protection order proceedings, and antiharassment protection order proceedings under this chapter~~((The jurisdiction of district and municipal courts is limited to enforcement of RCW 7.105.450(1), or the equivalent municipal ordinance, and the issuance and enforcement of temporary orders for protection provided for in RCW 7.105.305 f)).~~ except that such proceedings must be transferred from district court to superior court when:

(a) A superior court has exercised or is exercising jurisdiction over a proceeding involving the parties;

~~(b) ((The petition for relief under this chapter presents issues of the residential schedule of, and contact with, children of the parties; or~~

~~(e) The petition for relief under this chapter requests the court to exclude a party from the dwelling which the parties share))~~ The action would have the effect of interfering with a respondent's care, control, or custody of the respondent's minor child;

(c) The action would affect the use or enjoyment of real property for which the respondent has a cognizable claim or would exclude a party from a shared dwelling;

(d) The petitioner, victim, or respondent to the petition is under 18 years of age; or

(e) The district court is unable to verify whether there are potentially conflicting or related orders involving the parties as required by RCW 7.105.105 or 7.105.555.

(2)(a) When the jurisdiction of a district ~~((or municipal))~~ court is limited to the issuance and enforcement of a temporary protection order, the district ~~((or municipal))~~ court shall set the full hearing in superior court and transfer the case, indicating in the transfer order the circumstances and findings supporting transfer to the superior court.

(b) If the notice and order are not served on the respondent in time for the full hearing, the issuing court shall have concurrent jurisdiction with the superior court to extend the temporary protection order. The superior court to which the case is being transferred shall determine whether to grant any request for a continuance.

(3) Transfer procedures, court calendars, and judicial officer assignment must further the goals of this chapter to: Minimize delay; make the system less complex; provide sufficient victim support, consistency, safety, timeliness, and procedural fairness; enable comprehensive use of electronic filing, case tracking, and records management systems; provide for judicial officers with expertise

and training in protection orders and trauma-informed practices and continuity of judicial officers at each hearing so the judicial officer will have greater familiarity with the parties, history, and allegations; and help ensure that there is compliance with timely and comprehensive firearms relinquishment to reduce risk of harm. Courts shall make publicly available in print and online information about their transfer procedures, court calendars, and judicial officer assignment.

**Sec. 3.** RCW 7.105.070 and 2021 c 215 s 8 are each amended to read as follows:

The superior courts have jurisdiction over extreme risk protection order proceedings under this chapter. The juvenile court may hear an extreme risk protection order proceeding under this chapter if the respondent is under the age of 18 years. Additionally, district (~~and municipal~~) courts have limited jurisdiction over the issuance and enforcement of temporary extreme risk protection orders issued under RCW 7.105.330. The district (~~or municipal~~) court shall set the full hearing in superior court and transfer the case. If the notice and order are not served on the respondent in time for the full hearing, the issuing court has concurrent jurisdiction with the superior court to extend the temporary extreme risk protection order. The superior court to which the case is being transferred shall determine whether to grant any request for a continuance.

**Sec. 4.** RCW 7.105.075 and 2021 c 215 s 9 are each amended to read as follows:

An action for a protection order should be filed in the county (~~or municipality~~) where the petitioner resides. The petitioner may also file in:

- (1) The county (~~or municipality~~) where an act giving rise to the petition for a protection order occurred;
- (2) The county (~~or municipality~~) where a child to be protected by the order primarily resides;
- (3) The county (~~or municipality~~) where the petitioner resided prior to relocating if relocation was due to the respondent's conduct; or
- (4) The court nearest to the petitioner's residence or former residence under subsection (3) of this section.

**Sec. 5.** RCW 7.105.100 and 2021 c 215 s 13 are each amended to read as follows:

(1) There exists an action known as a petition for a protection order. The following types of petitions for a protection order may be filed:

(a) A petition for a domestic violence protection order, which must allege the existence of domestic violence committed against the petitioner or petitioners by an intimate partner or a family or household member. The petitioner may petition for relief on behalf of himself or herself and on behalf of family or household members who are minors or vulnerable adults. A petition for a domestic violence protection order must specify whether the petitioner and the respondent are intimate partners or family or household members. A petitioner who has been sexually assaulted or stalked by an intimate partner or a family or household member should, but is not required to, seek a domestic violence protection order, rather than a sexual assault protection order or a stalking protection order.

(b) A petition for a sexual assault protection order, which must allege the existence of nonconsensual sexual conduct or nonconsensual sexual penetration that was committed against the petitioner by the respondent. A petitioner who has been sexually assaulted by an intimate partner or a family or household member should, but is not required to, seek a domestic violence protection order, rather than a sexual assault protection order. A single incident of nonconsensual sexual conduct or nonconsensual sexual penetration is sufficient grounds for a petition for a sexual assault protection order. The petitioner may petition for a sexual assault protection order on behalf of:

- (i) Himself or herself;
- (ii) A minor child, where the petitioner is the parent, legal guardian, or custodian;
- (iii) A vulnerable adult, where the petitioner is an interested person; or
- (iv) Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.

(c) A petition for a stalking protection order, which must allege the existence of stalking committed against the petitioner or petitioners by the respondent. A petitioner who has been stalked by an intimate partner or a family or household member should, but is not required to, seek a domestic violence protection order, rather than a stalking protection order. The petitioner may petition for a stalking protection order on behalf of:

- (i) Himself or herself;
- (ii) A minor child, where the petitioner is the parent, legal guardian, or custodian;
- (iii) A vulnerable adult, where the petitioner is an interested person; or
- (iv) Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.

(d) A petition for a vulnerable adult protection order, which must allege that the petitioner, or person on whose behalf the petition is brought, is a vulnerable adult and that the petitioner, or person on whose behalf the petition is brought, has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect, by the respondent. ~~((If the petition is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.))~~

(e) A petition for an extreme risk protection order, which must allege that the respondent poses a significant danger of causing personal injury to self or others by having in the respondent's custody or control, purchasing, possessing, accessing, receiving, or attempting to purchase or receive, a firearm. The petition must also identify information the petitioner is able to provide about the firearms, such as the number, types, and locations of any firearms the petitioner believes to be in the respondent's current ownership, possession, custody, access, or control. A petition for an extreme risk protection order may be filed by (i) an intimate partner or a family or household member of the respondent; or (ii) a law enforcement agency.

(f) A petition for an antiharassment protection order, which must allege the existence of unlawful harassment committed against the petitioner or petitioners by the respondent. If a petitioner is seeking relief based on domestic violence, nonconsensual sexual conduct, nonconsensual sexual penetration, or stalking, the petitioner may, but is not required to, seek a domestic violence, sexual assault, or stalking protection order, rather than an antiharassment order. The petitioner may petition for an antiharassment protection order on behalf of:

(i) Himself or herself;

(ii) A minor child, where the petitioner is the parent, legal guardian, or custodian;

(iii) A vulnerable adult, where the petitioner is an interested person; or

(iv) Any other adult for whom the petitioner demonstrates to the court's satisfaction that the petitioner is interested in the adult's well-being, the court's intervention is necessary, and the adult cannot file the petition because of age, disability, health, or inaccessibility.

(2) With the exception of vulnerable adult protection orders, a person under 18 years of age who is 15 years of age or older may seek relief under this chapter as a petitioner and is not required to seek relief through a petition filed on his or her behalf. He or she may also petition on behalf of a family or household member who is a minor if chosen by the minor and capable of pursuing the minor's stated interest in the action.

(3) A person under 15 years of age who is seeking relief under this chapter is required to seek relief by a person authorized as a petitioner under this section.

(4) If a petition for a protection order is filed by an interested person, the affidavit or declaration must also include a statement of why the petitioner qualifies as an interested person.

(5) A petition for any type of protection order must not be dismissed or denied on the basis that the conduct alleged by the petitioner would meet the criteria for the issuance of another type of protection order. If a petition meets the criteria for a different type of protection order other than the one sought by the petitioner, the court shall consider the petitioner's preference, and enter a temporary protection order or set the matter for a hearing as appropriate under the law. The court's decision on the appropriate type of order shall not be premised on alleviating any potential stigma on the respondent.

~~((5))~~ (6) The protection order petition must contain a section where the petitioner, regardless of petition type, may request specific relief provided for in RCW 7.105.310 that the petitioner seeks for himself or herself or for family or household members who are minors. The totality of selected relief, and any other relief the court deems appropriate for the petitioner, or family or household members who are minors, must be considered at the time of entry of temporary protection orders and at the time of entry of full protection orders.

~~((6))~~ (7) If a court reviewing the petition for a protection order or a request for a temporary protection order determines that the petition was not filed in the correct court, the court shall enter findings establishing the correct court, and direct the clerk to transfer the petition to the correct court and to provide notice of the transfer to all parties who have appeared.

~~((7))~~ (8) Upon filing a petition for a protection order, the petitioner may request that the court enter an ex parte temporary protection order and an order to surrender and prohibit weapons without notice until a hearing on a full



protection order may be held. When requested, there shall be a rebuttable presumption to include the petitioner's minor children as protected parties in the ex parte temporary domestic violence protection order until the full hearing to reduce the risk of harm to children during periods of heightened risk, unless there is good cause not to include the minor children. If the court denies the petitioner's request to include the minor children, the court shall make written findings why the children should not be included, pending the full hearing. An ex parte temporary protection order shall be effective for a fixed period of time and shall be issued initially for a period not to exceed 14 days, which may be extended for good cause.

~~((8) The court may, at its discretion, issue a temporary order on the petition with or without a hearing. If an order is not signed upon presentation, the court shall set a hearing for a full protection order not later than 14 days from the date of the filing of the petition for a protection order, if the petition for a protection order is filed before close of business on a judicial day. If a petition for a protection order is filed after close of business on a judicial day or is filed on a nonjudicial day, the court shall set a hearing for a full protection order not later than 14 days from the first judicial day after the petition is filed.))~~

**Sec. 6.** RCW 7.105.105 and 2021 c 215 s 14 are each amended to read as follows:

The following apply to all petitions for protection orders under this chapter.

(1)(a) By January 1, 2023, county clerks on behalf of all superior courts and, by January 1, 2026, all courts of limited jurisdiction, must permit petitions for protection orders and all other filings in connection with the petition to be submitted as preferred by the petitioner either: (i) In person; (ii) remotely through an electronic submission process; or (iii) by mail for persons who are incarcerated or who are otherwise unable to file in person or remotely through an electronic system. The court or clerk must make ~~((all electronically filed court documents available for electronic access by))~~ available electronically to judicial officers ((statewide)) any protection orders filed within the state. Judicial officers may not be charged for access to such documents. The electronic ~~((filing))~~ submission system must allow for petitions for protection orders and supportive documents to be ~~((filed))~~ submitted at any time of the day. When a petition and supporting documents for a protection order are submitted to the clerk after business hours, they must be processed as soon as possible on the next judicial day. Petitioners and respondents should not ~~((be charged))~~ incur additional charges for electronic ~~((filing))~~ submission for petitions and documents filed pursuant to this section.

(b) By January 1, 2023, all superior courts' systems and, by January 1, 2026, all limited jurisdiction courts' systems, should allow for the petitioner to electronically track the progress of the petition for a protection order. Notification may be provided by text messaging or email, and should provide reminders of court appearances and alert the petitioner when the following occur: (i) The petition has been processed and is under review by a judicial officer; (ii) the order has been signed; (iii) the order has been transmitted to law enforcement for entry into the Washington crime information center system; (iv) ~~((return))~~ proof of service upon the respondent has been filed with the court or clerk; ~~((and))~~ (v) a receipt for the surrender of firearms has been filed with the court or clerk; and (vi) the respondent has filed a motion for the release of

surrendered firearms. Respondents, once served, should be able to sign up for similar electronic notification. Petitioners and respondents should not be charged for electronic notification.

(2) The petition must be accompanied by a confidential document to be used by the courts and law enforcement to fully identify the parties and serve the respondent. This record will be exempt from public disclosure at all times, and restricted access to this form is governed by general rule 22 provisions governing access to the confidential information form. The petitioner is required to fill out the confidential party information form to the petitioner's fullest ability. The respondent (~~((must))~~) should be (~~((served with))~~) provided a blank confidential party information form at the time of service, and when the respondent first appears, the respondent must confirm with the court the respondent's identifying and current contact information, including electronic means of contact, and file this with the court.

(3) A petition must be accompanied by a declaration signed under penalty of perjury stating the specific facts and circumstances for which relief is sought. Parties, attorneys, and witnesses may electronically sign sworn statements in all filings.

(4) The petitioner and the respondent must disclose the existence of any other litigation or of any other restraining, protection, or no-contact orders between the parties, to the extent that such information is known by the petitioner and the respondent. To the extent possible, the court shall take judicial notice of any existing restraining, protection, or no-contact orders between the parties before entering a protection order. The court shall not include provisions in a protection order that would allow the respondent to engage in conduct that is prohibited by another restraining, protection, or no-contact order between the parties that was entered in a different proceeding. The obligation to disclose the existence of any other litigation includes, but is not limited to, the existence of any other litigation concerning the custody or residential placement of a child of the parties as set forth in RCW 26.27.281. The court administrator shall verify for the court the terms of any existing protection order governing the parties.

(5) The petition may be made regardless of whether or not there is a pending lawsuit, complaint, petition, or other action between the parties, except in cases where the court has realigned the parties in accordance with RCW 7.105.210.

(6) Relief under this chapter must not be denied or delayed on the grounds that the relief is available in another action. The court shall not defer acting on a petition for a protection order nor grant a petitioner less than the full relief that the petitioner is otherwise entitled to under this chapter because there is, or could be, another proceeding involving the parties including, but not limited to, any potential or pending family law matter or criminal matter.

(7) A person's right to petition for relief under this chapter is not affected by the person leaving his or her residence or household.

(8) A petitioner is not required to post a bond to obtain relief in any proceeding for a protection order.

(9)(a) No fees for service of process may be charged by a court or any public agency to petitioners seeking relief under this chapter. Except as provided in (b) of this subsection, courts may not charge petitioners any fees or surcharges the payment of which is a condition precedent to the petitioner's ability to secure access to relief under this chapter. Petitioners shall be provided the necessary

number of certified copies, forms, and instructional brochures free of charge, including a copy of the service packet that consists of all documents that are being served on the respondent. A respondent who is served electronically with a protection order shall be provided a certified copy of the order free of charge upon request.

(b) A filing fee may be charged for a petition for an antiharassment protection order except as follows:

(i) No filing fee may be charged to a petitioner seeking an antiharassment protection order against a person who has engaged in acts of stalking as defined in RCW 9A.46.110, a hate crime under RCW 9A.36.080(1)(c), or a single act of violence or threat of violence under RCW 7.105.010(35)(b), or from a person who has engaged in nonconsensual sexual conduct or penetration or conduct that would constitute a sex offense as defined in RCW 9A.44.128, or from a person who is a family or household member or intimate partner who has engaged in conduct that would constitute domestic violence; and

(ii) The court shall waive the filing fee if the court determines the petitioner is not able to pay the costs of filing.

(10) If the petition states that disclosure of the petitioner's address or other identifying location information would risk harm to the petitioner or any member of the petitioner's family or household, that address may be omitted from all documents filed with the court. If the petitioner has not disclosed an address under this subsection, the petitioner shall designate an alternative address or email address at which the respondent may serve the petitioner.

(11) Subject to the availability of amounts appropriated for this specific purpose, or as provided through alternative sources including, but not limited to, grants, local funding, or pro bono means, if the court deems it necessary, the court may appoint a guardian ad litem for a petitioner or a respondent who is under 18 years of age and who is not represented by counsel. If a guardian ad litem is appointed by the court for either or both parties, neither the petitioner nor the respondent shall be required by the court to pay any costs associated with the appointment.

~~(12) (Minor children must only be referred to in the petition and in all other publicly available filed documents by their initials and date of birth. Any orders issued by the court for entry into a law enforcement database must show the minor's full name for purposes of identification, but be redacted to only display initials and date of birth for purposes of public access.~~

~~(13))~~ If a petitioner has requested an ex parte temporary protection order, because these are often emergent situations, the court shall prioritize review, either entering an order without a hearing or scheduling and holding an ex parte hearing in person, by telephone, by video, or by other electronic means on the day the petition is filed if possible. Otherwise, it must be heard no later than the following judicial day. The clerk shall ensure that the request for an ex parte temporary protection order is presented timely to a judicial officer, and signed orders will be returned promptly to the clerk for entry and to the petitioner as specified in this section.

~~((14))~~ (13) Courts shall not require a petitioner to file duplicative forms.

~~((15))~~ (14) The Indian child welfare act applies in the following manner.

(a) In a proceeding under this chapter where the petitioner seeks to protect a minor and the petitioner is not the minor's parent as defined by RCW 13.38.040,

the petition must contain a statement alleging whether the minor is or may be an Indian child as defined in RCW 13.38.040. If the minor is an Indian child, chapter 13.38 RCW and the federal Indian child welfare act, 25 U.S.C. Sec. 1901 et seq., shall apply. A party should allege in the petition if these laws have been satisfied in a prior proceeding and identify the proceeding.

(b) Every order entered in any proceeding under this chapter where the petitioner is not a parent of the minor or minors protected by the order must contain a finding that the federal Indian child welfare act or chapter 13.38 RCW does or does not apply, or if there is insufficient information to make a determination, the court must make a finding that a determination must be made before a full protection order may be entered. If there is reason to know the child is an Indian child, but the court does not have sufficient evidence to determine that the child is or is not an Indian child, 25 C.F.R. Sec. 23.107(b) applies. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does apply, the order must also contain a finding that all notice, evidentiary requirements, and placement preferences under the federal Indian child welfare act and chapter 13.38 RCW have been satisfied, or a finding that removal or placement of the child is necessary to prevent imminent physical damage or harm to the child pursuant to 25 U.S.C. Sec. 1922 and RCW 13.38.140. Where there is a finding that the federal Indian child welfare act or chapter 13.38 RCW does not apply, the order must also contain a finding as to why there is no reason to know the child may be an Indian child.

**Sec. 7.** RCW 7.105.115 and 2021 c 215 s 16 are each amended to read as follows:

(1) By ~~((June))~~ December 30, 2022, the administrative office of the courts shall:

(a) Develop and distribute standard forms for petitions and orders issued under this chapter, and facilitate the use of online forms for electronic filings.

(i) For all protection orders except extreme risk protection orders, the protection order must include, in a conspicuous location, a notice of criminal penalties resulting from a violation of the order, and the following statement: "You can be arrested even if the protected person or persons invite or allow you to violate the order. You alone are responsible for following the order. Only the court may change the order. Requests for changes must be made in writing."

