

NOTICE: Formatting and page numbering in this document are different from that in the original published version.

SIXTIETH LEGISLATURE - REGULAR SESSION

FIFTY FIFTH DAY

House Chamber, Olympia, Saturday, March 8, 2008

The House was called to order at 10:00 a.m. by the Speaker (Representative Morris presiding). The Clerk called the roll and a quorum was present.

The flags were escorted to the rostrum by a Sergeant at Arms Color Guard, Pages Lisa Modin and Darrel Belvin. The Speaker (Representative Morris presiding) led the Chamber in the Pledge of Allegiance. Prayer was offered by Representative Norma Smith.

Reading of the Journal of the previous day was dispensed with and it was ordered to stand approved.

The Speaker (Representative Morris presiding) called upon Representative Moeller to preside.

RESOLUTIONS

HOUSE RESOLUTION NO. 4703, By Representatives Roberts, Van De Wege, Seaquist, Appleton, Rolfes, McCoy, Goodman, Sells, Lias, Blake, Darneille, Green, Kelley, Loomis, Upthegrove, Warnick, Dickerson, Hasegawa and Linville

WHEREAS, March 31, 2008, marks the 75th anniversary of the signing by President Franklin D. Roosevelt of the historical law known as the Emergency Conservation Work Act, a precursor of the 1937 law that established the Civilian Conservation Corps (CCC) which helped alleviate some of the horrific unemployment of the Great Depression; and

WHEREAS, Between 1933 and 1942, the CCC provided employment and vocational training nationwide for the conservation and development of natural resources, protection of national forests, and construction and maintenance of military reservations for more than three million men, including unemployed youths, more than 250,000 veterans of the Spanish-American War and World War I, and more than 80,000 Native Americans; and

WHEREAS, The CCC spent more than 76 million dollars in Washington and provided work for 73,300 men, including 51,300 Washington state residents; and

WHEREAS, The CCC left the nation a legacy in the form of three billion new trees, 800 state parks, 8,452 improved beaches, and 405,037 signs, markers, and monuments; and

WHEREAS, The CCC constructed 125,000 miles of road and strung 89,000 miles of telephone line; and

WHEREAS, The CCC restored and enhanced the natural environment with the revegetation of 814,000 acres of range, the stocking of 972 million fish, and mosquito control on 248,000 acres of land; and

WHEREAS, The CCC performed eight million days of firefighting, with Camp North Bend in Washington state among those camps developing an excellent reputation for fighting forest fires; and

WHEREAS, The CCC contributed to the creation or improvement of eleven state parks in Washington, such as Deception Pass, Beacon Rock, Ginkgo Petrified Forest, and Saltwater State Park;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize how the work of the Civilian Conservation Corps has benefitted succeeding generations in Washington over the past 75 years, and express sincere gratitude for the rich heritage that was built by the CCC and remains greatly appreciated by all.

HOUSE RESOLUTION NO. 4703 was adopted.

HOUSE RESOLUTION NO. 4704, By Representatives Rolfes, Kenney, Loomis, Van De Wege, Dickerson, Lantz, Williams, Takko, Jarrett, Schual-Berke, Hunter, Hunt, Morrell, Seaquist, Goodman, Green, Appleton, Moeller, Skinner, Clibborn, Roberts, Pedersen, Conway, Armstrong, Nelson, Smith and Lias

WHEREAS, Washington state's greatest asset is the creative, collaborative, and innovative people in its workforce, and Washington Schools are an important factor in preparing young adults for the global workforce; and

WHEREAS, The arts make a tremendous impact on the developmental growth of every child and have been proven to help level the "learning field" across socioeconomic boundaries; and

WHEREAS, Young people who participate in the arts are more likely to be recognized for academic achievement, elected to class office within their schools, and have strong school attendance; and

WHEREAS, The arts can teach and inspire students about different cultures through literature, visual arts, music, dance, and drama; and

WHEREAS, The core subjects are important to learn; they can effectively be taught through the arts, thereby creating a well-rounded student; and

WHEREAS, The arts can bring academic subjects to life and the integration of the arts in the academic curriculum can enhance student engagement, extend student learning, and deepen student understanding of academic content; and