(ii) For extreme risk protection orders, the protection order must include, in a conspicuous location, a notice of criminal penalties resulting from a violation of the order, and the following statement: "You have the sole responsibility to avoid or refrain from violating this order's provisions. Only the court may change the order. Requests for changes must be made in writing.";

(b) Develop and distribute instructions and informational brochures regarding protection orders and a court staff handbook on the protection order process, which shall be made available online to view and download at no cost. Developing additional methods to inform the public about protection orders in understandable terms and in languages other than English through videos and social media should also be considered. The instructions, brochures, forms, and handbook must be prepared in consultation with civil legal aid, culturally specific advocacy programs, and domestic violence and sexual assault advocacy programs. The instructions must be designed to assist petitioners in completing the petition, and must include a sample of standard petition and protection order

forms. The instructions and standard petition must include a means for the petitioner to identify, with only lay knowledge, the firearms the respondent may own, possess, receive, have access to, or have in the respondent's custody or control. The instructions must provide pictures of types of firearms that the petitioner may choose from to identify the relevant firearms, or an equivalent means to allow petitioners to identify firearms without requiring specific or technical knowledge regarding the firearms. The court staff handbook must allow for the addition of a community resource list by the court clerk. The informational brochure must describe the use of, and the process for, obtaining, renewing, modifying, terminating, and enforcing protection orders as provided under this chapter, as well as the process for obtaining, modifying, terminating, and enforcing an antiharassment no-contact order as provided under chapter 9A.46 RCW, a domestic violence no-contact order as provided under chapter 10.99 RCW, a restraining order as provided under chapters 26.09, 26.26A, 26.26B, and 26.44 RCW, a foreign protection order as defined in chapter 26.52 RCW, and a Canadian domestic violence protection order as defined in RCW 26.55.010;

(c) Determine the significant non-English-speaking or limited English-speaking populations in the state. The administrative office of the courts shall then arrange for translation of the instructions and informational brochures required by this section, which must contain a sample of the standard petition and protection order forms, into the languages spoken by at least the top five significant non-English-speaking populations, and shall distribute a master copy of the translated instructions and informational brochures to all court clerks and to the Washington supreme court's interpreter commission, minority and justice commission, and gender and justice commission ((by July 25, 2024)). Such materials must be updated and distributed if needed due to relevant changes in the law;

(d)(i) Distribute a master copy of the petition and order forms, instructions, and informational brochures to all court clerks, and distribute a master copy of the petition and order forms to all superior, district, and municipal courts;

(ii) In collaboration with civil legal aid attorneys, domestic violence advocates, sexual assault advocates, elder abuse advocates, clerks, and judicial officers, develop and distribute a single petition form that a petitioner may use to file for any type of protection order authorized by this chapter, with the exception of extreme risk protection orders;

(iii) For extreme risk protection orders, develop and prepare:

(A) A standard petition and order form for an extreme risk protection order, as well as a standard petition and order form for an extreme risk protection order sought against a respondent under 18 years of age, titled "Extreme Risk Protection Order - Respondent Under 18 Years";

(B) Pattern forms to assist in streamlining the process for those persons who are eligible to seal records relating to an order under (d)(i) of this subsection, including:

(I) A petition and declaration the respondent can complete to ensure that requirements for public sealing have been met; and

(II) An order sealing the court records relating to that order; and

(C) An informational brochure to be served on any respondent who is subject to a temporary or full protection order under (d)(iii)(A) of this subsection;

(e) Create a new confidential party information form to satisfy the purposes of the confidential information form and the law enforcement information sheet that will serve both the court's and law enforcement's data entry needs without requiring a redundant effort for the petitioner, and ensure the petitioner's confidential information is protected for the purpose of safety. The form should be created with the presumption that it will also be used by the respondent to provide all current contact information needed by the court and law enforcement, and full identifying information for improved data entry. The form should also prompt the petitioner to disclose on the form whether the person who the petitioner is seeking to restrain has a disability, brain injury, or impairment requiring special assistance; and

(f) Update the instructions, brochures, standard petition and order for protection forms, and court staff handbook when changes in the law make an update necessary.

(2) ~~((The))~~ By July 1, 2022, the administrative office of the courts, through the gender and justice commission of the Washington state supreme court, and with the support of the Washington state women's commission, shall work with representatives of superior, district, and municipal court judicial officers, court clerks, and administrators, including those with experience in protection order proceedings, as well as advocates and practitioners with expertise in each type of protection order, and others with relevant expertise, to develop for the courts:

(a) Standards for filing evidence in protection order proceedings in a manner that protects victim safety and privacy, including evidence in the form of text messages, social media messages, voice mails, and other recordings, and the development of a sealed cover sheet for explicit or intimate images and recordings; and

(b) Requirements for private vendors who provide services related to filing systems for protection orders, as well as what data should be collected.

**Sec. 8.** RCW 7.105.120 and 2021 c 215 s 17 are each amended to read as follows:

(1) All court clerks' offices shall make available the standardized forms, instructions, and informational brochures required by this chapter, and shall ~~((~~fill in and~~))~~ keep current specific program names and telephone numbers for community resources, including civil legal aid and volunteer lawyer programs. Any assistance or information provided by clerks under this chapter, or any assistance or information provided by any person, including court clerks, employees of the department of social and health services, and other court facilitators, to complete the forms provided by the court, does not constitute the practice of law, and clerks are not responsible for incorrect information contained in a petition.

(2) All court clerks shall ~~((obtain))~~ accept and provide community resource lists as described in (a) and (b) of this subsection, which the court shall make available as part of, or in addition to, the informational brochures described in RCW 7.105.115.

(a) The court clerk shall ~~((obtain a))~~ accept an appropriate community resource list from a domestic violence program and from a sexual assault

program serving the county in which the court is located. The community resource list must include the names, telephone numbers, and, as available, website links of domestic violence programs, sexual assault programs, and elder abuse programs serving the community in which the court is located, including law enforcement agencies, domestic violence agencies, sexual assault agencies, civil legal aid programs, elder abuse programs, interpreters, multicultural programs, and batterers' treatment programs. The list must be made available in print and online.

(b) The court clerk may create a community resource list of crisis intervention, behavioral health, interpreter, counseling, and other relevant resources serving the county in which the court is located. The clerk may also create a community resource list for respondents to include suicide prevention, treatment options, and resources for when children are involved in protection order cases. Any list ~~((shall))~~ must be made available in print and online.

(c) Courts may make the community resource lists specified in (a) and (b) of this subsection available as part of, or in addition to, the informational brochures described in subsection (1) of this section, and should ~~((translate))~~ accept from the programs that provided the resource lists translations of them into the languages spoken by the county's top five significant non-English-speaking populations.

(3) Court clerks should not make an assessment of the merits of a petitioner's petition for a protection order or refuse to accept for filing any petition that meets the basic procedural requirements.

**Sec. 9.** RCW 7.105.150 and 2021 c 215 s 18 are each amended to read as follows:

(1) To minimize delays and the need for more hearings, which can hinder access to justice and undermine judicial economy, to lessen costs, to guarantee actual notice to the respondent, and to simplify and modernize processes for petitioners, respondents, law enforcement, and the courts, the following methods of service are authorized for protection order proceedings, including petitions, temporary protection orders, reissuances of temporary protection orders, full protection orders, motions to renew protection orders, and motions to modify or terminate protection orders.

(a) ~~((Personal))~~ (i) Except as provided in (a)(iii) and (b)(i) of this subsection, personal service, consistent with court rules for civil proceedings, ~~((must be made by law enforcement to mitigate risks, increase safety, and ensure swift recovery of firearms in cases))~~ is required in: (A) Cases requiring the surrender of firearms, such as extreme risk protection orders and protection orders with orders to surrender and prohibit weapons; (B) cases that involve transferring the custody of a child or children from the respondent to the petitioner; ~~((or))~~ (C) cases involving vacating the respondent from the parties' shared residence ~~((Personal service should also be used in)); (D) cases involving a respondent who is incarcerated; and (E) cases where a petition for a vulnerable adult protection order is filed by someone other than the vulnerable adult.~~

(ii) Personal service in cases specified in (a)(i)(A) through (D) of this subsection must be made by law enforcement including, at a minimum, two timely attempts at personal service. To reduce risk of harm for cases requiring personal service, law enforcement should continue to attempt personal service up to the hearing date. Personal service for cases specified in (a)(i)(E) of this

subsection and when used for other protection order cases must ((otherwise)) be made by law enforcement unless the petitioner elects to have the respondent served by a third party who is not a party to the action ((and)), is ((over)) 18 years of age or older and competent to be a witness, and can provide sworn proof of service to the court as required.

(iii) In cases where personal service is required under this subsection, after two unsuccessful attempts at personal service, service shall be permitted by electronic means in accordance with (b) of this subsection.

(b)(i) Service by electronic means, including service by email, text message, social media applications, or other technologies, must be prioritized for all orders at the time of the issuance of temporary protection orders, ~~((with the exception of the following cases, for which personal service must be prioritized: (A) Cases requiring the surrender of firearms, such as extreme risk protection orders and protection orders with orders to surrender weapons; (B) cases that involve transferring the custody of a child or children from the respondent to the petitioner; (C) cases involving vacating the respondent from the parties' shared residence; or (D) cases involving a respondent who is incarcerated))~~ except in cases where personal service is required under (a) of this subsection. ((One)) For cases specified in (a)(i)(A) through (D) of this subsection, once firearms and concealed pistol licenses have been surrendered and verified by the court, or there is evidence the respondent does not possess firearms, the restrained party has been vacated from the shared residence, or the custody of the child or children has been transferred, per court order, or the respondent is no longer incarcerated, then subsequent motions and orders may be served electronically.

(ii) Service by electronic means must be ~~((effected))~~ made by a law enforcement agency, unless the petitioner elects to have the respondent served by any person who is not a party to the action, is ~~((over))~~ 18 years of age or older and competent to be a witness, and can provide sworn proof of service to the court as required. Court authorization permitting electronic service is not required except in cases specified in (a)(i)(A) through (D) of this subsection. In those cases, either request of the petitioner, or good cause for granting an order for electronic service, such as two failed attempts at personal service, are required to authorize service by electronic means. No formal motion is necessary.

(iii) The respondent's email address, number for text messaging, and username or other identification on social media applications and other technologies, if known or available, must be provided by the petitioner to law enforcement in the confidential information form, and attested to by the petitioner as being the legitimate, current, or last known contact information for the respondent.

(iv) Electronic service must be effected by transmitting copies of the petition and any supporting materials filed with the petition, notice of hearing, and any orders, or relevant materials for motions, to the respondent at the respondent's electronic address or the respondent's electronic account associated with email, text messaging, social media applications, or other technologies. Verification of ~~((receipt))~~ notice is required and may be accomplished through read-receipt mechanisms, a response, a sworn statement from the person who effected service verifying transmission and any follow-up communications such as email or telephone contact used to further verify, or an appearance by the



respondent at a hearing. Sworn proof of service must be filed with the court by the person who effected service. ~~((Service by electronic means is complete upon transmission when made prior to 5:00 p.m. on a judicial day. Service made on a Saturday, Sunday, legal holiday, or after 5:00 p.m. on any other day shall be deemed complete at 9:00 a.m. on the first judicial day thereafter.))~~

(c) Service by mail is permitted when: (i) Personal service was required, there have been two unsuccessful attempts at personal service, and electronic service is not possible ~~((and there have been two unsuccessful attempts at personal service or when the petitioner requests it in lieu of electronic service or personal service where personal service is not otherwise required));~~ or (ii) personal service is not required and there have been two unsuccessful attempts at personal or electronic service. If electronic service and personal service are not successful, the court shall affirmatively order service by mail without requiring additional motions to be filed by the petitioner. Service by mail must be made by any person who is not a party to the action and is ~~((over))~~ 18 years of age or older and competent to be a witness, by mailing copies of the materials to be served to the party to be served at the party's last known address or any other address determined by the court to be appropriate. Two copies must be mailed, postage prepaid, one by ordinary first-class mail and the other by a form of mail requiring a tracking or certified information showing when and where it was delivered. The envelopes must bear the return address ~~((of the sender))~~ where the petitioner may receive legal mail. Service is complete ~~((upon))~~ 10 calendar days after the mailing of two copies as prescribed in this section. Where service by mail is provided by a third party, the clerk shall forward proof of service by mail to the law enforcement agency in the county or municipality where the respondent resides.

(d) Service by publication is permitted only in those cases where all other means of service have been unsuccessful or are not possible due to lack of any known physical or electronic address of the respondent. Publication must be made in a newspaper of general circulation in the county where the petition was brought and in the county of the last known address of the respondent once a week for three consecutive weeks. The newspaper selected must be one of the three most widely circulated papers in the county. The publication of summons must not be made until the court orders service by publication under this section. Service of the summons is considered complete on the date of the third publication when ~~((the))~~ publication has been made for three consecutive weeks. The summons must be signed by the petitioner. The summons must contain the date of the first publication, and shall require the respondent upon whom service by publication is desired to appear and answer the petition on the date set for the hearing. The summons must also contain a brief statement of the reason for the petition and a summary of the provisions under the temporary protection order. The summons must be essentially in the following form:

In the . . . . . court of the state of Washington for  
the county of . . . . .  
. . . . ., Petitioner  
vs. No. . . . .  
. . . . ., Respondent

The state of Washington to .....  
(respondent):

You are hereby summoned to appear on the . . . . day  
of . . . . ., (year) . . . ., at . . . . a.m./p.m., and respond to  
the petition. If you fail to respond, a protection order will be  
issued against you pursuant to the provisions of chapter  
7.105 RCW, for a minimum of one year from the date you  
are required to appear. A temporary protection order has  
been issued against you, restraining you from the  
following: (Insert a brief statement of the provisions of the  
temporary protection order). A copy of the petition, notice  
of hearing, and temporary protection order has been filed  
with the clerk of this court.

.....  
Petitioner .....

(2) The court may authorize multiple methods of service permitted by this section and may consider use of any address determined by the court to be appropriate in order to authorize service that is reasonably probable to provide actual notice. The court shall favor speedy and cost-effective methods of service to promote prompt and accessible resolution of the merits of the petition.

(3) To promote judicial economy and reduce delays, for respondents who are able to be served electronically, the respondent, or the parent or guardian of the respondent for respondents under the age of 18 or the guardian or conservator of an adult respondent, shall be required to provide his or her electronic address or electronic account associated with an email, text messaging, social media application, or other technology by filing the confidential party information form referred to in RCW 7.105.115(1). This must occur at the earliest point at which the respondent, parent, guardian, or conservator is in contact with the court so that electronic service can be effected for all subsequent motions, orders, and hearings.

(4) If an order entered by the court recites that the respondent appeared before the court, either in person or remotely, the necessity for further service is waived and proof of service of that order is not necessary, including in cases where the respondent leaves the hearing before a final ruling is issued or signed. The court's order, entered after a hearing, need not be served on a respondent who fails to appear before the court for the hearing, if material terms of the order have not changed from those contained in the temporary order, and it is shown to the court's satisfaction that the respondent has previously been served with the temporary order.

(5) When the respondent for a protection order is under the age of 18 or is an individual subject to a guardianship or conservatorship under Title 11 RCW:

(a) When the respondent is a minor, service of a petition for a protection order, modification, or renewal, shall be completed, as defined in this chapter, upon both the respondent and the respondent's parent or legal guardian.

(b) A copy of the protection order must be served on a parent, guardian, or conservator of the respondent at any address where the respondent resides, or the

department of children, youth, and families in the case where the respondent is the subject of a dependency or court approved out-of-home placement. A minor respondent shall not be served at the minor respondent's school unless no other address for service is known.

(c) For extreme risk protection orders, the court shall also provide a parent, guardian, or conservator of the respondent with written notice of the legal obligation to safely secure any firearm on the premises and the potential for criminal prosecution if a prohibited person were to obtain access to any firearm. This notice may be provided at the time the parent, guardian, or conservator of the respondent appears in court or may be served along with a copy of the order, whichever occurs first.

(6) When a petition for a vulnerable adult protection order is filed by someone other than the vulnerable adult, notice of the petition and hearing must be personally served upon the vulnerable adult. In addition to copies of all pleadings filed by the petitioner, the petitioner shall provide a written notice to the vulnerable adult using a standard notice form developed by the administrative office of the courts. The standard notice form must be designed to explain to the vulnerable adult in clear, plain language the purpose and nature of the petition and that the vulnerable adult has the right to participate in the hearing and to either support or object to the petition.

(7) The court shall not dismiss, over the objection of a petitioner, a petition for a protection order or a motion to renew a protection order based on the inability of law enforcement or the petitioner to serve the respondent, unless the court determines that all available methods of service have been attempted unsuccessfully or are not possible.

**Sec. 10.** RCW 7.105.155 and 2021 c 215 s 19 are each amended to read as follows:

When service is to be completed under this chapter by a law enforcement officer:

(1) The clerk of the court shall have a copy of any order issued under this chapter, the confidential information form, as well as the petition for a protection order and any supporting materials, electronically forwarded on or before the next judicial day to the law enforcement agency in the county or municipality where the respondent resides, as specified in the order, for service upon the respondent. If the respondent has moved from that county or municipality and personal service is not required, the law enforcement agency specified in the order may serve the order;

(2) Service of an order issued under this chapter must take precedence over the service of other documents by law enforcement unless they are of a similar emergency nature;

(3) Where personal service is required, the first attempt at service must occur within 24 hours of receiving the order from the court whenever practicable, but not more than five days after receiving the order. If the first attempt is not successful, no fewer than two additional attempts should be made to serve the order, particularly for respondents who present heightened risk of lethality or other risk of physical harm to the petitioner or petitioner's family or household members. ~~((Law enforcement shall document all))~~ All attempts at service must be documented on a ~~((return))~~ proof of service form and ~~((submit it))~~ submitted to the court in a timely manner;

(4) If service cannot be completed within 10 calendar days, the law enforcement officer shall notify the petitioner. The petitioner shall provide information sufficient to permit notification. Law enforcement shall continue to attempt to complete service unless otherwise directed by the court. In the event that the petitioner does not provide a service address for the respondent or there is evidence that the respondent is evading service, the law enforcement officer shall use law enforcement databases to assist in locating the respondent;

(5) If the respondent is in a protected person's presence at the time of contact for service, the law enforcement officer should take reasonable steps to separate the parties when possible prior to completing the service or inquiring about or collecting firearms. When the order requires the respondent to vacate the parties' shared residence, law enforcement shall take reasonable steps to ensure that the respondent has left the premises and is on notice that his or her return is a violation of the terms of the order. The law enforcement officer shall provide the respondent with copies of all forms with the exception of the (~~law enforcement information sheet~~) confidential information form completed by the protected party and the (~~return~~) proof of service form;

(6) Any law enforcement officer who serves a protection order on a respondent with the knowledge that the respondent requires special assistance due to a disability, brain injury, or impairment shall make a reasonable effort to accommodate the needs of the respondent to the extent practicable without compromise to the safety of the petitioner;

(7) Proof of service must be submitted to the court on the (~~return~~) proof of service form. The form must include the date and time of service and each document that was served in order for the service to be complete, along with any details such as conduct at the time of service, threats, or avoidance of service, as well as statements regarding possession of firearms, including any denials of ownership despite positive purchase history, active concealed pistol license, or sworn statements in the petition that allege the respondent's access to, or possession of, firearms; or

(8) If attempts at service were not successful, the (~~return~~) proof of service form or the form letter showing that the order was not served, and stating the reason it was not served, must be returned to the court by the next judicial day following the last unsuccessful attempt at service. Each attempt at service must be noted and reflected in computer aided dispatch records, with the date, time, address, and reason service was not completed.

**Sec. 11.** RCW 7.105.165 and 2021 c 215 s 21 are each amended to read as follows:

(~~Service~~) (1) Unless waived by the nonmoving party, service must be completed on the nonmoving party not less than five judicial days before the hearing date(~~, unless waived by the nonmoving party~~). If service cannot be made, the court shall set a new hearing date and shall either require an additional attempt at obtaining service or permit service by other means authorized in this chapter. The court shall not require more than two attempts at obtaining service before permitting service by other means authorized in this chapter unless the moving party requests additional time to attempt service.

(2) Service is completed on the day the respondent is served personally, on the date of transmission for electronic service, on the 10th calendar day after mailing for service by mail, or on the date of the third publication when

publication has been made for three consecutive weeks for service by publication.

(3) If the nonmoving party was served before the hearing, but less than five judicial days before the hearing, it is not necessary to re-serve materials that the nonmoving party already received, but any new notice of hearing and reissued order must be served on the nonmoving party. ((The court shall not require more than two attempts at obtaining service before permitting service by other means authorized in this chapter unless the moving party requests additional time to attempt service. If the court permits service by mail or by publication, the court shall set the hearing date not later than 24 days from the date of the order authorizing such service.)) This additional service may be made by mail as an alternative to other authorized methods of service under this chapter. If done by mail, this additional service is considered completed on the third calendar day after mailing.

(4) Where electronic service was not complete because there was no verification of notice, and service by mail or publication has been authorized, copies must also be sent by electronic means to any known electronic addresses.

**Sec. 12.** RCW 7.105.200 and 2021 c 215 s 24 are each amended to read as follows:

In hearings under this chapter, the following apply:

(1) Hearings under this chapter are special proceedings. The procedures established under this chapter for protection order hearings supersede inconsistent civil court rules. Courts should evaluate the needs and procedures best suited to individual hearings based on consideration of the totality of the circumstances, including disparities that may be apparent in the parties' resources and representation by counsel.

(2)(a) Courts shall prioritize hearings on petitions for ex parte temporary protection orders over less emergent proceedings.

(b) For extreme risk protection order hearings where a law enforcement agency is the petitioner, the court shall prioritize scheduling because of the importance of immediate temporary removal of firearms in situations of extreme risk and the goal of minimizing the time law enforcement must otherwise wait for a particular case to be called, which can hinder their other patrol and supervisory duties. Courts also may allow a law enforcement petitioner to participate ((telephonically)) remotely, or allow another representative from that law enforcement agency or the prosecutor's office to present the information to the court if personal presence of the petitioning officer is not required for testimonial purposes.

(3) ~~((A hearing on a petition for a protection order must be set by the court even if the court has denied a request for a temporary protection order in the proceeding where the petition is not dismissed or continued pursuant to subsection (11) of this section.~~

(4)) If the respondent does not appear(, or the petitioner informs the court that the respondent has not been served at least five judicial days before the hearing date and the petitioner desires to pursue service, or the parties have informed the court of an agreed date of continuance for the hearing,) for the full hearing and there is no proof of timely and proper service on the respondent, the court shall reissue any temporary protection order previously issued(, or cancel the scheduled hearing,) and reset the hearing date. If a temporary protection order is

reissued, the court shall reset the hearing date not later than 14 days from the reissue date. If a temporary protection order is reissued and the court permits service by mail or by publication, the court shall reset the hearing date not later than 30 days from the date of the order authorizing such service. These time frames may be extended for good cause.

~~((5))~~ (4) When considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief. Courts must consider on the record the following factors:

(a) The extent to which a defendant's Fifth Amendment rights are or are not implicated, given the special nature of protection order proceedings, which burden a defendant's Fifth Amendment privilege substantially less than do other civil proceedings;

(b) Similarities between the civil and criminal cases;

(c) Status of the criminal case;

(d) The interests of the petitioners in proceeding expeditiously with litigation and the potential prejudice and risk to petitioners of a delay;

(e) The burden that any particular aspect of the proceeding may impose on respondents;

(f) The convenience of the court in the management of its cases and the efficient use of judicial resources;

(g) The interests of persons not parties to the civil litigation; and

(h) The interest of the public in the pending civil and criminal litigation.

~~((6))~~ (5) Hearings ~~((must))~~ ~~may~~ be conducted upon ~~((live testimony of the parties and sworn declarations))~~ ~~the information provided in the sworn petition, live testimony of the parties should they choose to testify, and any additional sworn declarations.~~ Live testimony of witnesses other than the parties may be requested by a party, but shall not be permitted unless the court finds that live testimony of witnesses other than the parties is necessary and material. If either party requests a continuance to allow for proper notice of witnesses or to afford a party time to seek counsel, the court ~~((should))~~ ~~may~~ continue the hearing. In considering the request, the court should consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief.

(6) If the court continues ~~((the))~~ a hearing for any reason, the court shall reissue any temporary orders, including orders to surrender and prohibit weapons, issued with or without notice.

(7) Prehearing discovery under the civil court rules, including, but not limited to, depositions, requests for production, or requests for admission, is disfavored and only permitted if specifically authorized by the court for good cause shown upon written motion of a party filed six judicial days prior to the hearing and served prior to the hearing.

(8) The rules of evidence need not be applied, other than with respect to privileges, the requirements of the rape shield statute under RCW 9A.44.020, and evidence rules 412 and 413.

(9)(a) The prior sexual activity or the reputation of the petitioner is inadmissible except:

(i) As evidence concerning the past sexual conduct of the petitioner with the respondent when this evidence is offered by the respondent upon the issue of whether the petitioner consented to the sexual conduct alleged for the purpose of a protection order; or

(ii) When constitutionally required to be admitted.

(b) To determine admissibility, a written motion must be made six judicial days prior to the protection order hearing. The motion must include an offer of proof of the relevancy of the proposed evidence and reasonably specific information as to the date, time, and place of the past sexual conduct between the petitioner and the respondent. If the court finds that the offer of proof is relevant to the issue of the victim's consent, the court shall conduct a hearing in camera. The court may not admit evidence under this subsection unless it determines at the hearing that the evidence is relevant and the probative value of the evidence outweighs the danger of unfair prejudice. The evidence shall be admissible at the hearing to the extent an order made by the court specifies the evidence that may be admitted. If the court finds that the motion and related documents should be sealed pursuant to court rule and governing law, it may enter an order sealing the documents.

(10) When a petitioner has alleged incapacity to consent to sexual conduct or sexual penetration due to intoxicants, alcohol, or other condition, the court must determine on the record whether the petitioner had the capacity to consent.

~~(11) (If, prior to a full hearing, the court finds that the petition for a protection order does not contain sufficient allegations as a matter of law to support the issuance of a protection order, the court shall permit the petitioner 14 days to prepare and file an amended petition, provided the petitioner states an intent to do so and the court does not find that amendment would be futile. If the amended petition is not filed within 14 days, the case must be administratively dismissed by the clerk's office.~~

~~(12))~~ Courts shall not require parties to submit duplicate or working copies of pleadings or other materials filed with the court, unless the document or documents cannot be scanned or are illegible.

~~((13))~~ (12) Courts shall, if possible, have petitioners and respondents in protection order proceedings gather in separate locations and enter and depart the court room at staggered times. Where the option is available, for safety purposes, the court should arrange for petitioners to leave the court premises first and to have court security escort petitioners to their vehicles or transportation.

**Sec. 13.** RCW 7.105.205 and 2021 c 215 s 25 are each amended to read as follows:

(1) Hearings on protection orders, including hearings concerning temporary protection orders, full protection orders, compliance, reissuance, renewal, modification, or termination, may be conducted in person or remotely in order to enhance access for all parties.

(2) In the court's discretion, parties ~~((and)), witnesses, and others authorized by this chapter to participate in protection order proceedings~~ may attend a hearing on a petition for a protection order, or any hearings conducted pursuant to this chapter, in person or remotely, including by telephone, video, or other electronic means where possible. No later than three judicial days before the hearing, the parties may request to appear at the hearing, with witnesses, remotely by telephone, video, or other electronic means. The court shall grant

any request for a remote appearance unless the court finds good cause to require in-person attendance or attendance through a specific means.

(3) Courts shall require assurances of the identity of persons who appear by telephone, video, or other electronic means. Courts may not charge fees for remote appearances.

(4) Courts shall not post or stream proceedings or recordings of protection order hearings online unless (a) a waiver has been received from all parties, or (b) the hearing is being conducted online and members of the public do not have in-person access to observe or listen to the hearing. Unless the court orders a hearing to be closed to the public consistent with the requirements of Washington law, courts should provide access to members of the public who wish to observe or listen to a hearing conducted by telephone, video, or other electronic means.

(5) If a hearing is held with any parties or witnesses appearing remotely, the following apply:

(a) Courts should include directions to access a hearing remotely in the order setting the hearing and in any order granting a party's request for a remote appearance. Such orders shall also include directions to request an interpreter and accommodations for disabilities;

(b) Courts should endeavor to give a party or witness appearing by telephone no more than a one-hour waiting time by the court for the hearing to begin. For remote hearings, if the court anticipates the parties or witnesses will need to wait longer than one hour to be called or connected, the court should endeavor to inform them of the estimated start time of the hearing;

(c) Courts should inform the parties before the hearing begins that the hearing is being recorded by the court, in what manner the public is able to view the hearing, how a party may obtain a copy of the recording of the hearing, and that recording or broadcasting any portion of the hearing by any means other than the court record is strictly prohibited without prior court approval;

(d) To minimize trauma, while allowing remote hearings to be observed by the public, courts should take appropriate measures to prevent members of the public or the parties from harassing or intimidating any party or witness to a case. Such practices may include, but are not limited to, disallowing members of the public from communicating with the parties or with the court during the hearing, ensuring court controls over microphone and viewing settings, and announcing limitations on allowing others to record the hearing;

(e) Courts shall use technology that accommodates American sign language and other languages;

(f) To help ensure that remote access does not undermine personal safety or privacy, or introduce other risks, courts should protect the privacy of telephone numbers, emails, and other contact information for parties ~~((and))~~, witnesses, and others authorized by this chapter to participate in protection order proceedings, and inform ~~((parties and witnesses))~~ them of these safety considerations. Materials available to ~~((parties and witnesses))~~ persons appearing remotely should include warnings not to state their addresses or telephone numbers at the hearing, and that they ~~((may use virtual backgrounds to help ensure that their backgrounds do not reveal their location))~~ should ensure that background surroundings do not reveal their location;



(g) Courts should provide the parties, in orders setting the hearing, with a telephone number and an email address for the court, which the parties may use to inform the court if they have been unable to appear remotely for a hearing. Before dismissing or granting a petition due to the petitioner or respondent not appearing for a remote hearing, or the court not being able to reach the party via telephone or video, the court shall check for any notifications to the court regarding issues with remote access or other technological difficulties. If any party has provided such notification to the court, the court shall not dismiss or grant the petition, but shall reset the hearing by continuing it and reissuing any temporary order in place. If a party was unable to provide the notification regarding issues with remote access or other technological difficulties on the day of the hearing prior to the court's ruling, that party may seek relief via a motion for reconsideration; and

(h) A party attending a hearing remotely who is unable to participate in the hearing outside the presence of others who reside with the party, but who are not part of the proceeding including, but not limited to, children, and who asserts that the presence of those individuals may hinder the party's testimony or the party's ability to fully and meaningfully participate in the hearing, may request(~~(, and shall be granted, one)~~) a continuance on that basis. (~~(Subsequent)~~) Such requests may be granted in the court's discretion. In considering the request, the court may consider the rebuttable presumption against delay and the purpose of this chapter to provide victims quick and effective relief.

**Sec. 14.** RCW 7.105.250 and 2021 c 215 s 34 are each amended to read as follows:

(1) Whether or not the petitioner has retained an attorney, a sexual assault or domestic violence advocate, as defined in RCW 5.60.060, shall be allowed to accompany the petitioner, or appear remotely with the petitioner, and confer with the petitioner during court proceedings. The sexual assault or domestic violence advocate shall not provide legal representation nor interpretation services. Court administrators shall allow sexual assault and domestic violence advocates to assist petitioners with their protection orders. Sexual assault and domestic violence advocates are not engaged in the unauthorized practice of law when providing assistance of the types specified in this section. Unless the sexual assault or domestic violence advocate seeks to speak directly to the court, advocates shall not be required to be identified on the record beyond stating their role as a sexual assault or domestic violence advocate and identifying the program for which they work or volunteer for. Communications between the petitioner and a sexual assault and domestic violence advocate are protected as provided by RCW 5.60.060.

(2) Whether or not the petitioner has retained an attorney, a protection order advocate must be allowed to accompany the petitioner to any legal proceeding including, but not limited to, sitting or standing next to the petitioner, appearing remotely with the petitioner, and conferring with the petitioner during court proceedings, or addressing the court when invited to do so.

(a) For purposes of this section, "protection order advocate" means any employee or volunteer from a program that provides, as some part of its services, information, advocacy, counseling, or support to persons seeking protection orders.

(b) The protection order advocate shall not provide legal representation nor interpretation services.

(c) Unless a protection order advocate seeks to speak directly to the court, protection order advocates shall not be required to be identified on the record beyond stating his or her role as a protection order advocate and identifying the program for which he or she works or volunteers.

(d) A protection order advocate who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, the child protective services section of the department of children, youth, and families as defined in RCW 26.44.020, or other governmental entity, has the same privileges, rights, and responsibilities as a sexual assault advocate and domestic violence advocate under RCW 5.60.060.

(3) Whether or not the petitioner has retained an attorney (~~(, if a petitioner does not have)~~) or has an advocate, the petitioner shall be allowed a support person to accompany the petitioner to any legal proceeding including, but not limited to, sitting or standing next to the petitioner, appearing remotely with the petitioner, and conferring with the petitioner during court proceedings. The support person may be any third party of the petitioner's choosing, provided that:

(a) The support person shall not provide legal representation nor interpretation services; and

(b) A support person who is not employed by, or under the direct supervision of, a law enforcement agency, a prosecutor's office, the child protective services section of the department of children, youth, and families as defined in RCW 26.44.020, or other government entity, may not, without the consent of the petitioner, be examined as to any communication between the petitioner and the support person regarding the petition.

**Sec. 15.** RCW 7.105.255 and 2021 c 215 s 35 are each amended to read as follows:

To help ensure familiarity with the unique nature of protection order proceedings, and an understanding of trauma-informed practices and best practices in the use of new technologies for remote hearings, judicial officers, including persons who serve as judicial officers pro tempore, should receive evidence-based training on procedural justice, trauma-informed practices, gender-based violence dynamics, coercive control, elder abuse, juvenile sex offending, teen dating violence, and requirements for the surrender of weapons before presiding over protection order hearings. Trainings should be provided on an ongoing basis as best practices, research on trauma, and legislation continue to evolve. As a method of continuous training, court commissioners, including pro tempore commissioners, shall be notified by the presiding judge or court administrator upon revision of any decision made under this chapter.

**Sec. 16.** RCW 7.105.305 and 2021 c 215 s 38 are each amended to read as follows:

(1) Where it appears from the petition and any additional evidence that the respondent has engaged in conduct against the petitioner that serves as a basis for a protection order under this chapter, and the petitioner alleges that serious immediate harm or irreparable injury could result if an order is not issued immediately without prior notice to the respondent, the court may grant an ex parte temporary protection order, pending a full hearing. The court has broad

discretion to grant such relief as the court deems proper, including the forms of relief listed in RCW 7.105.310, provided that the court shall not order a form of relief listed in RCW 7.105.310 if it would not be feasible or appropriate for the respondent to comply with such a requirement before a full hearing may be held on the petition for a protection order. If the court does not order all the relief requested by the petitioner in an ex parte temporary protection order, the court shall still consider ordering such relief at the full hearing on the petition for a protection order. In issuing the order, the court shall consider the provisions of RCW 9.41.800, and order the respondent to surrender, and prohibit the respondent from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license, as required in RCW 9.41.800.

(2) Any order issued under this section must contain the date, time of issuance, and expiration date.

(3) The court may issue an ex parte temporary protection order on the petition with or without a hearing. If an ex parte temporary protection order is denied, the court shall still set a full hearing unless the court determines the petition does not contain prima facie allegations to support the issuance of any type of protection order. If the court declines to issue an ex parte temporary protection order as requested or declines to set a hearing, the court shall state the ~~((particular))~~ reasons ~~((for the court's denial))~~ in writing. The court's denial of a motion for an ex parte temporary protection order shall be filed with the court. ~~((If an ex parte temporary protection order is denied, the court shall still set a full hearing on the petition for a protection order.))~~

(4) If a full hearing is set on a petition that is filed before close of business on a judicial day, the hearing must be set not later than 14 days from the date of the filing of the petition. If a full hearing is set on a petition that is submitted after close of business on a judicial day or is submitted on a nonjudicial day, the hearing must be set not later than 14 days from the first judicial day after the petition is filed, which may be extended for good cause.

(5) If the court does not set a full hearing, the petitioner may file an amended petition within 14 days of the court's denial. If the court determines the amended petition does not contain prima facie allegations to support the issuance of any type of protection order or if the petitioner fails to file an amended petition within the required time, the court may enter an order dismissing the petition.

(6) A petitioner may not obtain an ex parte temporary antiharassment protection order against a respondent if the petitioner has previously obtained two such ex parte orders against the same respondent, but has failed to obtain the issuance of a civil antiharassment protection order, unless good cause for such failure can be shown.

**Sec. 17.** RCW 7.105.310 and 2021 c 215 s 39 are each amended to read as follows:

(1) In issuing any type of protection order, other than an ex parte temporary antiharassment protection order as limited by subsection (2) of this section, and other than an extreme risk protection order, the court shall have broad discretion to grant such relief as the court deems proper, including an order that provides relief as follows:

(a) Restrain the respondent from committing any of the following acts against the petitioner and other persons protected by the order: Domestic violence; nonconsensual sexual conduct or nonconsensual sexual penetration; sexual abuse; stalking; acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult; and unlawful harassment;

(b) Restrain the respondent from making any attempts to have contact, including nonphysical contact, with the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household, either directly, indirectly, or through third parties regardless of whether those third parties know of the order;

(c) Exclude the respondent from the (~~(dwelling))~~ residence that the parties share;

(d) ~~Exclude the respondent~~ from the residence, workplace, or school of the petitioner; or from the day care or school of a minor child;

(~~(d))~~ (e) Restrain the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location including, but not limited to, a residence, school, day care, workplace, the protected party's person, and the protected party's vehicle. The specified distance shall presumptively be at least 1,000 feet, unless the court for good cause finds that a shorter specified distance is appropriate;

(~~(e))~~ (f) If the parties have children in common, make residential provisions with regard to their minor children on the same basis as is provided in chapter 26.09 RCW. However, parenting plans as specified in chapter 26.09 RCW must not be required under this chapter. The court may not delay or defer relief under this chapter on the grounds that the parties could seek a parenting plan or modification to a parenting plan in a different action. A protection order must not be denied on the grounds that the parties have an existing parenting plan in effect. A protection order may suspend the respondent's contact with the parties' children under an existing parenting plan, subject to further orders in a family law proceeding;

(~~(f))~~ (g) Order the respondent to participate in a state-certified domestic violence perpetrator treatment program approved under RCW 43.20A.735 or a state-certified sex offender treatment program approved under RCW 18.155.070;

(~~(g))~~ (h) Order the respondent to obtain a mental health or chemical dependency evaluation. If the court determines that a mental health evaluation is necessary, the court shall clearly document the reason for this determination and provide a specific question or questions to be answered by the mental health professional. The court shall consider the ability of the respondent to pay for an evaluation. Minors are presumed to be unable to pay. The parent or legal guardian is responsible for costs unless the parent or legal guardian demonstrates inability to pay;

(~~(h))~~ (i) In cases where the petitioner and the respondent are students who attend the same public or private elementary, middle, or high school, the court, when issuing a protection order and providing relief, shall consider, among the other facts of the case, the severity of the act, any continuing physical danger, emotional distress, or educational disruption to the petitioner, and the financial difficulty and educational disruption that would be caused by a transfer of the respondent to another school. The court may order that the respondent not attend

the public or private elementary, middle, or high school attended by the petitioner. If a minor respondent is prohibited attendance at the minor's assigned public school, the school district must provide the student comparable educational services in another setting. In such a case, the district shall provide transportation at no cost to the respondent if the respondent's parent or legal guardian is unable to pay for transportation. The district shall put in place any needed supports to ensure successful transition to the new school environment. The court shall send notice of the restriction on attending the same school as the petitioner to the public or private school the respondent will attend and to the school the petitioner attends;

~~((#))~~ (j) Require the respondent to pay the administrative court costs and service fees, as established by the county or municipality incurring the expense, and to reimburse the petitioner for costs incurred in bringing the action, including reasonable attorneys' fees or limited license legal technician fees when such fees are incurred by a person licensed and practicing in accordance with state supreme court admission and practice rule 28, the limited practice rule for limited license legal technicians. Minors are presumed to be unable to pay. The parent or legal guardian is responsible for costs unless the parent or legal guardian demonstrates inability to pay;

~~((#))~~ (k) Restrain the respondent from harassing, following, monitoring, keeping under physical or electronic surveillance, cyberstalking as defined in RCW 9.61.260, and using telephonic, audiovisual, or other electronic means to monitor the actions, location, or communication of the petitioner or the petitioner's family or household members who are minors or other members of the petitioner's household. For the purposes of this subsection, "communication" includes both "wire communication" and "electronic communication" as defined in RCW 9.73.260;

~~((#))~~ (l) Other than for respondents who are minors, require the respondent to submit to electronic monitoring. The order must specify who shall provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the respondent to pay for electronic monitoring;

~~((#))~~ (m) Consider the provisions of RCW 9.41.800, and order the respondent to surrender, and prohibit the respondent from accessing, having in his or her custody or control, possessing, purchasing, attempting to purchase or receive, or receiving, all firearms, dangerous weapons, and any concealed pistol license, as required in RCW 9.41.800;

~~((#))~~ (n) Order possession and use of essential personal effects. The court shall list the essential personal effects with sufficient specificity to make it clear which property is included. Personal effects may include pets. The court may order that a petitioner be granted the exclusive custody or control of any pet owned, possessed, leased, kept, or held by the petitioner, respondent, or minor child residing with either the petitioner or respondent, and may prohibit the respondent from interfering with the petitioner's efforts to obtain the pet. The court may also prohibit the respondent from knowingly coming within, or knowingly remaining within, a specified distance of specified locations where the pet is regularly found;

~~((#))~~ (o) Order use of a vehicle;

~~((+))~~ (p) Enter an order restricting the respondent from engaging in abusive litigation as set forth in chapter 26.51 RCW or in frivolous filings against the petitioner, making harassing or libelous communications about the petitioner to third parties, or making false reports to investigative agencies. A petitioner may request this relief in the petition or by separate motion. A petitioner may request this relief by separate motion at any time within five years of the date the protection order is entered even if the order has since expired. A stand-alone motion for an order restricting abusive litigation may be brought by a party who meets the requirements of chapter 26.51 RCW regardless of whether the party has previously sought a protection order under this chapter, provided the motion is made within five years of the date the order that made a finding of domestic violence was entered. In cases where a finding of domestic violence was entered pursuant to an order under chapter 26.09, 26.26, or 26.26A RCW, a motion for an order restricting abusive litigation may be brought under the family law case or as a stand-alone action filed under this chapter, when it is not reasonable or practical to file under the family law case;

~~((+))~~ (q) Restrain the respondent from committing acts of abandonment, abuse, neglect, or financial exploitation against a vulnerable adult;

~~((+))~~ (r) Require an accounting by the respondent of the disposition of the vulnerable adult's income or other resources;

~~((+))~~ (s) Restrain the transfer of either the respondent's or vulnerable adult's property, or both, for a specified period not exceeding 90 days;

~~((+))~~ (t) Order financial relief and restrain the transfer of jointly owned assets;

~~((+))~~ (u) Restrain the respondent from possessing or distributing intimate images, as defined in RCW 9A.86.010, depicting the petitioner including, but not limited to, requiring the respondent to: Take down and delete all intimate images and recordings of the petitioner in the respondent's possession or control; and cease any and all disclosure of those intimate images. The court may also inform the respondent that it would be appropriate to ask third parties in possession or control of the intimate images of this protection order to take down and delete the intimate images so that the order may not inadvertently be violated; or

~~((+))~~ (v) Order other relief as it deems necessary for the protection of the petitioner and other family or household members who are minors or vulnerable adults for whom the petitioner has sought protection, including orders or directives to a law enforcement officer, as allowed under this chapter.