WHEREAS, The arts can be a strong deterrent to delinquent behavior and truancy problems while also increasing overall academic performance among those youth engaged in afterschool and summer arts programs targeted toward delinquency prevention;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives reaffirm the importance of the arts as an essential part of a classic, well-rounded, strong academic education; and

BE IT FURTHER RESOLVED, That the House of Representatives recognize teachers, instructors, and volunteers who bring arts to our children in public schools and extracurricular activities; and

BE IT FURTHER RESOLVED, That the House of Representatives seek to partner with local school districts to ensure equal opportunity and access to the study of and participation in the arts as part of a core curriculum within the school day for all Washington students.

HOUSE RESOLUTION NO. 4704 was adopted.

HOUSE RESOLUTION NO. 4705, By Representative Dunshee

WHEREAS, The House of Representatives has an interest in identifying and honoring extraordinary citizens in Washington state; and

WHEREAS, The Cedar Cross United Methodist Women's Mission Quilt Makers have furnished a useful service to their community; and

WHEREAS, The Mission Quilt Makers meet twice a month for two and a half hours to make quilts; and

WHEREAS, Each quilt takes approximately one to two hours to complete; and

WHEREAS, All the fabric is donated and bought with money fundraised by the United Methodist Women's group; and

WHEREAS, The value of each quilt is 25 dollars; and

WHEREAS, A total of 150 quilts and 76 lap robes have been made by the women and donated to local organizations over the last ten years; and

WHEREAS, They have made 15 quilts for veterans staying in the Veterans Hospital in Seattle; and

WHEREAS, Fifteen quilts have also been produced for babies through the Everett Catholic Community Church; and

WHEREAS, Each month the women will make a child's quilt and donate it to the Early Childhood Education and Assistance Program for their family night; and

WHEREAS, Their service has been recognized and awarded by the Early Childhood Education and Assistance Program;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize the service of the Cedar Cross United Methodist Women's Mission Quilt Makers and express our appreciation and admiration for their service on behalf of the people of the state of Washington.

HOUSE RESOLUTION NO. 4705 was adopted.

HOUSE RESOLUTION NO. 4706, By Representatives Pearson and Kristiansen

WHEREAS, Linda Byrnes has served as the Superintendent of Arlington School District for 12 years; and

WHEREAS, Arlington's own Superintendent, Linda Byrnes, was selected as Washington State's 2008 Superintendent of the Year by the Washington Association of School Administrators; and

WHEREAS, Linda Byrnes received her bachelor's and master's degrees in education from Central Washington University, and did postgraduate studies at the University of Washington; and

WHEREAS, Linda Byrnes has served her community as a classroom teacher, assistant principal, and principal in the Lakewood School District, and assistant superintendent of the Highline School District; and

WHEREAS, Linda Byrnes is a current member of the Washington Association of School Administrators Board of Directors; and

WHEREAS, Linda Byrnes was a key figure in getting the district to pass the first capital bond measure in decades in 2000; and

WHEREAS, Linda Byrnes' leadership enabled the district to make nearly 100 million dollars in improvements from a 54 million dollar bond measure; and

WHEREAS, Linda Byrnes led a community-wide effort to raise money for a new performing arts center; and

WHEREAS, In recognition of her vision and determination that made the construction possible, the new auditorium at Arlington High School was named the Linda M. Byrnes Performing Arts Center; and

WHEREAS, Linda Byrnes selflessly gives her time on the board of directors of the Snohomish County Boys and Girls Club and the Arlington Rotary Club; and

WHEREAS, Linda Byrnes was awarded the 2005 Service Award for Professional Excellence by the Arlington Rotary Club; and

WHEREAS, Linda Byrnes has also given her time to the community by serving on the board of directors for the Snohomish County United Way and the Stillaguamish Valley Senior Center, and as a member of the Lake Stevens City Council; and

WHEREAS, Linda Byrnes, Superintendent of the Arlington School District, will be stepping down at the end of the 2008 school year;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives, on behalf of all the people of this state, acknowledge that Washington is honored to be home to a great leader in education who gave many years of dedicated service to our schools, teachers, and our communities, and provided ongoing leadership and service for the betterment of Washington; and

BE IT FURTHER RESOLVED, That the House of Representatives recognize and commend Linda Byrnes for her many accomplishments that have culminated in her selection as the Washington State Superintendent of the Year; and

BE IT FURTHER RESOLVED, That copies of this resolution be immediately transmitted by the Chief Clerk of the House of Representatives to Linda Byrnes and the Arlington School District.