(2) In an antiharassment protection order proceeding, the court may grant the relief specified in subsection (1)(c), (f), and (t) of this section only as part of a full antiharassment protection order.

(3) The court in granting a temporary antiharassment protection order or a civil antiharassment protection order shall not prohibit the respondent from exercising constitutionally protected free speech. Nothing in this section prohibits the petitioner from utilizing other civil or criminal remedies to restrain conduct or communications not otherwise constitutionally protected.

~~((+))~~ (4) The court shall not take any of the following actions in issuing a protection order.

(a) The court may not order the petitioner to obtain services including, but not limited to, drug testing, victim support services, a mental health assessment, or a psychological evaluation.

~~(b) ((The court may not order the petitioner to pay the respondent's attorneys' fees or other costs.~~

~~(e))~~ The court shall not issue a full protection order to any party except upon notice to the respondent and the opportunity for a hearing pursuant to a petition or counter-petition filed and served by the party seeking relief in accordance with this chapter. Except as provided in RCW 7.105.210, the court shall not issue a temporary protection order to any party unless the party has filed a petition or counter-petition for a protection order seeking relief in accordance with this chapter.

~~((d))~~ (c) Under no circumstances shall the court deny the petitioner the type of protection order sought in the petition on the grounds that the court finds that a different type of protection order would have a less severe impact on the respondent.

~~((4))~~ (5) The order shall specify the date the order expires, if any. For permanent orders, the court shall set the date to expire 99 years from the issuance date. The order shall also state whether the court issued the protection order following personal service, service by electronic means, service by mail, or service by publication, and whether the court has approved service by mail or publication of an order issued under this section.

**Sec. 18.** RCW 7.105.320 and 2021 c 215 s 41 are each amended to read as follows:

(1) When an order is issued under this chapter upon request of the petitioner, the court may order a law enforcement officer to accompany the petitioner and assist in placing the petitioner in possession of those items indicated in the order or to otherwise assist in the execution of the order of protection. The order must list all items that are to be included with sufficient specificity to make it clear which property is included. Orders issued under this chapter must include a designation of the appropriate law enforcement agency to execute, serve, or enforce the order. Any appropriate law enforcement agency should act where assistance is needed, even if the agency is not specifically named in the order, including assisting with the recovery of firearms as ordered.

(2) Upon order of a court, a law enforcement officer shall accompany the petitioner and assist in placing the petitioner in possession of all items listed in the order and to otherwise assist in the execution of the order.

(3) When the respondent is ordered to vacate the residence or other shared property, the respondent may be permitted by the court to remove personal clothing, personal items needed during the duration of the order, and any other items specified by the court, while a law enforcement officer is present.

(4) Where orders involve surrender of firearms, dangerous weapons, and concealed pistol licenses, those items must be secured and accounted for in a manner that prioritizes safety and compliance with court orders.

**Sec. 19.** RCW 7.105.340 and 2021 c 215 s 45 are each amended to read as follows:

(1) Upon the issuance of any extreme risk protection order under this chapter, including a temporary extreme risk protection order, the court shall:

(a) Order the respondent to surrender to the local law enforcement agency all firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070; and

(b) Other than for ex parte temporary protection orders, direct law enforcement to revoke any concealed pistol license issued to the respondent.

(2) The law enforcement officer serving any extreme risk protection order under this chapter, including a temporary extreme risk protection order, shall request that the respondent immediately surrender all firearms in his or her custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms. The law enforcement officer shall take possession of all firearms belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. ~~((The order must be personally served upon the respondent or defendant #))~~ If the order is entered in open court ((in the presence of)) and the respondent ((or defendant. The respondent or defendant shall acknowledge receipt and service)) appears in person, the respondent must be provided a copy and further service is not required. If the respondent ~~((or defendant))~~ refuses ((service)) to accept a copy, an agent of the court may indicate on the record that the respondent ~~((or defendant))~~ refused ((service)) to accept a copy of the order. If the respondent appears remotely for the hearing, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice such that additional service is not necessary, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary. The court shall enter the service and receipt into the record. A copy of the order and service must be transmitted immediately to law enforcement. The respondent must immediately surrender all firearms and any concealed pistol license, not previously surrendered, in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. If the respondent is in custody, arrangements to recover the firearms must be made prior to release. Alternatively, if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.

(3) At the time of surrender, a law enforcement officer taking possession of a firearm or concealed pistol license shall issue a receipt identifying all firearms that have been surrendered and provide a copy of the receipt to the respondent. Within 72 hours after service of the order, the officer serving the order shall file the original receipt with the court and shall ensure that his or her law enforcement agency retains a copy of the receipt.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms as required by an order issued under this chapter, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms in his or her possession, custody, or control. If probable cause for a violation of the order exists, the court shall issue a warrant describing the firearms and authorizing a search of the locations where the



firearms are reasonably believed to be and the seizure of any firearms discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms surrendered pursuant to this section, and that person is determined by the law enforcement agency to be the lawful owner of the firearm, the firearm must be returned to that person, provided that:

(a) The firearm is removed from the respondent's custody, control, or possession, and the lawful owner provides written verification to the court regarding how the lawful owner will safely store the firearm in a manner such that the respondent does not have access to, or control of, the firearm for the duration of the order;

(b) The court advises the lawful owner of the penalty for failure to do so; and

(c) The firearm is not otherwise unlawfully possessed by the owner.

(6) Upon the issuance of a one-year extreme risk protection order, the court shall order a new compliance review hearing date and require the respondent to appear not later than three judicial days from the issuance of the order. The court shall require a showing that the respondent has surrendered any firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency. The compliance review hearing is not required upon a satisfactory showing on which the court can otherwise enter findings on the record that the respondent has timely and completely surrendered all firearms in the respondent's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070 to a law enforcement agency, and is in compliance with the order. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible, at which the respondent must be present and provide proof of compliance with the court's order.

(7)(a) If a court finds at the compliance review hearing, or any other hearing where compliance with the order is addressed, that there is probable cause to believe the respondent was aware of, and failed to fully comply with, the order, failed to appear at the compliance review hearing, or violated the order after the court entered findings of compliance, pursuant to its authority under chapter 7.21 RCW, the court may initiate a contempt proceeding on its own motion, or upon the motion of the prosecutor, city attorney, or the petitioner's counsel, to impose remedial sanctions, and issue an order requiring the respondent to appear, provide proof of compliance with the order, and show cause why the respondent should not be held in contempt of court.

(b) If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, the clerk of the court shall electronically transmit a copy of the order to show cause to the law enforcement agency where the respondent resides for personal service or service in the manner provided in the civil rules of superior court or applicable statute.

(c) The order to show cause served upon the respondent shall state the date, time, and location of the hearing, and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the extreme risk protection order and a warning that an arrest

warrant could be issued if the respondent fails to appear on the date and time provided in the order to show cause.

(d)(i) At the show cause hearing, the respondent must be present and provide proof of compliance with the extreme risk protection order and demonstrate why the relief requested should not be granted.

(ii) The court shall take judicial notice of the receipt filed with the court by the law enforcement agency pursuant to subsection (3) of this section. The court shall also provide sufficient notice to the law enforcement agency of the hearing. Upon receiving notice pursuant to this subsection, a law enforcement agency must:

(A) Provide the court with a complete list of firearms surrendered by the respondent or otherwise belonging to the respondent that are in the possession of the law enforcement agency; and

(B) Provide the court with verification that any concealed pistol license issued to the respondent has been surrendered and that a law enforcement agency with authority to revoke the license has been notified.

(iii) If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the law enforcement agency must submit the basis for its belief to the court, and may do so through the filing of an affidavit.

(e) If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender and prohibit weapons.

(f) The court may order a respondent found in contempt of the order to pay for any losses incurred by a party in connection with the contempt proceeding, including reasonable attorneys' fees, service fees, and other costs. The costs of the proceeding must not be borne by the petitioner.

(8)(a) To help ensure that accurate and comprehensive information about firearms compliance is provided to judicial officers, a representative from either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may appear and be heard at any hearing that concerns compliance with an extreme risk protection order.

(b) Either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may designate an advocate or a staff person from their office who is not an attorney to appear on behalf of their office. Such appearance does not constitute the unauthorized practice of law.

(9)(a) An extreme risk protection order must state that the act of voluntarily surrendering firearms, or providing testimony relating to the surrender of firearms, pursuant to such an order, may not be used against the respondent (~~or defendant~~) in any criminal prosecution under this chapter, chapter 9A.41 RCW, or RCW 9A.56.310.

(b) To provide relevant information to the court to determine compliance with the order, the court may allow the prosecuting attorney or city attorney to question the respondent regarding compliance.

(10) All law enforcement agencies must develop and implement policies and procedures regarding the acceptance, storage, and return of firearms required to be surrendered under this chapter. Any surrendered firearms must be handled and stored properly to prevent damage or degradation in appearance or function, and the condition of the surrendered firearms documented, including

by digital photograph. A law enforcement agency holding any surrendered firearm or concealed pistol license shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

**Sec. 20.** RCW 7.105.400 and 2021 c 215 s 53 are each amended to read as follows:

(1) A temporary protection order issued under this chapter may be reissued for the following reasons:

(a) Agreement of the parties;

(b) To provide additional time to effect service of the temporary protection order on the respondent; or

(c) If the court, in writing, finds good cause to reissue the order.

(2) Any temporary orders to surrender and prohibit weapons must also be automatically reissued with the temporary protection order.

(3) To ensure that a petitioner is not delayed in receiving a hearing on a petition for a protection order, there is a rebuttable presumption that a temporary protection order should not be reissued more than once or for more than 30 days at the request of the respondent, absent agreement of the parties, good cause, or the need to provide additional time to effect service.

(4) When considering any request to stay, continue, or delay a hearing under this chapter because of the pendency of a parallel criminal investigation or prosecution of the respondent, courts shall apply a rebuttable presumption against such delay and give due recognition to the purpose of this chapter to provide victims quick and effective relief. Courts must consider on the record the following factors:

(a) The extent to which a defendant's Fifth Amendment rights are or are not implicated, given the special nature of protection order proceedings which burden a defendant's Fifth Amendment privilege substantially less than do other civil proceedings;

(b) Similarities between the civil and criminal cases;

(c) Status of the criminal case;

(d) The interests of the petitioners in proceeding expeditiously with litigation and the potential prejudice and risk to petitioners of a delay;

(e) The burden that any particular aspect of the proceeding may impose on respondents;

(f) The convenience of the court in the management of its cases and the efficient use of judicial resources;

(g) The interests of persons not parties to the civil litigation; and

(h) The interest of the public in the pending civil and criminal litigation.

(5) Courts shall not require a petitioner to complete a new (~~law enforcement information sheet~~) confidential information form when a temporary protection order is reissued or when a full order for a fixed time period is entered, unless the petitioner indicates that the information needs to be updated or amended. The clerk shall transmit the order to the law enforcement agency identified in the order for service, along with a copy of the confidential party information form received from the respondent, if available, or the petitioner's confidential party information form to assist law enforcement in serving the order.

**Sec. 21.** RCW 7.105.450 and 2021 c 215 s 56 are each amended to read as follows:

(1)(a) Whenever a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order is granted under this chapter, or an order is granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or there is a valid foreign protection order as defined in RCW 26.52.020, or there is a Canadian domestic violence protection order as defined in RCW 26.55.010, and the respondent or person to be restrained knows of the order, a violation of any of the following provisions of the order is a gross misdemeanor, except as provided in subsections (4) and (5) of this section:

(i) The restraint provisions prohibiting acts or threats of violence against, or stalking of, a protected party, or the restraint provisions prohibiting contact with a protected party;

(ii) A provision excluding the person from a residence, workplace, school, or day care;

(iii) A provision prohibiting the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle;

(iv) A provision prohibiting interfering with the protected party's efforts to remove a pet owned, possessed, leased, kept, or held by the petitioner, the respondent, or a minor child residing with either the petitioner or the respondent; or

(v) A provision of a foreign protection order or a Canadian domestic violence protection order specifically indicating that a violation will be a crime.

(b) Upon conviction, and in addition to any other penalties provided by law, the court:

(i) May require that the respondent submit to electronic monitoring. The court shall specify who must provide the electronic monitoring services and the terms under which the monitoring must be performed. The order also may include a requirement that the respondent pay the costs of the monitoring. The court shall consider the ability of the convicted person to pay for electronic monitoring; and

(ii) Shall impose a fine of \$15, in addition to any penalty or fine imposed, for a violation of a domestic violence protection order issued under this chapter. Revenue from the \$15 fine must be remitted monthly to the state treasury for deposit in the domestic violence prevention account.

(2) A law enforcement officer shall arrest without a warrant and take into custody a person whom the law enforcement officer has probable cause to believe has violated a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, that restrains the person or excludes the person from a residence, workplace, school, or day care, or prohibits the person from knowingly coming within, or knowingly remaining within, a specified distance of a location, a protected party's person, or a protected party's vehicle, if the person restrained knows of the order. Presence of the order in the law

enforcement computer-based criminal intelligence information system is not the only means of establishing knowledge of the order.

(3) A violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, shall also constitute contempt of court, and is subject to the penalties prescribed by law.

(4) Any assault that is a violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, and that does not amount to assault in the first or second degree under RCW 9A.36.011 or 9A.36.021 is a class C felony, and any conduct in violation of such an order that is reckless and creates a substantial risk of death or serious physical injury to another person is a class C felony.

(5) A violation of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or a court order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, is a class C felony if the offender has at least two previous convictions for violating the provisions of a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a vulnerable adult protection order, or an order issued under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010. The previous convictions may involve the same victim or other victims specifically protected by the orders the offender violated.

(6)(a) A defendant arrested for violating a domestic violence protection order, sexual assault protection order, stalking protection order, or vulnerable adult protection order, or an order granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, is required to appear in person before a magistrate within one judicial day after the arrest. At the time of the appearance, the court shall determine the necessity of imposing a no-contact order or other conditions of pretrial release.

(b) A defendant who is charged by citation, complaint, or information with violating any protection order identified in (a) of this subsection and not arrested shall appear in court for arraignment in person as soon as practicable, but in no event later than 14 days after the next day on which court is in session following the issuance of the citation or the filing of the complaint or information.

(7) Upon the filing of an affidavit by the petitioner or any law enforcement officer alleging that the respondent has violated a domestic violence protection order, a sexual assault protection order, a stalking protection order, or a

vulnerable adult protection order, or an order granted under chapter 9A.40, 9A.44, 9A.46, 9A.88, 9.94A, 10.99, 26.09, 26.26A, or 26.26B RCW, or a valid foreign protection order as defined in RCW 26.52.020, or a Canadian domestic violence protection order as defined in RCW 26.55.010, the court may issue an order to the respondent, requiring the respondent to appear and show cause within 14 days as to why the respondent should not be found in contempt of court and punished accordingly. The hearing may be held in the court of any county or municipality in which the petitioner or respondent temporarily or permanently resides at the time of the alleged violation.

(8) Appearances required under this section are mandatory and cannot be waived.

**Sec. 22.** RCW 7.105.460 and 2021 c 215 s 58 are each amended to read as follows:

(1) Any person who files a petition for an extreme risk protection order knowing the information in such petition to be materially false, or with the intent to harass the respondent, is guilty of a gross misdemeanor.

(2) ~~((Any))~~ (a) Except as provided in (b) of this subsection, any person who has in his or her custody or control, accesses, purchases, possesses, or receives, or attempts to purchase or receive, a firearm with knowledge that he or she is prohibited from doing so by an extreme risk protection order is guilty of a gross misdemeanor, and further is prohibited from having in his or her custody or control, accessing, purchasing, possessing, or receiving, or attempting to purchase or receive, a firearm for a period of five years from the date the existing order expires. ~~((However, such))~~

(b) A person is guilty of a class C felony for a violation under (a) of this subsection if the person has two or more previous convictions for violating an order issued under this chapter.

**Sec. 23.** RCW 7.105.500 and 2021 c 215 s 61 are each amended to read as follows:

This section applies to modification or termination of domestic violence protection orders, sexual assault protection orders, stalking protection orders, and antiharassment protection orders.

(1) Upon a motion with notice to all parties and after a hearing, the court may modify the terms of an existing protection order or terminate an existing order.

(2) A respondent's motion to modify or terminate an existing protection order must include a declaration setting forth facts supporting the requested order for modification or termination. The nonmoving parties to the proceeding may file opposing declarations. All motions to modify or terminate shall be based on the written materials and evidence submitted to the court. The court shall set a hearing only if the court finds that adequate cause is established. If the court finds that the respondent established adequate cause, the court shall set a date for hearing the respondent's motion, which must be at least 14 days from the date the court finds adequate cause.

(3) Upon the motion of a respondent, the court may not modify or terminate an existing protection order unless the respondent proves by a preponderance of the evidence that there has been a substantial change in circumstances such that the respondent will not resume, engage in, or attempt to engage in, the following

acts against the petitioner or those persons protected by the protection order if the order is terminated or modified:

(a) Acts of domestic violence, in cases involving domestic violence protection orders;

(b) Physical or nonphysical contact, in cases involving sexual assault protection orders;

(c) Acts of stalking, in cases involving stalking protection orders; or

(d) Acts of unlawful harassment, in cases involving antiharassment protection orders.

The petitioner bears no burden of proving that he or she has a current reasonable fear of harm by the respondent.

(4) In determining whether there has been a substantial change in circumstances, the court may consider the following unweighted factors, and no inference is to be drawn from the order in which the factors are listed:

(a) Whether the respondent has committed or threatened sexual assault, domestic violence, stalking, or other harmful acts against the petitioner or any other person since the protection order was entered;

(b) Whether the respondent has violated the terms of the protection order and the time that has passed since the entry of the order;

(c) Whether the respondent has exhibited suicidal ideation or attempts since the protection order was entered;

(d) Whether the respondent has been convicted of criminal activity since the protection order was entered;

(e) Whether the respondent has either acknowledged responsibility for acts of sexual assault, domestic violence, stalking, or behavior that resulted in the entry of the protection order, or successfully completed state-certified perpetrator treatment or counseling since the protection order was entered;

(f) Whether the respondent has a continuing involvement with drug or alcohol abuse, if such abuse was a factor in the protection order;

(g) Whether the petitioner consents to terminating the protection order, provided that consent is given voluntarily and knowingly; or

(h) Other factors relating to a substantial change in circumstances.

(5) In determining whether there has been a substantial change in circumstances, the court may not base its determination on the fact that time has passed without a violation of the order.

(6) Regardless of whether there is a substantial change in circumstances, the court may decline to terminate a protection order if it finds that the acts of domestic violence, sexual assault, stalking, unlawful harassment, and other harmful acts that resulted in the issuance of the protection order were of such severity that the order should not be terminated.

(7) A respondent may file a motion to modify or terminate an order no more than once in every 12-month period that the order is in effect, starting from the date of the order and continuing through any renewal period.

(8) If a person who is protected by a protection order has a child or adopts a child after a protection order has been issued, but before the protection order has expired, the petitioner may seek to include the new child in the order of protection on an ex parte basis if the child is already in the physical custody of the petitioner. If the restrained person is the legal or biological parent of the

child, a hearing must be set and notice given to the restrained person prior to final modification of the full protection order.

(9) A court may require the respondent to pay the petitioner for costs incurred in responding to a motion to modify or terminate a protection order, including reasonable attorneys' fees.

**Sec. 24.** RCW 7.105.510 and 2021 c 215 s 63 are each amended to read as follows:

This section applies to the modification or termination of vulnerable adult protection orders.

(1) Any vulnerable adult who is not subject to ~~((a limited guardianship, limited conservatorship, or other protective arrangement))~~ an order under chapter 11.130 RCW may, at any time subsequent to the entry of a permanent protection order under this chapter, file a motion to modify or terminate the protection order. Where a vulnerable adult is subject to an order under chapter 11.130 RCW, the vulnerable adult, or the vulnerable adult's guardian, conservator, or person acting on behalf of the vulnerable adult under a protective arrangement under chapter 11.130 RCW, may, ((at any time subsequent to the entry of a permanent protection order under this chapter,)) if within the person's authority under the guardianship, conservatorship, or protective arrangement, file a motion to modify or terminate the protection order at any time subsequent to the entry of a permanent protection order under this chapter.

(2) In a hearing on a motion to modify or terminate the protection order, the court shall grant such relief consistent with RCW 7.105.310 as it deems necessary for the protection of the vulnerable adult, including modification or termination of the protection order.

**Sec. 25.** RCW 7.105.555 and 2021 c 215 s 66 are each amended to read as follows:

(1) To prevent the issuance of competing protection orders in different courts and to give courts needed information for the issuance of orders, the judicial information system or alternative databases must be available in each district, municipal, and superior court, and must include a database containing the following information:

~~((+))~~ (a) The names of the parties and the cause number for every order of protection issued under this chapter, protection orders provided by military and tribal courts, every criminal no-contact order issued under chapters 9A.46 and 10.99 RCW, every dissolution action under chapter 26.09 RCW, every parentage action under chapter 26.26A or 26.26B RCW, every restraining order issued on behalf of an abused child or adult dependent person under chapter 26.44 RCW, every foreign protection order filed under chapter 26.52 RCW, and every Canadian domestic violence protection order filed under chapter 26.55 RCW. When a guardian or the department of social and health services or department of children, youth, and families has petitioned for relief on behalf of an abused child, adult dependent person, or vulnerable adult, the name of the person on whose behalf relief was sought must be included in the database as a party rather than the guardian or appropriate department;

~~((2))~~ (b) A complete criminal history of the parties; and



~~((3))~~ (c) Other relevant information necessary to assist courts in issuing orders under this chapter as determined by the judicial information system committee.

(2) Information within the database must be easily accessible and accurately updated as soon as possible but no later than within one judicial day.

(3) A document viewing system must be available as part of the judicial information system or other databases used by the court, so that in addition to having access to the summary information in subsection (1) of this section, the court is able to view any protection order filed within the state.

**Sec. 26.** RCW 7.105.902 and 2021 c 215 s 36 are each amended to read as follows:

(1) The administrative office of the courts, through the gender and justice commission of the Washington state supreme court, and with the support of the Washington state women's commission, shall work with representatives of superior, district, and municipal court judicial officers, court clerks, and administrators, including those with experience in protection order proceedings, as well as advocates and practitioners with expertise in each type of protection order, and others with relevant expertise, to consider and develop recommendations regarding:

(a) Uses of technology to reduce administrative burdens in protection order proceedings;

(b) Improving access to unrepresented parties in protection order proceedings, including promoting access for pro bono attorneys for remote protection order proceedings, in consultation with the Washington state bar association;

(c) Developing best practices for courts when there are civil protection order and criminal proceedings that concern the same alleged conduct;

(d) Developing best practices in data collection and sharing, including demographic information, in order to promote research and study on protection orders and transparency of protection order data for the public, in partnership with the Washington state center for court research, the Washington state institute for public policy, the University of Washington, and the urban Indian health institute;

(e) Developing best practices, including proposed training and necessary forms, in partnership with the Washington tribal state court consortium, to address how:

(i) Washington state court judges of all levels can see the existence of, and parties to, tribal court, military, and other jurisdiction protection orders, in comity with similar state court orders;

(ii) Tribal courts can enter their protection orders into the judicial information system used by courts to check for conflicting orders and history; and

(iii) State courts can query the national crime information center to check for tribal, military, and other jurisdictions' protection orders prior to issuing protection orders;

(f) Developing best practices for minor respondents and petitioners in civil protection order proceedings, including what sanctions should be provided for in law, with input from legal advocates for children and youth, juvenile public defense, juvenile prosecutors, adolescent behavioral health experts, youth

development experts, educators, judicial officers, victim advocates, restorative-informed or trauma-informed professionals, child advocacy centers, and professionals experienced in evidenced-based modalities for the treatment of trauma; and

(g) Assessing how the civil protection order law can more effectively address the type of abuse known as "coercive control" so that survivors can seek earlier protective intervention before abuse further escalates.

(2) The gender and justice commission may hire a consultant to assist with the requirements of this section with funds as appropriated.

(3) The gender and justice commission shall provide a brief report of its recommendations to the legislature for subsection (1)(e) through (g) of this section by December 1, 2021, and, for subsection (1)(a) through (d) of this section, provide recommendations to the courts by July 1, 2022.

(4) This section expires October 1, 2022.

**NEW SECTION. Sec. 27.** (1) The gender and justice commission, through its E2SHB 1320 stakeholder work groups, and in consultation with the Washington state center for court research, shall include in their 2022 work consideration of a study regarding how the inclusion of coercive control under this act helps to further realize the legislative intent of the law to increase safety for victims by obtaining effective legal protection apart from, or in addition to, the criminal legal system. The possible parameters for such a study would be as follows:

(a) The center for court research may engage or partner with other researchers with expertise in intimate partner violence, coercive control, civil protection order processes, and related research to conduct the study or help with study design, duration, methods, measurements, data collection, and analysis.

(b) The administrative office of the courts and superior and district courts shall provide the center for court research with necessary data to conduct the study, as requested by the center for court research.

(c) The study may include, if determined by the gender and justice commission's E2SHB 1320 stakeholder work groups and the center for court research to be empirically useful and readily measurable through available data, measurements such as:

(i) The ability of survivors to obtain protection orders that fully address the nature of the harm or threat of harm they are experiencing;

(ii) The frequency of inclusion of coercive control in protection order petitions and the nature of the harm or threatened harm articulated;

(iii) Whether the orders were granted and if so, the relief ordered by the court;

(iv) Whether the orders were denied, and if so, the reason for the denial; and

(v) In proceedings involving domestic violence where coercive control is part of the harm alleged:

(A) The frequency of conflicting protection orders, cross-petitions (where each party files a petition against the other), or re-aligned orders (where the court finds that the original petitioner is the abuser and the original respondent is the victim);

(B) Enforcement of protection order violations;

(C) Other legal proceedings involving either party, such as family, dependency, or criminal matters; and

(D) Whether the parties had legal representation or legal advocates in the protection order proceedings.

(d) The study shall also assess judicial officer training regarding protection orders, and coercive control in particular, and whether additional judicial officers are required to hear protection order proceedings.

(e) To the extent feasible, and considered best practice by the center for court research, the evaluation should also: Gather qualitative information from survivors of domestic violence, legal counsel, protection order advocates and court navigators, court clerks, and judicial officers; and include analysis of any disproportionate impact on survivors by race, immigration status, language, gender, sexual orientation, or disability.

(f) At the conclusion of any study conducted under this section, the center for court research shall report its findings to the legislature in compliance with RCW 43.01.036.

(2) By July 1, 2022, the gender and justice commission through its E2SHB 1320 work groups and the center for court research shall advise the chairs of the relevant policy committees of the legislature of their recommendations regarding need, timing, and design for such a study.

(3) This section expires January 1, 2028.

**Sec. 28.** RCW 9.41.040 and 2021 c 215 s 72 are each amended to read as follows:

(1)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the first degree, if the person owns, has in his or her possession, or has in his or her control any firearm after having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any serious offense as defined in this chapter.

(b) Unlawful possession of a firearm in the first degree is a class B felony punishable according to chapter 9A.20 RCW.

(2)(a) A person, whether an adult or juvenile, is guilty of the crime of unlawful possession of a firearm in the second degree, if the person does not qualify under subsection (1) of this section for the crime of unlawful possession of a firearm in the first degree and the person owns, has in his or her possession, or has in his or her control any firearm:

(i) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of any felony not specifically listed as prohibiting firearm possession under subsection (1) of this section, or any of the following crimes when committed by one family or household member against another or by one intimate partner against another, as those terms are defined by the statutes in effect at the time of the commission of the crime, committed on or after July 1, 1993: Assault in the fourth degree, coercion, stalking, reckless endangerment, criminal trespass in the first degree, or violation of the provisions of a ((domestic violence)) protection order or no-contact order restraining the person or excluding the person from a residence (((chapter 7.105 RCW,)) RCW 10.99.040((=)) or any of the former RCW 26.50.060, 26.50.070, and 26.50.130);

(ii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of harassment when committed by one family or household member against another or by one intimate partner against another, committed on or after June 7, 2018;

(iii) After having previously been convicted or found not guilty by reason of insanity in this state or elsewhere of a violation of the provisions of a protection order under chapter 7.105 RCW restraining the person or excluding the person from a residence, when committed by one family or household member against another or by one intimate partner against another, committed on or after July 1, 2022;

(iv) During any period of time that the person is subject to a court order issued under chapter 7.105, 9A.46, 10.99, 26.09, 26.26A, or 26.26B RCW or any of the former chapters 7.90, 7.92, 10.14, and 26.50 RCW that:

(A) Was issued after a hearing for which the person received actual notice, and at which the person had an opportunity to participate, whether the court then issues a full order or reissues a temporary order. If the court enters an agreed order by the parties without a hearing, such an order meets the requirements of this subsection;

(B) Restrains the person from harassing, stalking, or threatening the person protected under the order or child of the person or protected person, or engaging in other conduct that would place the protected person in reasonable fear of bodily injury to the protected person or child; and

(C)(I) Includes a finding that the person represents a credible threat to the physical safety of the protected person or child (~~and~~) or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the protected person or child that would reasonably be expected to cause bodily injury; or

(II) Includes an order under RCW 9.41.800 requiring the person to surrender all firearms and prohibiting the person from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, firearms;

~~((iv))~~ (v) After having previously been involuntarily committed based on a mental disorder under RCW 71.05.240, 71.05.320, 71.34.740, 71.34.750, chapter 10.77 RCW, or equivalent statutes of another jurisdiction, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

~~((v))~~ (vi) After dismissal of criminal charges based on incompetency to stand trial under RCW 10.77.088 when the court has made a finding indicating that the defendant has a history of one or more violent acts, unless his or her right to possess a firearm has been restored as provided in RCW 9.41.047;

~~((vi))~~ (vii) If the person is under 18 years of age, except as provided in RCW 9.41.042; and/or

~~((vii))~~ (viii) If the person is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense as defined in RCW 9.41.010.

(b) Unlawful possession of a firearm in the second degree is a class C felony punishable according to chapter 9A.20 RCW.

(3) Notwithstanding RCW 9.41.047 or any other provisions of law, as used in this chapter, a person has been "convicted," whether in an adult court or adjudicated in a juvenile court, at such time as a plea of guilty has been accepted or a verdict of guilty has been filed, notwithstanding the pendency of any future proceedings including, but not limited to, sentencing or disposition, post-trial or post-fact-finding motions, and appeals. Conviction includes a dismissal entered after a period of probation, suspension, or deferral of sentence, and also includes equivalent dispositions by courts in jurisdictions other than Washington state. A

person shall not be precluded from possession of a firearm if the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding of the rehabilitation of the person convicted or the conviction or disposition has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence. Where no record of the court's disposition of the charges can be found, there shall be a rebuttable presumption that the person was not convicted of the charge.

(4)(a) Notwithstanding subsection (1) or (2) of this section, a person convicted or found not guilty by reason of insanity of an offense prohibiting the possession of a firearm under this section other than murder, manslaughter, robbery, rape, indecent liberties, arson, assault, kidnapping, extortion, burglary, or violations with respect to controlled substances under RCW 69.50.401 and 69.50.410, who received a probationary sentence under RCW 9.95.200, and who received a dismissal of the charge under RCW 9.95.240, shall not be precluded from possession of a firearm as a result of the conviction or finding of not guilty by reason of insanity. Notwithstanding any other provisions of this section, if a person is prohibited from possession of a firearm under subsection (1) or (2) of this section and has not previously been convicted or found not guilty by reason of insanity of a sex offense prohibiting firearm ownership under subsection (1) or (2) of this section and/or any felony defined under any law as a class A felony or with a maximum sentence of at least 20 years, or both, the individual may petition a court of record to have his or her right to possess a firearm restored:

(i) Under RCW 9.41.047; and/or

(ii)(A) If the conviction or finding of not guilty by reason of insanity was for a felony offense, after five or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525; or

(B) If the conviction or finding of not guilty by reason of insanity was for a nonfelony offense, after three or more consecutive years in the community without being convicted or found not guilty by reason of insanity or currently charged with any felony, gross misdemeanor, or misdemeanor crimes, if the individual has no prior felony convictions that prohibit the possession of a firearm counted as part of the offender score under RCW 9.94A.525 and the individual has completed all conditions of the sentence.

(b) An individual may petition a court of record to have his or her right to possess a firearm restored under (a) of this subsection only at:

(i) The court of record that ordered the petitioner's prohibition on possession of a firearm; or

(ii) The superior court in the county in which the petitioner resides.

(5) In addition to any other penalty provided for by law, if a person under the age of 18 years is found by a court to have possessed a firearm in a vehicle in violation of subsection (1) or (2) of this section or to have committed an offense while armed with a firearm during which offense a motor vehicle served an integral function, the court shall notify the department of licensing within 24 hours and the person's privilege to drive shall be revoked under RCW 46.20.265, unless the offense is the juvenile's first offense in violation of this section and

has not committed an offense while armed with a firearm, an unlawful possession of a firearm offense, or an offense in violation of chapter 66.44, 69.52, 69.41, or 69.50 RCW.

(6) Nothing in chapter 129, Laws of 1995 shall ever be construed or interpreted as preventing an offender from being charged and subsequently convicted for the separate felony crimes of theft of a firearm or possession of a stolen firearm, or both, in addition to being charged and subsequently convicted under this section for unlawful possession of a firearm in the first or second degree. Notwithstanding any other law, if the offender is convicted under this section for unlawful possession of a firearm in the first or second degree and for the felony crimes of theft of a firearm or possession of a stolen firearm, or both, then the offender shall serve consecutive sentences for each of the felony crimes of conviction listed in this subsection.

(7) Each firearm unlawfully possessed under this section shall be a separate offense.

**Sec. 29.** RCW 9.41.800 and 2021 c 215 s 74 are each amended to read as follows:

(1) Any court when entering an order authorized under chapter 7.105 RCW, RCW 9A.46.080, 10.99.040, 10.99.045, 26.09.050, 26.09.060, 26.26B.020, or 26.26A.470 shall, upon a showing by a preponderance of the evidence, that a party has: Used, displayed, or threatened to use a firearm or other dangerous weapon in a felony, or is ineligible to possess a firearm under the provisions of RCW 9.41.040:

(a) Require that the party immediately surrender all firearms and other dangerous weapons;

(b) Require that the party immediately surrender any concealed pistol license issued under RCW 9.41.070;

(c) Prohibit the party from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons;

(d) Prohibit the party from obtaining or possessing a concealed pistol license;

(e) Other than for ex parte temporary protection orders, unless the ex parte temporary protection order was reissued after the party received noticed and had an opportunity to be heard, direct law enforcement to revoke any concealed pistol license issued to the party.

(2) During any period of time that the party is subject to a court order issued under chapter 7.105, 9A.46, 10.99, 26.09, 26.26A, or 26.26B RCW that:

(a) Was issued after a hearing of which the party received actual notice, and at which the party had an opportunity to participate, whether the court then issues a full order or reissues a temporary order. If the court enters an agreed order by the parties without a hearing, such an order meets the requirements of this subsection;

(b) Restrains the party from harassing, stalking, or threatening an intimate partner of the party, the protected person, or child of the intimate partner, party, or protected person, or engaging in other conduct that would place an intimate partner or protected person in reasonable fear of bodily injury to the intimate partner, protected person, or child; and

(c)(i) Includes a finding that the party represents a credible threat to the physical safety of the intimate partner, protected person, or child; ~~((and))~~ or

(ii) By its terms, explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner, protected person, or child that would reasonably be expected to cause bodily injury, the court shall:

(A) Require that the party immediately surrender all firearms and other dangerous weapons;

(B) Require that the party immediately surrender a concealed pistol license issued under RCW 9.41.070;

(C) Prohibit the party from accessing, having in his or her custody or control, possessing, purchasing, receiving, or attempting to purchase or receive, any firearms or other dangerous weapons; and

(D) Prohibit the party from obtaining or possessing a concealed pistol license.

(3) The court may order temporary surrender and prohibit the purchase of all firearms and other dangerous weapons, and any concealed pistol license, without notice to the other party if it finds, on the basis of the moving affidavit or other evidence, that irreparable injury could result if an order is not issued until the time for response has elapsed.

(4) In addition to the provisions of subsections (1) and (3) of this section, the court may enter an order requiring a party to comply with the provisions in subsection (1) of this section if it finds that the possession of a firearm or other dangerous weapon by any party presents a serious and imminent threat to public health or safety, or to the health or safety of any individual.

(5) The requirements of subsections (1) and (4) of this section may be for a period of time less than the duration of the order.

(6) The court shall require the party to surrender all firearms and other dangerous weapons in his or her immediate possession or control or subject to his or her immediate possession or control, and any concealed pistol license issued under RCW 9.41.070, to the local law enforcement agency. Law enforcement officers shall use law enforcement databases to assist in locating the party in situations where the protected person does not know where the party lives or where there is evidence that the party is trying to evade service.

(7) If the court enters a protection order, restraining order, or no-contact order that includes an order to surrender firearms, dangerous weapons, and any concealed pistol license under this section:

(a) The order must be served by a law enforcement officer; and

(b) Law enforcement must immediately ensure entry of the order to surrender and prohibit weapons and the revocation of any concealed pistol license is made into the appropriate databases making the party ineligible to possess firearms and a concealed pistol license.

**Sec. 30.** RCW 9.41.801 and 2021 c 215 s 75 are each amended to read as follows:

(1) Because of the heightened risk of lethality to petitioners when respondents to protection orders become aware of court involvement and continue to have access to firearms, and the frequency of noncompliance with court orders prohibiting possession of firearms, law enforcement and judicial processes must emphasize swift and certain compliance with court orders prohibiting access, possession, and ownership of all firearms.