HOUSE RESOLUTION NO. 4706 was adopted.

HOUSE RESOLUTION NO. 4707, By Representatives Kenney, Linville, Hunt, Williams, Upthegrove, Roberts, Sells, Jarrett, Conway, Appleton, McIntire, Hasegawa, Nelson, Skinner, Hudgins, Sullivan, Miloscia, McCoy, Kagi, Green, Campbell and Morrell.

WHEREAS, On March 31, 1927, Cesar Chavez was born on a small ranch near Yuma, Arizona; and

WHEREAS, When severe drought forced the Chavez Family to give up their ranch in Yuma, they began picking crops on California farms; and

WHEREAS, After serving our nation in World War II, Cesar Chavez returned to farm labor in California and began advocating for workers' rights; and

WHEREAS, In 1962, Cesar Chavez founded the National Farm Workers Association, which later became the United Farm Workers of America (UFW), AFL-CIO, the first successful farm workers' union in United States history; and

WHEREAS, Cesar Chavez led a successful five-year grape pickers' strike that rallied millions of supporters to the UFW and forged a national coalition of unions, church groups, students, minorities, and consumers; and

WHEREAS, On April 23, 1993, Cesar Chavez passed away, leaving behind an enduring legacy of service and leadership; in 1994 he posthumously received the Presidential Medal of Freedom from President Bill Clinton, becoming the second Mexican-American to receive the award; and

WHEREAS, In 1994 the Cesar E. Chavez Foundation was created to inspire current and future generations by promoting the ideals of education and civil rights embodied by Cesar Chavez;

NOW, THEREFORE, BE IT RESOLVED, That the House of Representatives recognize that farm worker labor is essential to the state economy, which has benefited from the life's work of Cesar Chavez; and

BE IT FURTHER RESOLVED, That the civil rights leaders of this state and nation be commended for their work in promoting fairness and equal opportunity in the community and the workplace; and

BE IT FURTHER RESOLVED, That the House of Representatives honor a man who devoted his life to improving the working conditions, safety, and dignity of so many.

HOUSE RESOLUTION NO. 4707 was adopted.

MESSAGES FROM THE SENATE

March 7, 2008

Mr. Speaker:

The Senate has passed:

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1865,
HOUSE BILL NO. 2448,
ENGROSSED HOUSE BILL NO. 2459,
HOUSE BILL NO. 2499,
HOUSE BILL NO. 2540,
SUBSTITUTE HOUSE BILL NO. 2560,
SUBSTITUTE HOUSE BILL NO. 2575,
SUBSTITUTE HOUSE BILL NO. 2580,
HOUSE BILL NO. 2594,
HOUSE BILL NO. 2700,
SUBSTITUTE HOUSE BILL NO. 2727,
HOUSE BILL NO. 2762,
SUBSTITUTE HOUSE BILL NO. 2823,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2847,
SUBSTITUTE HOUSE BILL NO. 2879,
SUBSTITUTE HOUSE BILL NO. 2885,
SECOND SUBSTITUTE HOUSE BILL NO. 2903,
HOUSE BILL NO. 2949,
HOUSE BILL NO. 2955,
ENGROSSED SUBSTITUTE HOUSE BILL NO. 2996,
HOUSE BILL NO. 2999,
HOUSE BILL NO. 3019,
HOUSE BILL NO. 3024,
SUBSTITUTE HOUSE BILL NO. 3126,
HOUSE BILL NO. 3200,
SUBSTITUTE HOUSE BILL NO. 3224,

and the same are herewith transmitted.