(2) A law enforcement officer serving a protection order, no-contact order, or restraining order that includes an order to surrender all firearms, dangerous weapons, and a concealed pistol license under RCW 9.41.800 shall inform the respondent that the order is effective upon service and the respondent must immediately surrender all firearms and dangerous weapons in the respondent's custody, control, or possession and any concealed pistol license issued under RCW 9.41.070, and conduct any search permitted by law for such firearms, dangerous weapons, and concealed pistol license. The law enforcement officer shall take possession of all firearms, dangerous weapons, and any concealed pistol license belonging to the respondent that are surrendered, in plain sight, or discovered pursuant to a lawful search. ~~((The order must be personally served upon the respondent or defendant if))~~ If the order is entered in open court ((in the presence of)) and the respondent ((or defendant)) appears in person, the respondent shall be provided a copy and further service is not required. ((The respondent or defendant shall acknowledge receipt and service.)) If the respondent ~~((or defendant))~~ refuses ((service)) to receive a copy, an agent of the court may indicate on the record that the respondent ~~((or defendant))~~ refused ((service)) to receive a copy of the order. If the respondent appears remotely for the hearing, or leaves the hearing before a final ruling is issued or order signed, and the court believes the respondent has sufficient notice such that additional service is not necessary, the order must recite that the respondent appeared before the court, has actual notice of the order, the necessity for further service is waived, and proof of service of the order is not necessary. The court shall enter the service and receipt into the record. A copy of the order and service shall be transmitted immediately to law enforcement. The respondent must immediately surrender all firearms, dangerous weapons, and any concealed pistol license in a safe manner to the control of the local law enforcement agency on the day of the hearing at which the respondent was present in person or remotely. Alternatively, if personal service by a law enforcement officer is not possible, and the respondent did not appear in person or remotely at the hearing, the respondent shall surrender the firearms in a safe manner to the control of the local law enforcement agency within 24 hours of being served with the order by alternate service.

(3) At the time of surrender, a law enforcement officer taking possession of firearms, dangerous weapons, and any concealed pistol license shall issue a receipt identifying all firearms, dangerous weapons, and any concealed pistol license that have been surrendered and provide a copy of the receipt to the respondent. The law enforcement agency shall file the original receipt with the court within 24 hours after service of the order and retain a copy of the receipt, electronically whenever electronic filing is available.

(4) Upon the sworn statement or testimony of the petitioner or of any law enforcement officer alleging that the respondent has failed to comply with the surrender of firearms or dangerous weapons as required by an order issued under RCW 9.41.800, the court shall determine whether probable cause exists to believe that the respondent has failed to surrender all firearms and dangerous weapons in their possession, custody, or control. If probable cause exists that a crime occurred, the court shall issue a warrant describing the firearms or dangerous weapons and authorizing a search of the locations where the firearms



and dangerous weapons are reasonably believed to be and the seizure of all firearms and dangerous weapons discovered pursuant to such search.

(5) If a person other than the respondent claims title to any firearms or dangerous weapons surrendered pursuant to this section, and the person is determined by the law enforcement agency to be the lawful owner of the firearm or dangerous weapon, the firearm or dangerous weapon shall be returned to the lawful owner, provided that:

(a) The firearm or dangerous weapon is removed from the respondent's access, custody, control, or possession and the lawful owner agrees by written document signed under penalty of perjury to store the firearm or dangerous weapon in a manner such that the respondent does not have access to or control of the firearm or dangerous weapon;

(b) The firearm or dangerous weapon is not otherwise unlawfully possessed by the owner; and

(c) The requirements of RCW 9.41.345 are met.

(6) Courts shall develop procedures to verify timely and complete compliance with orders to surrender and prohibit weapons under RCW 9.41.800, including compliance review hearings to be held as soon as possible upon receipt from law enforcement of proof of service. A compliance review hearing is not required if the court can otherwise enter findings on the record or enter written findings that the proof of surrender or declaration of nonsurrender attested to by the person subject to the order, along with verification from law enforcement and any other relevant evidence, makes a sufficient showing that the person has timely and completely surrendered all firearms and dangerous weapons in the person's custody, control, or possession, and any concealed pistol license issued under RCW 9.41.070, to a law enforcement agency. If the court does not have a sufficient record before it on which to make such a finding, the court must set a review hearing to occur as soon as possible at which the respondent must be present and provide proof of compliance with the court's order. Courts shall make available forms that petitioners may complete and submit to the court in response to a respondent's declaration of whether the respondent has surrendered weapons.

(7)(a) If a court finds at the compliance review hearing, or any other hearing where compliance with the order to surrender and prohibit weapons is addressed, that there is probable cause to believe the respondent was aware of and failed to fully comply with the order, failed to appear at the compliance review hearing, or violated the order after the court entered findings of compliance, pursuant to its authority under chapter 7.21 RCW, the court may initiate a contempt proceeding to impose remedial sanctions on its own motion, or upon the motion of the prosecutor, city attorney, or the petitioner's counsel, and issue an order requiring the respondent to appear, provide proof of compliance with the order, and show cause why the respondent should not be held in contempt of court.

(b) If the respondent is not present in court at the compliance review hearing or if the court issues an order to appear and show cause after a compliance review hearing, the clerk of the court shall electronically transmit a copy of the order to show cause to the law enforcement agency where the respondent resides for personal service or service in the manner provided in the civil rules of superior court or applicable statute. Law enforcement shall also serve a copy of

the order to show cause on the petitioner, either electronically or in person, at no cost.

(c) The order to show cause served upon the respondent shall state the date, time, and location of the hearing and shall include a warning that the respondent may be held in contempt of court if the respondent fails to promptly comply with the terms of the order to surrender and prohibit weapons and a warning that an arrest warrant could be issued if the respondent fails to appear on the date and time provided in the order.

(d)(i) At the show cause hearing, the respondent must be present and provide proof of compliance with the underlying court order to surrender and prohibit weapons and demonstrate why the relief requested should not be granted.

(ii) The court shall take judicial notice of the receipt filed with the court by the law enforcement agency pursuant to subsection (3) of this section. The court shall also provide sufficient notice to the law enforcement agency of the hearing. Upon receiving notice pursuant to this subsection, a law enforcement agency must:

(A) Provide the court with a complete list of firearms and other dangerous weapons surrendered by the respondent or otherwise belonging to the respondent that are in the possession of the law enforcement agency; and

(B) Provide the court with verification that any concealed pistol license issued to the respondent has been surrendered and the agency with authority to revoke the license has been notified.

(iii) If the law enforcement agency has a reasonable suspicion that the respondent is not in full compliance with the terms of the order, the law enforcement agency must submit the basis for its belief to the court, and may do so through the filing of a declaration.

(e) If the court finds the respondent in contempt, the court may impose remedial sanctions designed to ensure swift compliance with the order to surrender and prohibit weapons.

(f) The court may order a respondent found in contempt of the order to surrender and prohibit weapons to pay for any losses incurred by a party in connection with the contempt proceeding, including reasonable attorneys' fees, service fees, and other costs. The costs of the proceeding shall not be borne by the petitioner.

(8)(a) To help ensure that accurate and comprehensive information about firearms compliance is provided to judicial officers, a representative from either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may appear and be heard at any hearing that concerns compliance with an order to surrender and prohibit weapons issued in connection with another type of protection order.

(b) Either the prosecuting attorney's office or city attorney's office, or both, from the relevant jurisdiction may designate an advocate or a staff person from their office who is not an attorney to appear on behalf of their office. Such appearance does not constitute the unauthorized practice of law.

(9)(a) An order to surrender and prohibit weapons issued pursuant to RCW 9.41.800 must state that the act of voluntarily surrendering firearms or weapons, or providing testimony relating to the surrender of firearms or weapons, pursuant to such an order, may not be used against the respondent (~~or defendant~~) in any

criminal prosecution under this chapter, chapter ~~((9.41 [7.105]))~~ 7.105 RCW, or RCW 9A.56.310.

(b) To provide relevant information to the court to determine compliance with the order, the court may allow the prosecuting attorney or city attorney to question the respondent regarding compliance.

(10) All law enforcement agencies must have policies and procedures to provide for the acceptance, storage, and return of firearms, dangerous weapons, and concealed pistol licenses that a court requires must be surrendered under RCW 9.41.800. A law enforcement agency holding any firearm or concealed pistol license that has been surrendered under RCW 9.41.800 shall comply with the provisions of RCW 9.41.340 and 9.41.345 before the return of the firearm or concealed pistol license to the owner or individual from whom it was obtained.

(11) The administrative office of the courts shall create a statewide pattern form to assist the courts in ensuring timely and complete compliance in a consistent manner with orders issued under this chapter. The administrative office of the courts shall report annually on the number of orders issued under this chapter by each court, the degree of compliance, and the number of firearms obtained, and may make recommendations regarding additional procedures to enhance compliance and victim safety.

**Sec. 31.** RCW 42.56.240 and 2019 c 300 s 1 are each amended to read as follows:

The following investigative, law enforcement, and crime victim information is exempt from public inspection and copying under this chapter:

(1) Specific intelligence information and specific investigative records compiled by investigative, law enforcement, and penology agencies, and state agencies vested with the responsibility to discipline members of any profession, the nondisclosure of which is essential to effective law enforcement or for the protection of any person's right to privacy;

(2) Information revealing the identity of persons who are witnesses to or victims of crime or who file complaints with investigative, law enforcement, or penology agencies, other than the commission, if disclosure would endanger any person's life, physical safety, or property. If at the time a complaint is filed the complainant, victim, or witness indicates a desire for disclosure or nondisclosure, such desire shall govern. However, all complaints filed with the commission about any elected official or candidate for public office must be made in writing and signed by the complainant under oath;

(3) Any records of investigative reports prepared by any state, county, municipal, or other law enforcement agency pertaining to sex offenses contained in chapter 9A.44 RCW or sexually violent offenses as defined in RCW 71.09.020, which have been transferred to the Washington association of sheriffs and police chiefs for permanent electronic retention and retrieval pursuant to RCW 40.14.070(2)(b);

(4) License applications under RCW 9.41.070(~~+~~), except that copies of license applications or information on the applications may be released to law enforcement or corrections agencies or to persons and entities as authorized under RCW 9.41.815;

(5) Information revealing the specific details that describe an alleged or proven child victim of sexual assault under age eighteen, or the identity or contact information of an alleged or proven child victim of sexual assault who is

under age eighteen. Identifying information includes the child victim's name, addresses, location, photograph, and in cases in which the child victim is a relative, stepchild, or stepsibling of the alleged perpetrator, identification of the relationship between the child and the alleged perpetrator. Contact information includes phone numbers, email addresses, social media profiles, and user names and passwords;

(6) Information contained in a local or regionally maintained gang database as well as the statewide gang database referenced in RCW 43.43.762;

(7) Data from the electronic sales tracking system established in RCW 69.43.165;

(8) Information submitted to the statewide unified sex offender notification and registration program under RCW 36.28A.040(6) by a person for the purpose of receiving notification regarding a registered sex offender, including the person's name, residential address, and email address;

(9) Personally identifying information collected by law enforcement agencies pursuant to local security alarm system programs and vacation crime watch programs. Nothing in this subsection shall be interpreted so as to prohibit the legal owner of a residence or business from accessing information regarding his or her residence or business;

(10) The felony firearm offense conviction database of felony firearm offenders established in RCW 43.43.822;

(11) The identity of a state employee or officer who has in good faith filed a complaint with an ethics board, as provided in RCW 42.52.410, or who has in good faith reported improper governmental action, as defined in RCW 42.40.020, to the auditor or other public official, as defined in RCW 42.40.020;

(12) The following security threat group information collected and maintained by the department of corrections pursuant to RCW 72.09.745: (a) Information that could lead to the identification of a person's security threat group status, affiliation, or activities; (b) information that reveals specific security threats associated with the operation and activities of security threat groups; and (c) information that identifies the number of security threat group members, affiliates, or associates;

(13) The global positioning system data that would indicate the location of the residence of an employee or worker of a criminal justice agency as defined in RCW 10.97.030;

(14) Body worn camera recordings to the extent nondisclosure is essential for the protection of any person's right to privacy as described in RCW 42.56.050, including, but not limited to, the circumstances enumerated in (a) of this subsection. A law enforcement or corrections agency shall not disclose a body worn camera recording to the extent the recording is exempt under this subsection.

(a) Disclosure of a body worn camera recording is presumed to be highly offensive to a reasonable person under RCW 42.56.050 to the extent it depicts:

(i)(A) Any areas of a medical facility, counseling, or therapeutic program office where:

(I) A patient is registered to receive treatment, receiving treatment, waiting for treatment, or being transported in the course of treatment; or

(II) Health care information is shared with patients, their families, or among the care team; or

(B) Information that meets the definition of protected health information for purposes of the health insurance portability and accountability act of 1996 or health care information for purposes of chapter 70.02 RCW;

(ii) The interior of a place of residence where a person has a reasonable expectation of privacy;

(iii) An intimate image;

(iv) A minor;

(v) The body of a deceased person;

(vi) The identity of or communications from a victim or witness of an incident involving domestic violence as defined in RCW 10.99.020 or sexual assault as defined in RCW 70.125.030, or disclosure of intimate images as defined in RCW 9A.86.010. If at the time of recording the victim or witness indicates a desire for disclosure or nondisclosure of the recorded identity or communications, such desire shall govern; or

(vii) The identifiable location information of a community-based domestic violence program as defined in RCW 70.123.020, or emergency shelter as defined in RCW 70.123.020.

(b) The presumptions set out in (a) of this subsection may be rebutted by specific evidence in individual cases.

(c) In a court action seeking the right to inspect or copy a body worn camera recording, a person who prevails against a law enforcement or corrections agency that withholds or discloses all or part of a body worn camera recording pursuant to (a) of this subsection is not entitled to fees, costs, or awards pursuant to RCW 42.56.550 unless it is shown that the law enforcement or corrections agency acted in bad faith or with gross negligence.

(d) A request for body worn camera recordings must:

(i) Specifically identify a name of a person or persons involved in the incident;

(ii) Provide the incident or case number;

(iii) Provide the date, time, and location of the incident or incidents; or

(iv) Identify a law enforcement or corrections officer involved in the incident or incidents.

(e)(i) A person directly involved in an incident recorded by the requested body worn camera recording, an attorney representing a person directly involved in an incident recorded by the requested body worn camera recording, a person or his or her attorney who requests a body worn camera recording relevant to a criminal case involving that person, or the executive director from either the Washington state commission on African American affairs, Asian Pacific American affairs, or Hispanic affairs, has the right to obtain the body worn camera recording, subject to any exemption under this chapter or any applicable law. In addition, an attorney who represents a person regarding a potential or existing civil cause of action involving the denial of civil rights under the federal or state Constitution, or a violation of a United States department of justice settlement agreement, has the right to obtain the body worn camera recording if relevant to the cause of action, subject to any exemption under this chapter or any applicable law. The attorney must explain the relevancy of the requested body worn camera recording to the cause of action and specify that he or she is seeking relief from redaction costs under this subsection (14)(e).

(ii) A law enforcement or corrections agency responding to requests under this subsection (14)(e) may not require the requesting individual to pay costs of any redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of a body worn camera recording.

(iii) A law enforcement or corrections agency may require any person requesting a body worn camera recording pursuant to this subsection (14)(e) to identify himself or herself to ensure he or she is a person entitled to obtain the body worn camera recording under this subsection (14)(e).

(f)(i) A law enforcement or corrections agency responding to a request to disclose body worn camera recordings may require any requester not listed in (e) of this subsection to pay the reasonable costs of redacting, altering, distorting, pixelating, suppressing, or otherwise obscuring any portion of the body worn camera recording prior to disclosure only to the extent necessary to comply with the exemptions in this chapter or any applicable law.

(ii) An agency that charges redaction costs under this subsection (14)(f) must use redaction technology that provides the least costly commercially available method of redacting body worn camera recordings, to the extent possible and reasonable.

(iii) In any case where an agency charges a requestor for the costs of redacting a body worn camera recording under this subsection (14)(f), the time spent on redaction of the recording shall not count towards the agency's allocation of, or limitation on, time or costs spent responding to public records requests under this chapter, as established pursuant to local ordinance, policy, procedure, or state law.

(g) For purposes of this subsection (14):

(i) "Body worn camera recording" means a video and/or sound recording that is made by a body worn camera attached to the uniform or eyewear of a law enforcement or corrections officer while in the course of his or her official duties; and

(ii) "Intimate image" means an individual or individuals engaged in sexual activity, including sexual intercourse as defined in RCW 9A.44.010 and masturbation, or an individual's intimate body parts, whether nude or visible through less than opaque clothing, including the genitals, pubic area, anus, or postpubescent female nipple.

(h) Nothing in this subsection shall be construed to restrict access to body worn camera recordings as otherwise permitted by law for official or recognized civilian and accountability bodies or pursuant to any court order.

(i) Nothing in this section is intended to modify the obligations of prosecuting attorneys and law enforcement under *Brady v. Maryland*, 373 U.S. 83, 83 S. Ct. 1194, 10 L. Ed. 2d 215 (1963), *Kyles v. Whitley*, 514 U.S. 419, 115 S. Ct. 1555, 131 L. Ed.2d 490 (1995), and the relevant Washington court criminal rules and statutes.

(j) A law enforcement or corrections agency must retain body worn camera recordings for at least sixty days and thereafter may destroy the records in accordance with the applicable records retention schedule;

(15) Any records and information contained within the statewide sexual assault kit tracking system established in RCW 43.43.545;

(16)(a) Survivor communications with, and survivor records maintained by, campus-affiliated advocates.

(b) Nothing in this subsection shall be construed to restrict access to records maintained by a campus-affiliated advocate in the event that:

- (i) The survivor consents to inspection or copying;
- (ii) There is a clear, imminent risk of serious physical injury or death of the survivor or another person;
- (iii) Inspection or copying is required by federal law; or
- (iv) A court of competent jurisdiction mandates that the record be available for inspection or copying.

(c) "Campus-affiliated advocate" and "survivor" have the definitions in RCW 28B.112.030;

(17) Information and records prepared, owned, used, or retained by the Washington association of sheriffs and police chiefs and information and records prepared, owned, used, or retained by the Washington state patrol pursuant to chapter 261, Laws of 2017; and

(18) Any and all audio or video recordings of child forensic interviews as defined in chapter 26.44 RCW. Such recordings are confidential and may only be disclosed pursuant to a court order entered upon a showing of good cause and with advance notice to the child's parent, guardian, or legal custodian. However, if the child is an emancipated minor or has attained the age of majority as defined in RCW 26.28.010, advance notice must be to the child. Failure to disclose an audio or video recording of a child forensic interview as defined in chapter 26.44 RCW is not grounds for penalties or other sanctions available under this chapter.

### TECHNICAL AMENDMENTS

**Sec. 32.** RCW 4.08.050 and 2021 c 215 s 89 are each amended to read as follows:

Except as provided under RCW 28A.225.035 and (~~7.105.105~~) 7.105.100, when an infant is a party he or she shall appear by guardian, or if he or she has no guardian, or in the opinion of the court the guardian is an improper person, the court shall appoint one to act. Said guardian shall be appointed as follows:

(1) When the infant is plaintiff, upon the application of the infant, if he or she be of the age of fourteen years, or if under that age, upon the application of a relative or friend of the infant.

(2) When the infant is defendant, upon the application of the infant, if he or she be of the age of fourteen years, and applies within thirty days after the service of the summons; if he or she be under the age of fourteen, or neglects to apply, then upon the application of any other party to the action, or of a relative or friend of the infant.

**Sec. 33.** RCW 9.41.042 and 2020 c 18 s 6 are each amended to read as follows:

RCW 9.41.040(2)(a)(~~(vi)~~) (vii) shall not apply to any person under the age of eighteen years who is:

- (1) In attendance at a hunter's safety course or a firearms safety course;
- (2) Engaging in practice in the use of a firearm or target shooting at an established range authorized by the governing body of the jurisdiction in which such range is located or any other area where the discharge of a firearm is not prohibited;

(3) Engaging in an organized competition involving the use of a firearm, or participating in or practicing for a performance by an organized group that uses firearms as a part of the performance;

(4) Hunting or trapping under a valid license issued to the person under Title 77 RCW;

(5) In an area where the discharge of a firearm is permitted, is not trespassing, and the person either: (a) Is at least fourteen years of age, has been issued a hunter safety certificate, and is using a lawful firearm other than a pistol; or (b) is under the supervision of a parent, guardian, or other adult approved for the purpose by the parent or guardian;

(6) Traveling with any unloaded firearm in the person's possession to or from any activity described in subsection (1), (2), (3), (4), or (5) of this section;

(7) On real property under the control of his or her parent, other relative, or legal guardian and who has the permission of the parent or legal guardian to possess a firearm;

(8) At his or her residence and who, with the permission of his or her parent or legal guardian, possesses a firearm for the purpose of exercising the rights specified in RCW 9A.16.020(3); or

(9) Is a member of the armed forces of the United States, national guard, or organized reserves, when on duty.