Brad Hendrickson, Deputy Secretary

March 7, 2008

Mr. Speaker:

The President has signed:

SUBSTITUTE SENATE BILL NO. 6060,
SUBSTITUTE SENATE BILL NO. 6273,
SENATE BILL NO. 6471,
ENGROSSED SUBSTITUTE SENATE BILL NO. 6532,
SENATE BILL NO. 6588,
ENGROSSED SENATE BILL NO. 6641,
SUBSTITUTE SENATE BILL NO. 6791,
SUBSTITUTE SENATE BILL NO. 6847,
SENATE JOINT MEMORIAL NO. 8028,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

There being no objection, the House advanced to the seventh order of business.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2525 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 77.55.021 and 2005 c 146 s 201 are each amended to read as follows:

(1) Except as provided in RCW 77.55.031, 77.55.051, and 77.55.041, in the event that any person or government agency desires to undertake a hydraulic project, the person or government agency shall, before commencing work thereon, secure the approval of the department in the form of a permit as to the adequacy of the means proposed for the protection of fish life.

(2) A complete written application for a permit may be submitted in person or by registered mail and must contain the following:

(a) General plans for the overall project;

(b) Complete plans and specifications of the proposed construction or work within the mean higher high water line in saltwater or within the ordinary high water line in freshwater;

(c) Complete plans and specifications for the proper protection of fish life; and

(d) Notice of compliance with any applicable requirements of the state environmental policy act, unless otherwise provided for in this chapter.

(3) As soon as possible after receipt of an application, the department shall provide notice of the application to affected federally recognized Indian tribes and shall accept comment regarding the application provided by such tribes.

(4)(a) Protection of fish life is the only ground upon which approval of a permit may be denied or conditioned. Approval of a permit may not be unreasonably withheld or unreasonably conditioned. Except as provided in this subsection and subsections ~~((8))~~ (9), ~~((10))~~ (11), and ~~((11))~~ (13) of this section, the department has forty-five calendar days upon receipt of a complete application to grant or deny approval of a permit. The forty-five day requirement is suspended if:

(i) After ten working days of receipt of the application, the applicant remains unavailable or unable to arrange for a timely field evaluation of the proposed project;

(ii) The site is physically inaccessible for inspection;

(iii) The applicant requests a delay; or

(iv) The department is issuing a permit for a storm water discharge and is complying with the requirements of RCW 77.55.161(3)(b).

(b) Immediately upon determination that the forty-five day period is suspended, the department shall notify the applicant in writing of the reasons for the delay.

(c) The period of forty-five calendar days may be extended if the permit is part of a multiagency permit streamlining effort and all participating permitting agencies and the permit applicant agree to an extended timeline longer than forty-five calendar days.

~~((4))~~ (5) If the department denies approval of a permit, the department shall provide the applicant a written statement of the specific reasons why and how the proposed project would adversely affect fish life. Issuance, denial, conditioning, or modification of a permit shall be appealable to the department or the board as specified in RCW 77.55.301 within thirty days of the notice of decision.

~~((5))~~ (6)(a) The permittee must demonstrate substantial progress on construction of that portion of the project relating to the permit within two years of the date of issuance.

(b) Approval of a permit is valid for a period of up to five years from the date of issuance, except as provided in (c) of this subsection and in RCW 77.55.151.

(c) A permit remains in effect without need for periodic renewal for hydraulic projects that divert water for agricultural irrigation or stock watering purposes and that involve seasonal construction or other work. A permit for streambank stabilization projects to protect farm and agricultural land as defined in RCW 84.34.020 remains in effect without need for periodic renewal if the problem causing the need for the streambank stabilization occurs on an annual or more frequent basis. The permittee must notify the appropriate agency before commencing the construction or other work within the area covered by the permit.

~~((6))~~ (7) The department may, after consultation with the permittee, modify a permit due to changed conditions. The modification becomes effective unless appealed to the department or the board as specified in RCW 77.55.301 within thirty days from the notice of the proposed modification. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the department to show that changed conditions warrant the modification in order to protect fish life.

~~((7))~~ (8) A permittee may request modification of a permit due to changed conditions. The request must be processed within forty-five calendar days of receipt of the written request. A decision by the department may be appealed to the board within thirty days of the notice of the decision. For hydraulic projects that divert water for agricultural irrigation or stock watering purposes, or when the hydraulic project or other work is associated with streambank stabilization to protect farm and agricultural land as defined in RCW 84.34.020, the burden is on the permittee to show that changed conditions warrant the requested modification and that such a modification will not impair fish life.

~~((8))~~ (9)(a) The department ~~((or))~~ the county legislative authority, or the governor may declare and continue an emergency. If the county legislative authority declares an emergency under this subsection, it shall immediately notify the department ~~((if it declares an emergency under this subsection))~~. A declared state of emergency by the governor under RCW 43.06.010 shall constitute a declaration under this subsection.

(b) The department, through its authorized representatives, shall issue immediately, upon request, oral approval for a stream crossing, or work to remove any obstructions, repair existing structures, restore streambanks, protect fish life, or protect property threatened by the stream or a change in the stream flow without the necessity of obtaining a written permit prior to commencing work. Conditions of the emergency oral permit must be established by the department and reduced to writing within thirty days and complied with as provided for in this chapter.

(c) The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((+))~~ (10) All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

~~((+))~~ (11) The department or the county legislative authority may determine an imminent danger exists. The county legislative authority shall notify the department, in writing, if it determines that an imminent danger exists. In cases of imminent danger, the department shall issue an expedited written permit, upon request, for work to remove any obstructions, repair existing structures, restore banks, protect fish resources, or protect property. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection.

~~((+))~~ (12)(a) For any property, except for property located on a marine shoreline, that has experienced at least two consecutive years of flooding or erosion that has damaged or has threatened to damage a major structure, water supply system, septic system, or access to any road or highway, the county legislative authority may determine that a chronic danger exists. The county legislative authority shall notify the department, in writing, when it determines that a chronic danger exists. In cases of chronic danger, the department may issue a permit, upon request, for work necessary to abate the chronic danger by removing any obstructions, repairing existing structures, restoring banks, restoring road or highway access, protecting fish resources, or protecting property. Permit requests must be made and processed in accordance with subsections (2) and (4) of this section.

(b) Any projects proposed to address a chronic danger identified under (a) of this subsection that satisfies the project description identified in RCW 77.55.181(1)(a)(ii) are not subject to the provisions of the state environmental policy act, chapter 43.21C RCW. However, the project is subject to the review process established in RCW 77.55.181(3) as if it were a fish habitat improvement project.

(13) The department may issue an expedited written permit in those instances where normal permit processing would result in significant hardship for the applicant or unacceptable damage to the environment. Expedited permit requests require a complete written application as provided in subsection (2) of this section and must be issued within fifteen calendar days of the receipt of a complete written application. Approval of an expedited permit is valid for up to sixty days from the date of issuance. The department may not require the provisions of the state environmental policy act, chapter 43.21C RCW, to be met as a condition of issuing a permit under this subsection."

On page 1, line 1 of the title, after "damage;" strike the remainder of the title and insert "and amending RCW 77.55.021."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2525 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2714 with the following amendment

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The sex offender policy board, as created by chapter . . . (Substitute Senate Bill No. 6596), Laws of 2008, shall review and make recommendations for changes to the statutory requirements relating to sex offender and kidnapping offender registration and notification. The review and recommendations shall include, but are not limited to:

(a) The appropriate class of felony and sentencing designations for a conviction of the failure to register;

(b) The appropriate groups and classes of adult offenders who should be required to register;

(c) The appropriate groups and classes of juvenile offenders who should be required to register;

(d) When a sex offender or kidnapping offender should be relieved of registration or notification requirements and the process for termination of those obligations; and

(e) Simplification of the statutory language to allow the department of corrections, law enforcement, and offenders to more easily identify registration and notification requirements.

(2) In formulating its recommendations, the board shall review the experience of other jurisdictions and any available evidence-based research to ensure that its recommendations have the maximum impact on public safety.

(3) The board shall report to the governor and the relevant committees of the legislature no later than November 1, 2009."