**Sec. 34.** RCW 12.04.140 and 2021 c 215 s 127 are each amended to read as follows:

Except as provided under RCW (~~(7.105.105)~~) 7.105.100, no action shall be commenced by any person under the age of eighteen years, except by his guardian, or until a next friend for such a person shall have been appointed. Whenever requested, the justice shall appoint some suitable person, who shall consent thereto in writing, to be named by such plaintiff, to act as his or her next friend in such action, who shall be responsible for the costs therein.

**Sec. 35.** RCW 12.04.150 and 2021 c 215 s 128 are each amended to read as follows:

After service and return of process against a defendant under the age of eighteen years, the action shall not be further prosecuted, until a guardian for such defendant shall have been appointed, except as provided under RCW (~~(7.105.105)~~) 7.105.100. Upon the request of such defendant, the justice shall appoint some person who shall consent thereto in writing, to be guardian of the defendant in defense of the action; and if the defendant shall not appear on the return day of the process, or if he or she neglect or refuse to nominate such guardian, the justice may, at the request of the plaintiff, appoint any discreet person as such guardian. The consent of the guardian or next friend shall be filed with the justice; and such guardian for the defendant shall not be liable for any costs in the action.

**Sec. 36.** RCW 13.40.0357 and 2021 c 311 s 16 are each 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
<b>Arson and Malicious Mischief</b>		
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 (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E
A	Possession of Incendiary Device (9.40.120)	B+
<b>Assault and Other Crimes Involving Physical Harm</b>		
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) committed at age 15 or under	C+
A++	Drive-By Shooting (9A.36.045) committed at age 16 or 17	A
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+
<b>Burglary and Trespass</b>		
B+	Burglary 1 (9A.52.020) committed at age 15 or under	C+
A-	Burglary 1 (9A.52.020) committed at age 16 or 17	B+
B	Residential Burglary (9A.52.025)	C
B	Burglary 2 (9A.52.030)	C

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
<b>Drugs</b>		
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(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	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, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
E	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	E
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
<b>Firearms and Weapons</b>		
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(2)(a)(( <del>vii</del> )) (vii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
<b>Homicide</b>		
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+
<b>Kidnapping</b>		
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
<b>Obstructing Governmental Operation</b>		
D	Obstructing a Law Enforcement Officer (9A.76.020)	E
E	Resisting Arrest (9A.76.040)	E

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
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+
<b>Public Disturbance</b>		
C+	Criminal Mischief with Weapon (9A.84.010(2)(b))	D+
D+	Criminal Mischief Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
<b>Sex Crimes</b>		
A	Rape 1 (9A.44.040)	B+
B++	Rape 2 (9A.44.050) committed at age 14 or under	B+
A-	Rape 2 (9A.44.050) committed at age 15 through age 17	B+
C+	Rape 3 (9A.44.060)	D+
B++	Rape of a Child 1 (9A.44.073) committed at age 14 or under	B+
A-	Rape of a Child 1 (9A.44.073) committed at age 15	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+
B++	Child Molestation 1 (9A.44.083) committed at age 14 or under	B+

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
A-	Child Molestation 1 (9A.44.083) committed at age 15 through age 17	B+
B	Child Molestation 2 (9A.44.086)	C+
C	Failure to Register as a Sex Offender (9A.44.132)	D
<b>Theft, Robbery, Extortion, and Forgery</b>		
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 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200) committed at age 15 or under	B+
A++	Robbery 1 (9A.56.200) committed at age 16 or 17	A
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of a Stolen Vehicle (9A.56.068)	C
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
B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
B	Theft of a Motor Vehicle (9A.56.065)	C

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
<b>Motor Vehicle Related Crimes</b>		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	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
B+	Felony Driving While Under the Influence (46.61.502(6))	B
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
<b>Other</b>		
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 <sup>1</sup> (9A.76.110)	C
C	Escape 2 <sup>1</sup> (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) <sup>2</sup>	V

<sup>1</sup>Escape 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 - 28 days 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

<sup>2</sup>If 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, C, or D.

OPTION A  
JUVENILE OFFENDER SENTENCING GRID  
STANDARD RANGE

	A++	129 to 260 weeks for all category A++ offenses				
	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	30-40 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B++	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
CURRENT OFFENSE CATEGORY	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS		0	1	2	3	4 or more

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

(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

#### SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender:

(a) Is adjudicated of an A+ or A++ offense;

(b) Is fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), or manslaughter 2 (RCW 9A.32.070); or



(iv) Violation of the uniform controlled substances act (RCW 69.50.401(2) (a) and (b)), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Is ordered to serve a disposition for a firearm violation under RCW 13.40.193;

(d) Is adjudicated of a sex offense as defined in RCW 9.94A.030; or

(e) Has a prior option B disposition.

**OR**

**OPTION C**

**CHEMICAL DEPENDENCY/MENTAL HEALTH 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 a B++ or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

**OR**

**OPTION D**

**MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

**Sec. 37.** RCW 13.40.0357 and 2020 c 18 s 8 are each 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
<b>Arson and Malicious Mischief</b>		
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 (9A.48.090)	E
E	Tampering with Fire Alarm Apparatus (9.40.100)	E
E	Tampering with Fire Alarm Apparatus with Intent to Commit Arson (9.40.105)	E

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
A	Possession of Incendiary Device (9.40.120)	B+
<b>Assault and Other Crimes Involving Physical Harm</b>		
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) committed at age 15 or under	C+
A++	Drive-By Shooting (9A.36.045) committed at age 16 or 17	A
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+
<b>Burglary and Trespass</b>		
B+	Burglary 1 (9A.52.020) committed at age 15 or under	C+
A-	Burglary 1 (9A.52.020) committed at age 16 or 17	B+
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	Mineral Trespass (78.44.330)	C
C	Vehicle Prowling 1 (9A.52.095)	D
D	Vehicle Prowling 2 (9A.52.100)	E
<b>Drugs</b>		
E	Possession/Consumption of Alcohol (66.44.270)	E
C	Illegally Obtaining Legend Drug (69.41.020)	D

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
C+	Sale, Delivery, Possession of Legend Drug with Intent to Sell (69.41.030(2)(a))	D+
E	Possession of Legend Drug (69.41.030(2)(b))	E
B+	Violation of Uniform Controlled Substances Act - Narcotic, Methamphetamine, or Flunitrazepam Sale (69.50.401(2) (a) or (b))	B+
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Sale (69.50.401(2)(c))	C
E	Possession of Marihuana <40 grams (69.50.4014)	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, Methamphetamine, or Flunitrazepam Counterfeit Substances (69.50.4011(2) (a) or (b))	B
C	Violation of Uniform Controlled Substances Act - Nonnarcotic Counterfeit Substances (69.50.4011(2) (c), (d), or (e))	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4013)	C
C	Violation of Uniform Controlled Substances Act - Possession of a Controlled Substance (69.50.4012)	C
<b>Firearms and Weapons</b>		
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

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
C	Possession of Firearms by Minor (<18) (9.41.040(2)(a)( <del>(vi)</del> ) (vii))	C
D+	Possession of Dangerous Weapon (9.41.250)	E
D	Intimidating Another Person by use of Weapon (9.41.270)	E
<b>Homicide</b>		
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+
<b>Kidnapping</b>		
A	Kidnap 1 (9A.40.020)	B+
B+	Kidnap 2 (9A.40.030)	C+
C+	Unlawful Imprisonment (9A.40.040)	D+
<b>Obstructing Governmental Operation</b>		
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+
<b>Public Disturbance</b>		
C+	Criminal Mischief with Weapon (9A.84.010(2)(b))	D+
D+	Criminal Mischief Without Weapon (9A.84.010(2)(a))	E
E	Failure to Disperse (9A.84.020)	E
E	Disorderly Conduct (9A.84.030)	E
<b>Sex Crimes</b>		
A	Rape 1 (9A.44.040)	B+

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
B++	Rape 2 (9A.44.050) committed at age 14 or under	B+
A-	Rape 2 (9A.44.050) committed at age 15 through age 17	B+
C+	Rape 3 (9A.44.060)	D+
B++	Rape of a Child 1 (9A.44.073) committed at age 14 or under	B+
A-	Rape of a Child 1 (9A.44.073) committed at age 15	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+
B++	Child Molestation 1 (9A.44.083) committed at age 14 or under	B+
A-	Child Molestation 1 (9A.44.083) committed at age 15 through age 17	B+
B	Child Molestation 2 (9A.44.086)	C+
C	Failure to Register as a Sex Offender (9A.44.132)	D
<b>Theft, Robbery, Extortion, and Forgery</b>		
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 1 and 2 (9A.56.080 and 9A.56.083)	C
C	Forgery (9A.60.020)	D
A	Robbery 1 (9A.56.200) committed at age 15 or under	B+

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
A++	Robbery 1 (9A.56.200) committed at age 16 or 17	A
B+	Robbery 2 (9A.56.210)	C+
B+	Extortion 1 (9A.56.120)	C+
C+	Extortion 2 (9A.56.130)	D+
C	Identity Theft 1 (9.35.020(2))	D
D	Identity Theft 2 (9.35.020(3))	E
D	Improperly Obtaining Financial Information (9.35.010)	E
B	Possession of a Stolen Vehicle (9A.56.068)	C
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
B	Taking Motor Vehicle Without Permission 1 (9A.56.070)	C
C	Taking Motor Vehicle Without Permission 2 (9A.56.075)	D
B	Theft of a Motor Vehicle (9A.56.065)	C
<b>Motor Vehicle Related Crimes</b>		
E	Driving Without a License (46.20.005)	E
B+	Hit and Run - Death (46.52.020(4)(a))	C+
C	Hit and Run - Injury (46.52.020(4)(b))	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
B+	Felony Driving While Under the Influence (46.61.502(6))	B

JUVENILE DISPOSITION OFFENSE CATEGORY	DESCRIPTION (RCW CITATION)	JUVENILE DISPOSITION CATEGORY FOR ATTEMPT, BAILJUMP, CONSPIRACY, OR SOLICITATION
B+	Felony Physical Control of a Vehicle While Under the Influence (46.61.504(6))	B
	<b>Other</b>	
B	Animal Cruelty 1 (16.52.205)	C
B	Bomb Threat (9.61.160)	C
C	Escape 1 <sup>1</sup> (9A.76.110)	C
C	Escape 2 <sup>1</sup> (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) <sup>2</sup>	V

<sup>1</sup>Escape 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 - 28 days 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

<sup>2</sup>If 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, C, or D.

OPTION A  
 JUVENILE OFFENDER SENTENCING GRID  
 STANDARD RANGE

	A++	129 to 260 weeks for all category A++ offenses				
	A+	180 weeks to age 21 for all category A+ offenses				
	A	103-129 weeks for all category A offenses				
	A-	30-40 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
	B++	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks	103-129 weeks
CURRENT OFFENSE CATEGORY	B+	15-36 weeks	15-36 weeks	52-65 weeks	80-100 weeks	103-129 weeks
	B	LS	LS	15-36 weeks	15-36 weeks	52-65 weeks
	C+	LS	LS	LS	15-36 weeks	15-36 weeks
	C	LS	LS	LS	LS	15-36 weeks
	D+	LS	LS	LS	LS	LS
	D	LS	LS	LS	LS	LS
	E	LS	LS	LS	LS	LS
PRIOR ADJUDICATIONS		0	1	2	3	4 or more

NOTE: References in the grid to days or weeks mean periods of confinement. "LS" means "local sanctions" as defined in RCW 13.40.020.

(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

## SUSPENDED DISPOSITION ALTERNATIVE

(1) If the offender is subject to a standard range disposition involving confinement by the department, the court may impose the standard range and suspend the disposition on condition that the offender comply with one or more local sanctions and any educational or treatment requirement. The treatment programs provided to the offender must be either research-based best practice programs as identified by the Washington state institute for public policy or the joint legislative audit and review committee, or for chemical dependency treatment programs or services, they must be evidence-based or research-based best practice programs. For the purposes of this subsection:

(a) "Evidence-based" means a program or practice that has had multiple site random controlled trials across heterogeneous populations demonstrating that the program or practice is effective for the population; and

(b) "Research-based" means a program or practice that has some research demonstrating effectiveness, but that does not yet meet the standard of evidence-based practices.

(2) If the offender fails to comply with the suspended disposition, the court may impose sanctions pursuant to RCW 13.40.200 or may revoke the suspended disposition and order the disposition's execution.

(3) An offender is ineligible for the suspended disposition option under this section if the offender:

(a) Is adjudicated of an A+ or A++ offense;

(b) Is fourteen years of age or older and is adjudicated of one or more of the following offenses:

(i) A class A offense, or an attempt, conspiracy, or solicitation to commit a class A offense;

(ii) Manslaughter in the first degree (RCW 9A.32.060);

(iii) Assault in the second degree (RCW 9A.36.021), extortion in the first degree (RCW 9A.56.120), kidnapping in the second degree (RCW 9A.40.030), drive-by shooting (RCW 9A.36.045), vehicular homicide (RCW 46.61.520), hit and run death (RCW 46.52.020(4)(a)), or manslaughter 2 (RCW 9A.32.070); or

(iv) Violation of the uniform controlled substances act (RCW 69.50.401(2) (a) and (b)), when the offense includes infliction of bodily harm upon another or when during the commission or immediate withdrawal from the offense the respondent was armed with a deadly weapon;

(c) Is ordered to serve a disposition for a firearm violation under RCW 13.40.193;

(d) Is adjudicated of a sex offense as defined in RCW 9.94A.030; or

(e) Has a prior option B disposition.

## OR

## OPTION C

**CHEMICAL DEPENDENCY/MENTAL HEALTH 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 a B++ or B+ offense, the court may impose a disposition under RCW 13.40.160(4) and 13.40.165.

## OR

## OPTION D

**MANIFEST INJUSTICE**

If the court determines that a disposition under option A, B, or C would effectuate a manifest injustice, the court shall impose a disposition outside the standard range under RCW 13.40.160(2).

**Sec. 38.** RCW 13.40.160 and 2020 c 18 s 9 are each amended to read as follows:

(1) The standard range disposition for a juvenile adjudicated of an offense is determined according to RCW 13.40.0357.

(a) When the court sentences an offender to a local sanction as provided in RCW 13.40.0357 option A, the court shall impose a determinate disposition within the standard ranges, except as provided in subsection (2), (3), (4), (5), or (6) of this section. The disposition may be comprised of one or more local sanctions.

(b) When the court sentences an offender to a standard range as provided in RCW 13.40.0357 option A that includes a term of confinement exceeding thirty days, commitment shall be to the department for the standard range of confinement, except as provided in subsection (2), (3), (4), (5), or (6) of this section.

(2) If the court concludes, and enters reasons for its conclusion, that disposition within the standard range would effectuate a manifest injustice the court shall impose a disposition outside the standard range, as indicated in option D of RCW 13.40.0357. The court's finding of manifest injustice shall be supported by clear and convincing evidence.

A disposition outside the standard range shall be determinate and shall be comprised of confinement or community supervision, or a combination thereof. When a judge finds a manifest injustice and imposes a sentence of confinement exceeding thirty days, the court shall sentence the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. A disposition outside the standard range is appealable under RCW 13.40.230 by the state or the respondent. A disposition within the standard range is not appealable under RCW 13.40.230.

(3) If a juvenile offender is found to have committed a sex offense, other than a sex offense that is also a serious violent offense as defined by RCW 9.94A.030, and has no history of a prior sex offense, the court may impose the special sex offender disposition alternative under RCW 13.40.162.

(4) 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 the disposition alternative under RCW 13.40.165.

(5) If a juvenile is subject to a commitment of 15 to 65 weeks of confinement, the court may impose the disposition alternative under RCW 13.40.167.

(6) When the offender is subject to a standard range commitment of 15 to 36 weeks and is ineligible for a suspended disposition alternative, a manifest injustice disposition below the standard range, special sex offender disposition alternative, chemical dependency disposition alternative, or mental health disposition alternative, the court in a county with a pilot program under RCW 13.40.169 may impose the disposition alternative under RCW 13.40.169.

(7) RCW 13.40.193 shall govern the disposition of any juvenile adjudicated of possessing a firearm in violation of RCW 9.41.040(2)(a)((~~vi~~)) (vii) or any crime in which a special finding is entered that the juvenile was armed with a firearm.

(8) RCW 13.40.308 shall govern the disposition of any juvenile adjudicated of theft of a motor vehicle as defined under RCW 9A.56.065, possession of a stolen motor vehicle as defined under RCW 9A.56.068, taking a motor vehicle without permission in the first degree under RCW 9A.56.070, and taking a motor vehicle without permission in the second degree under RCW 9A.56.075.

(9) Whenever a juvenile offender is entitled to credit for time spent in detention prior to a dispositional order, the dispositional order shall specifically state the number of days of credit for time served.

(10) Except as provided under subsection (3), (4), (5), or (6) of this section, or option B of RCW 13.40.0357, or RCW 13.40.127, the court shall not suspend or defer the imposition or the execution of the disposition.

(11) In no case shall the term of confinement imposed by the court at disposition exceed that to which an adult could be subjected for the same offense.

**Sec. 39.** RCW 13.40.193 and 2020 c 18 s 10 are each amended to read as follows:

(1) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040(2)(a)((~~vi~~)) (vii), the court shall impose a minimum disposition of ten days of confinement. If the offender's standard range of disposition for the offense as indicated in RCW 13.40.0357 is more than thirty days of confinement, the court shall commit the offender to the department for the standard range disposition. The offender shall not be released until the offender has served a minimum of ten days in confinement.

(2)(a) If a respondent is found to have been in possession of a firearm in violation of RCW 9.41.040, the disposition must include a requirement that the respondent participate in a qualifying program as described in (b) of this subsection, when available, unless the court makes a written finding based on the outcome of the juvenile court risk assessment that participation in a qualifying program would not be appropriate.

(b) For purposes of this section, "qualifying program" means an aggression replacement training program, a functional family therapy program, or another program applicable to the juvenile firearm offender population that has been identified as evidence-based or research-based and cost-beneficial in the current

list prepared at the direction of the legislature by the Washington state institute for public policy.

(3) If the court finds that the respondent or an accomplice was armed with a firearm, the court shall determine the standard range disposition for the offense pursuant to RCW 13.40.160. If the offender or an accomplice was armed with a firearm when the offender committed any felony other than possession of a machine gun or bump-fire stock, possession of a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, or use of a machine gun or bump-fire stock in a felony, the following periods of total confinement must be added to the sentence: (a) Except for (b) of this subsection, for a class A felony, six months; for a class B felony, four months; and for a class C felony, two months; (b) for any violent offense as defined in RCW 9.94A.030, committed by a respondent who is sixteen or seventeen years old at the time of the offense, a period of twelve months. The additional time shall be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357.

(4)(a) If the court finds that the respondent who is sixteen or seventeen years old and committed the offense of robbery in the first degree, drive-by shooting, rape of a child in the first degree, burglary in the first degree, or any violent offense as defined in RCW 9.94A.030 and was armed with a firearm, and the court finds that the respondent's participation was related to membership in a criminal street gang or advancing the benefit, aggrandizement, gain, profit, or other advantage for a criminal street gang, a period of three months total confinement must be added to the sentence. The additional time must be imposed regardless of the offense's juvenile disposition offense category as designated in RCW 13.40.0357 and must be served consecutively with any other sentencing enhancement.

(b) For the purposes of this section, "criminal street gang" means any ongoing organization, association, or group of three or more persons, whether formal or informal, having a common name or common identifying sign or symbol, having as one of its primary activities the commission of criminal acts, and whose members or associates individually or collectively engage in or have engaged in a pattern of criminal street gang activity. This definition does not apply to employees engaged in concerted activities for their mutual aid and protection, or to the activities of labor and bona fide nonprofit organizations or their members or agents.