On page 1, line 2 of the title, after "felony;" strike the remainder of the title and insert "and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2714 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2791 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 61.34.020 and 1988 c 33 s 4 are each amended to read as follows:

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

~~(1) ("Pattern of equity skimming" means engaging in a least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.~~

~~(2) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.~~

~~(3) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.~~

~~(4)) An "act of equity skimming" occurs when:~~

~~(a)(i) A person purchases a dwelling with the representation that the purchaser will pay for the dwelling by assuming the obligation to make payments on existing mortgages, deeds of trust, or real estate contracts secured by and pertaining to the dwelling, or by representing that such obligation will be assumed; and~~

~~(ii) The person fails to make payments on such mortgages, deeds of trust, or real estate contracts as the payments become due, within two years subsequent to the purchase; and~~

~~(iii) The person diverts value from the dwelling by either (A) applying or authorizing the application of rents from the dwelling for the person's own benefit or use, or (B) obtaining anything of value from the sale or lease with option to purchase of the dwelling for the person's own benefit or use, or (C) removing or obtaining appliances, fixtures, furnishings, or parts of such dwellings or appurtenances for the person's own benefit or use without replacing the removed items with items of equal or greater value; or~~

~~(b)(i) The person purchases a dwelling in a transaction in which all or part of the purchase price is financed by the seller and is (A) secured by a lien which is inferior in priority or subordinated to a lien placed on the dwelling by the purchaser, or (B) secured by a lien on other real or personal property, or (C) without any security; and~~

~~(ii) The person obtains a superior priority loan which either (A) is secured by a lien on the dwelling which is superior in priority to the lien of the seller, but not including a bona fide assumption by the purchaser of a loan existing prior to the time of purchase, or (B) creating any lien or encumbrance on the dwelling when the seller does not hold a lien on the dwelling; and~~

~~(iii) The person fails to make payments or defaults on the superior priority loan within two years subsequent to the purchase; and~~

~~(iv) The person diverts value from the dwelling by applying or authorizing any part of the proceeds from such superior priority loan for the person's own benefit or use.~~

~~(2) "Distressed home" means either:~~

~~(a) A dwelling that is in danger of foreclosure or at risk of loss due to nonpayment of taxes; or~~

~~(b) A dwelling that is in danger of foreclosure or that is in the process of being foreclosed due to a default under the terms of a mortgage.~~

~~(3) "Distressed home consultant" means a person who:~~

~~(a) Solicits or contacts a distressed homeowner in writing, in person, or through any electronic or telecommunications medium and makes a representation or offer to perform any service that the person represents will:~~

~~(i) Stop, enjoin, delay, void, set aside, annul, stay, or postpone a foreclosure sale;~~

~~(ii) Obtain forbearance from any servicer, beneficiary, or mortgagee;~~

~~(iii) Assist the distressed homeowner to exercise a right of reinstatement provided in the loan documents or to refinance a loan that is in foreclosure or is in danger of foreclosure;~~

~~(iv) Obtain an extension of the period within which the distressed homeowner may reinstate the distressed homeowner's obligation or extend the deadline to object to a ratification;~~

~~(v) Obtain a waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a distressed home or contained in the mortgage;~~

~~(vi) Assist the distressed homeowner to obtain a loan or advance of funds;~~

~~(vii) Save the distressed homeowner's residence from foreclosure;~~

~~(viii) Avoid or ameliorate the impairment of the distressed homeowner's credit resulting from the recording of a notice of trustee sale, the filing of a petition to foreclose, or the conduct of a foreclosure sale;~~

~~(ix) Purchase or obtain an option to purchase the distressed homeowner's residence within twenty days of an advertised or docketed foreclosure sale;~~

~~(x) Arrange for the distressed homeowner to become a lessee or tenant entitled to continue to reside in the distressed homeowner's residence;~~

~~(xi) Arrange for the distressed homeowner to have an option to repurchase the distressed homeowner's residence; or~~

~~(xii) Engage in any documentation, grant, conveyance, sale, lease, trust, or gift by which the distressed homeowner clogs the distressed homeowner's equity of redemption in the distressed homeowner's residence; or~~

~~(b) Systematically contacts owners of property that court records, newspaper advertisements, or any other source demonstrate are in foreclosure or are in danger of foreclosure.~~