(5) When a disposition under this section would effectuate a manifest injustice, the court may impose another disposition. When a judge finds a manifest injustice and imposes a disposition of confinement exceeding thirty days, the court shall commit the juvenile to a maximum term, and the provisions of RCW 13.40.030(2) shall be used to determine the range. When a judge finds a manifest injustice and imposes a disposition of confinement less than thirty days, the disposition shall be comprised of confinement or community supervision or both.

(6) Any term of confinement ordered pursuant to this section shall run consecutively to any term of confinement imposed in the same disposition for other offenses.

**Sec. 40.** RCW 13.40.265 and 2020 c 18 s 11 are each amended to read as follows:

(1) If a juvenile thirteen years of age or older is found by juvenile court to have committed an offense while armed with a firearm or an offense that is a violation of RCW 9.41.040(2)(a)(~~(vi)~~) (vii) or chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court shall notify the department of licensing within twenty-four hours after entry of the judgment, unless the offense is the juvenile's first offense while armed with a firearm, first unlawful possession of a firearm offense, or first offense in violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile who has been found by the court to have committed an offense that is a violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the court may at any time the court deems appropriate notify the department of licensing that the juvenile's driving privileges should be reinstated.

(3) If the offense is the juvenile's second or subsequent violation of chapter 66.44, 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the date the juvenile turns seventeen or one year after the date judgment was entered, whichever is later.

**Sec. 41.** RCW 26.28.015 and 2021 c 215 s 141 are each amended to read as follows:

Notwithstanding any other provision of law, and except as provided under RCW (~~(7-105-105)~~) 7.105.100, all persons shall be deemed and taken to be of full age for the specific purposes hereafter enumerated at the age of eighteen years:

(1) To enter into any marriage contract without parental consent if otherwise qualified by law;

(2) To execute a will for the disposition of both real and personal property if otherwise qualified by law;

(3) To vote in any election if authorized by the Constitution and otherwise qualified by law;

(4) To enter into any legal contractual obligation and to be legally bound thereby to the full extent as any other adult person;

(5) To make decisions in regard to their own body and the body of their lawful issue whether natural born to or adopted by such person to the full extent allowed to any other adult person including but not limited to consent to surgical operations;

(6) To sue and be sued on any action to the full extent as any other adult person in any of the courts of this state, without the necessity for a guardian ad litem.

**Sec. 42.** RCW 50.20.050 and 2021 c 251 s 3 and 2021 c 215 s 153 are each reenacted to read as follows:

(1) With respect to separations that occur on or after September 6, 2009, and for separations that occur before April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant obtains bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount.

Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

- (i) The duration of the work;
- (ii) The extent of direction and control by the employer over the work; and
- (iii) The level of skill required for the work in light of the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant pursued all reasonable alternatives to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 7.105.010, or stalking, as defined in RCW 9A.46.110;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute was greater than is customary for workers in the claimant's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs; or

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program.

(2) With respect to separations that occur on or after April 4, 2021:

(a) A claimant shall be disqualified from benefits beginning with the first day of the calendar week in which the claimant has left work voluntarily without good cause and thereafter for seven calendar weeks and until the claimant has obtained bona fide work in employment covered by this title and earned wages in that employment equal to seven times the claimant's weekly benefit amount. Good cause reasons to leave work are limited to reasons listed in (b) of this subsection.

The disqualification shall continue if the work obtained is a mere sham to qualify for benefits and is not bona fide work. In determining whether work is of a bona fide nature, the commissioner shall consider factors including but not limited to the following:

(i) The duration of the work;

(ii) The extent of direction and control by the employer over the work; and

(iii) The level of skill required for the work in light of the claimant's training and experience.

(b) A claimant has good cause and is not disqualified from benefits under (a) of this subsection only under the following circumstances:

(i) The claimant has left work to accept a bona fide offer of bona fide work as described in (a) of this subsection;

(ii) The separation was necessary because of the illness or disability of the claimant or the death, illness, or disability of a member of the claimant's immediate family if:

(A) The claimant made reasonable efforts to preserve the claimant's employment status by requesting a leave of absence, by having promptly notified the employer of the reason for the absence, and by having promptly requested reemployment when again able to assume employment. These alternatives need not be pursued, however, when they would have been a futile act, including those instances when the futility of the act was a result of a recognized labor/management dispatch system; and

(B) The claimant terminated the claimant's employment status, and is not entitled to be reinstated to the same position or a comparable or similar position;

(iii) The claimant: (A) Left work to relocate for the employment of a spouse or domestic partner that is outside the existing labor market area; and (B) remained employed as long as was reasonable prior to the move;

(iv) The separation was necessary to protect the claimant or the claimant's immediate family members from domestic violence, as defined in RCW 7.105.010, or stalking, as defined in RCW 9A.46.110;

(v) The claimant's usual compensation was reduced by twenty-five percent or more;

(vi) The claimant's usual hours were reduced by twenty-five percent or more;

(vii) The claimant's worksite changed, such change caused a material increase in distance or difficulty of travel, and, after the change, the commute

was greater than is customary for workers in the individual's job classification and labor market;

(viii) The claimant's worksite safety deteriorated, the claimant reported such safety deterioration to the employer, and the employer failed to correct the hazards within a reasonable period of time;

(ix) The claimant left work because of illegal activities in the claimant's worksite, the claimant reported such activities to the employer, and the employer failed to end such activities within a reasonable period of time;

(x) The claimant's usual work was changed to work that violates the claimant's religious convictions or sincere moral beliefs;

(xi) The claimant left work to enter an apprenticeship program approved by the Washington state apprenticeship training council. Benefits are payable beginning Sunday of the week prior to the week in which the claimant begins active participation in the apprenticeship program; or

(xii) During a public health emergency:

(A) The claimant was unable to perform the claimant's work for the employer from the claimant's home;

(B) The claimant is able to perform, available to perform, and can actively seek suitable work which can be performed for an employer from the claimant's home; and

(C) The claimant or another individual residing with the claimant is at higher risk of severe illness or death from the disease that is the subject of the public health emergency because the higher risk individual:

(I) Was in an age category that is defined as high risk for the disease that is the subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides; or

(II) Has an underlying health condition, verified as required by the department by rule, that is identified as a risk factor for the disease that is the subject of the public health emergency by the federal centers for disease control and prevention, the department of health, or the equivalent agency in the state where the individual resides.

(3) With respect to claims that occur on or after July 4, 2021, a claimant has good cause and is not disqualified from benefits under subsection (2)(a) of this section under the following circumstances, in addition to those listed under subsection (2)(b) of this section, if, during a public health emergency, the claimant worked at a health care facility as defined in RCW 9A.50.010, was directly involved in the delivery of health services, and left work for the period of quarantine consistent with the recommended guidance from the United States centers for disease control and prevention or subject to the direction of the state or local health jurisdiction because of exposure to or contracting the disease that is the subject of the declaration of the public health emergency.

(4) Notwithstanding subsection (1) of this section, a claimant who was simultaneously employed in full-time employment and part-time employment and is otherwise eligible for benefits from the loss of the full-time employment shall not be disqualified from benefits because the claimant:

(a) Voluntarily quit the part-time employment before the loss of the full-time employment; and



(b) Did not have prior knowledge that the claimant would be separated from full-time employment.

**Sec. 43.** RCW 70.02.230 and 2021 c 264 s 17 and 2021 c 263 s 6 are each reenacted to read as follows:

(1) The fact of admission to a provider for mental health services and all information and records compiled, obtained, or maintained in the course of providing mental health services to either voluntary or involuntary recipients of services at public or private agencies may not be disclosed except as provided in this section, RCW 70.02.050, 71.05.445, 74.09.295, 70.02.210, 70.02.240, 70.02.250, 70.02.260, and 70.02.265, or pursuant to a valid authorization under RCW 70.02.030.

(2) Information and records related to mental health services, other than those obtained through treatment under chapter 71.34 RCW, may be disclosed:

(a) In communications between qualified professional persons to meet the requirements of chapter 71.05 RCW, including Indian health care providers, in the provision of services or appropriate referrals, or in the course of guardianship proceedings if provided to a professional person:

(i) Employed by the facility;

(ii) Who has medical responsibility for the patient's care;

(iii) Who is a designated crisis responder;

(iv) Who is providing services under chapter 71.24 RCW;

(v) Who is employed by a state or local correctional facility where the person is confined or supervised; or

(vi) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW;

(b) 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 services to the operator of a facility in which the patient resides or will reside;

(c)(i) 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 a designation;

(ii) A public or private agency shall release to a person's next of kin, attorney, personal representative, guardian, or conservator, if any:

(A) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(B) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, personal representative, guardian, or conservator; and

(iii) Other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator;

(d)(i) To the courts, including tribal courts, as necessary to the administration of chapter 71.05 RCW or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under chapter 71.05 RCW.

(ii) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(iii) Disclosure under this subsection is mandatory for the purpose of the federal health insurance portability and accountability act;

(e)(i) When a mental health professional or designated crisis responder is requested by a representative of a law enforcement or corrections agency, including a police officer, sheriff, community corrections officer, a municipal attorney, or prosecuting attorney to undertake an investigation or provide treatment under RCW 71.05.150, 10.31.110, or 71.05.153, the mental health professional or designated crisis responder shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. The written report must be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement or corrections representative, whichever occurs later.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(f) To the attorney of the detained person;

(g) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2), 71.05.340(1)(b), and 71.05.335. The prosecutor must 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 must be disclosed only after giving notice to the committed person and the person's counsel;

(h)(i) 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 must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(i)(i) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency or its employees are not civilly liable for the decision to disclose or not so long as the decision was reached in good faith and without gross negligence.

(ii) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act;

(j) To the persons designated in RCW 71.05.425 for the purposes described in those sections;

(k) By a care coordinator under RCW 71.05.585 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.05 or 10.77 RCW;

(l) Upon the death of a person. The person's next of kin, personal representative, guardian, or conservator, if any, must be notified. Next of kin who are of legal age and competent must be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient are governed by RCW 70.02.140;

(m) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient;

(n) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(~~(iv)~~) (v). The extent of information that may be released is limited as follows:

(i) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(ii) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(~~(iv)~~) (v);

(iii) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(o) When a patient would otherwise be subject to the provisions of this section and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of the disappearance, along with relevant information, may be made to relatives, the department of corrections when the person is under the supervision of the department, and governmental law enforcement agencies designated by the physician or psychiatric advanced registered nurse practitioner in charge of the patient or the professional person in charge of the facility, or his or her professional designee;

(p) Pursuant to lawful order of a court, including a tribal court;

(q) To qualified staff members of the department, to the authority, to behavioral health administrative services organizations, to managed care organizations, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility;

(r) Within the mental health service agency or Indian health care provider facility where the patient is receiving treatment, confidential information may be disclosed to persons employed, serving in bona fide training programs, or

participating in supervised volunteer programs, at the facility when it is necessary to perform their duties;

(s) Within the department and the authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department;

(t) Between the department of social and health services, the department of children, youth, and families, and the health care authority as necessary to coordinate treatment for mental illness, developmental disabilities, or substance use disorder of persons who are under the supervision of the department of social and health services or the department of children, youth, and families;

(u) To a licensed physician or psychiatric advanced registered nurse practitioner who has determined that the life or health of the person is in danger and that treatment without the information and records related to mental health services could be injurious to the patient's health. Disclosure must be limited to the portions of the records necessary to meet the medical emergency;

(v)(i) Consistent with the requirements of the federal health insurance portability and accountability act, to:

(A) A health care provider, including an Indian health care provider, who is providing care to a patient, or to whom a patient has been referred for evaluation or treatment; or

(B) Any other person who is working in a care coordinator role for a health care facility, health care provider, or Indian health care provider, or is under an agreement pursuant to the federal health insurance portability and accountability act with a health care facility or a health care provider and requires the information and records to assure coordinated care and treatment of that patient.

(ii) A person authorized to use or disclose information and records related to mental health services under this subsection (2)(v) must take appropriate steps to protect the information and records relating to mental health services.

(iii) Psychotherapy notes may not be released without authorization of the patient who is the subject of the request for release of information;

(w) To administrative and office support staff designated to obtain medical records for those licensed professionals listed in (v) of this subsection;

(x) To a facility that is to receive a person who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the person from one evaluation and treatment facility to another. The release of records under this subsection is limited to the information and records related to mental health services required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record;

(y) To the person's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW;

(z) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental disorders or developmental disabilities. Resource management services may limit the release of information

to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information must notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information;

(aa) To all current treating providers, including Indian health care providers, of the patient with prescriptive authority who have written a prescription for the patient within the last twelve months. For purposes of coordinating health care, the department or the authority may release without written authorization of the patient, information acquired for billing and collection purposes as described in RCW 70.02.050(1)(d). The department, or the authority, if applicable, shall notify the patient that billing and collection information has been released to named providers, and provide the substance of the information released and the dates of such release. Neither the department nor the authority may release counseling, inpatient psychiatric hospitalization, or drug and alcohol treatment information without a signed written release from the client;

(bb)(i) To the secretary of social and health services and the director of the health care authority for either program evaluation or research, or both so long as the secretary or director, where applicable, adopts rules for the conduct of the evaluation or research, or both. Such rules must include, but need not be limited to, the requirement that all evaluators and researchers 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/ . . . . ."

(ii) Nothing in this chapter may be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary, or director, where applicable;

(cc) To any person if the conditions in RCW 70.02.205 are met;

(dd) To the secretary of health for the purposes of the maternal mortality review panel established in RCW 70.54.450; or

(ee) To a tribe or Indian health care provider to carry out the requirements of RCW 71.05.150(6).

(3) Whenever federal law or federal regulations restrict the release of information contained in the information and records related to mental health services of any patient who receives treatment for a substance use disorder, the department or the authority may restrict the release of the information as necessary to comply with federal law and regulations.

(4) Civil liability and immunity for the release of information about a particular person who is committed to the department of social and health services or the authority under RCW 71.05.280(3) and 71.05.320(4)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(5) The fact of admission to a provider of mental health services, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to chapter 71.05 RCW are not admissible as evidence in any legal proceeding outside that chapter without the written authorization of the person who was the subject of the proceeding except as provided in RCW 70.02.260, in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(4)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial, in a civil commitment proceeding pursuant to chapter 71.09 RCW, or, in the case of a minor, a guardianship or dependency proceeding. The records and files maintained in any court proceeding pursuant to chapter 71.05 RCW must 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.

(6)(a) Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this section, for the greater of the following amounts:

(i) One thousand dollars; or

(ii) Three times the amount of actual damages sustained, if any.

(b) It is not a prerequisite to recovery under this subsection that the plaintiff suffered or was threatened with special, as contrasted with general, damages.

(c) Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this section, and may in the same action seek damages as provided in this subsection.

(d) The court may award to the plaintiff, should he or she prevail in any action authorized by this subsection, reasonable attorney fees in addition to those otherwise provided by law.

(e) If an action is brought under this subsection, no action may be brought under RCW 70.02.170.

**Sec. 44.** RCW 70.02.240 and 2021 c 264 s 18 and 2021 c 263 s 7 are each reenacted and amended to read as follows:

The fact of admission and all information and records related to mental health services obtained through inpatient or outpatient treatment of a minor under chapter 71.34 RCW must be kept confidential, except as authorized by this section or under RCW 70.02.050, 70.02.210, 70.02.230, 70.02.250,

70.02.260, and 70.02.265. Confidential information under this section may be disclosed only:

(1) In communications between mental health professionals to meet the requirements of chapter 71.34 RCW, in the provision of services to the minor, or in making appropriate referrals;

(2) In the course of guardianship or dependency proceedings;

(3) To the minor, the minor's parent, including those acting as a parent as defined in RCW 71.34.020 for purposes of family-initiated treatment, and the minor's attorney, subject to RCW 13.50.100;

(4) To the courts as necessary to administer chapter 71.34 RCW;

(5) By a care coordinator under RCW 71.34.755 or 10.77.175 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 or 10.77 RCW;

(6) By a care coordinator under RCW 71.34.755 assigned to a person ordered to receive less restrictive alternative treatment for the purpose of sharing information to parties necessary for the implementation of proceedings under chapter 71.34 RCW;

(7) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address must be disclosed upon request;

(8) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies, if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(9) To the secretary of social and health services and the director of the health care authority for assistance in data collection and program evaluation or research so long as the secretary or director, where applicable, adopts rules for the conduct of such evaluation and research. The rules must include, but need not be limited to, the requirement that all evaluators and researchers 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 minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ . . . . .";

(10) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The mental health service agency

or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(11) 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 must be made by the professional person in charge of the public or private agency or his or her designee and must include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only any other information that is pertinent to the threat or harassment. The agency or its employees are not civilly liable for the decision to disclose or not, so long as the decision was reached in good faith and without gross negligence;

(12) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(13) Upon the death of a minor, to the minor's next of kin;

(14) To a facility in which the minor resides or will reside;

(15) To law enforcement officers and to prosecuting attorneys as are necessary to enforce RCW 9.41.040(2)(a)(~~(iv)~~) (v). The extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, an official copy of any order or orders of commitment, and an official copy of any written or oral notice of ineligibility to possess a firearm that was provided to the person pursuant to RCW 9.41.047(1), must be disclosed upon request;

(b) The law enforcement and prosecuting attorneys may only release the information obtained to the person's attorney as required by court rule and to a jury or judge, if a jury is waived, that presides over any trial at which the person is charged with violating RCW 9.41.040(2)(a)(~~(iv)~~) (v);

(c) Disclosure under this subsection is mandatory for the purposes of the federal health insurance portability and accountability act;

(16) This section may not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the director of the health care authority or the secretary of the department of social and health services, where applicable. The fact of admission and all information obtained pursuant to chapter 71.34 RCW are not admissible as evidence in any legal proceeding outside chapter 71.34 RCW, except guardianship or dependency, without the written consent of the minor or the minor's parent;

(17) For the purpose of a correctional facility participating in the postinstitutional medical assistance system supporting the expedited medical determinations and medical suspensions as provided in RCW 74.09.555 and 74.09.295;

(18) Pursuant to a lawful order of a court.

**NEW SECTION. Sec. 45.** The following acts or parts of acts are each repealed:



(1) RCW 7.105.055 (Jurisdiction—Stalking protection orders) and 2021 c 215 s 5;

(2) RCW 7.105.060 (Jurisdiction—Antiharassment protection orders) and 2021 c 215 s 6;

(3) RCW 7.105.170 (Vulnerable adult protection orders—Service when vulnerable adult is not the petitioner) and 2021 c 215 s 22; and

(4) RCW 7.105.901 (Recommendations on jurisdiction over protection order proceedings—Report) and 2021 c 215 s 12.

**NEW SECTION. Sec. 46.** If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

**Sec. 47.** 2021 c 215 s 87 (uncodified) is amended to read as follows:

(1) Except for sections 12, 16, 18, 19, 21, 24, 25, 34, and 36 of this act, this act takes effect July 1, 2022.

(2) Sections 19, 21, 24, and 34, chapter 215, Laws of 2021 take effect the effective date of this section.

**NEW SECTION. Sec. 48.** Section 36 of this act expires July 1, 2023.

**NEW SECTION. Sec. 49.** (1) Except for sections 9 through 14, 37, and 47 of this act, this act takes effect July 1, 2022.

(2) Section 37 of this act takes effect July 1, 2023.

(3) Sections 9 through 14 and 47 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately.

Passed by the House March 8, 2022.

Passed by the Senate March 3, 2022.

Approved by the Governor March 31, 2022.

Filed in Office of Secretary of State April 1, 2022.

## AUTHENTICATION

I, Kathleen Buchli, 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 2022 session (67th Legislature), chapters 178 through 268, as certified and transmitted to the Statute Law Committee by the Secretary of State under RCW 44.20.020.

IN TESTIMONY WHEREOF, I have hereunto set my hand at Olympia, Washington, this 25th day of April, 2022.

A handwritten signature in black ink, appearing to read "Kathleen Buchli". The signature is written in a cursive style with a large initial "K".

Kathleen Buchli  
Code Reviser