~~"Distressed home consultant" does not mean a financial institution that the distressed homeowner is a customer of, a nonprofit credit counseling service, or a licensed attorney.~~

~~(4) "Distressed home consulting transaction" means an agreement between a distressed homeowner and a distressed home consultant in which the distressed home consultant represents or offers to perform any of the services enumerated in subsection (3)(a) of this section.~~

~~(5) "Distressed home conveyance" means a transaction in which:~~

~~(a) A distressed homeowner transfers an interest in the distressed home to a distressed home purchaser;~~

~~(b) The distressed home purchaser allows the distressed homeowner to occupy the distressed home; and~~

~~(c) The distressed home purchaser or a person acting in participation with the distressed home purchaser conveys or promises to convey the distressed home to the distressed homeowner, provides the distressed homeowner with an option to purchase the distressed home at a later date, or promises the distressed homeowner an interest in, or portion of, the proceeds of any resale of the distressed home.~~

~~(6) "Distressed home purchaser" means any person who acquires an interest in a distressed home under a distressed home conveyance. "Distressed home purchaser" includes a person who acts in joint venture or joint enterprise with one or more distressed home purchasers in a distressed home conveyance. A financial institution is not a distressed home purchaser.~~

~~(7) "Distressed homeowner" means an owner of a distressed home.~~

(8) "Dwelling" means a single, duplex, triplex, or four-unit family residential building.

(9) "Financial institution" means any federally or state chartered bank or trust company, savings bank or savings and loan association, or credit union.

(10) "Homeowner" means a person who owns and occupies a dwelling as his or her primary residence, whether or not his or her ownership interest is encumbered by a mortgage, deed of trust, or other lien.

(11) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold, the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed home consulting transaction.

(12) "Mortgage" means a mortgage, mortgage deed, deed of trust, security agreement, or other instrument securing a mortgage loan and constituting a lien on or security interest in housing.

(13) "Nonprofit credit counseling service" means a nonprofit organization described under section 501(c)(3) of the internal revenue code, or similar successor provisions, that is licensed or certified by any federal, state, or local agency.

(14) "Pattern of equity skimming" means engaging in at least three acts of equity skimming within any three-year period, with at least one of the acts occurring after June 9, 1988.

(15) "Person" includes any natural person, corporation, joint stock association, or unincorporated association.

(16) "Resale" means a bona fide market sale of the distressed home subject to the distressed home conveyance by the distressed home purchaser to an unaffiliated third party.

(17) "Resale price" means the gross sale price of the distressed home on resale.

NEW SECTION. Sec. 2. (1) A distressed home consulting transaction must:

(a) Be in writing in at least twelve-point font;

(b) Be in the same language as principally used by the distressed home consultant to describe his or her services to the distressed homeowner. If the agreement is written in a language other than English, the distressed home consultant shall cause the agreement to be translated into English and shall deliver copies of both the original and English language versions to the distressed homeowner at the time of execution and shall keep copies of both versions on file in accordance with subsection (2) of this section. Any ambiguities or inconsistencies between the English language and the original language versions of the written agreement must be strictly construed in favor of the distressed homeowner;

(c) Fully disclose the exact nature of the distressed home consulting services to be provided, including any distressed home conveyance that may be involved and the total amount and terms of any compensation to be received by the distressed home consultant or anyone working in association with the distressed home consultant;

(d) Be dated and signed by the distressed homeowner and the distressed home consultant;

(e) Contain the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the distressed home consultant, and if the distressed home consultant is serving as an agent for any other person, the complete legal name, address, telephone number, fax number, e-mail address, and internet address if any, of the principal; and

(f) Contain the following notice, which must be initialed by the distressed homeowner, in bold face type and in at least fourteen-point font:

"NOTICE REQUIRED BY WASHINGTON LAW

THIS IS AN IMPORTANT LEGAL CONTRACT AND COULD RESULT IN THE LOSS OF YOUR HOME.

. . . Name of distressed home consultant . . . or anyone working for him or her CANNOT guarantee you that he or she will be able to refinance your home or arrange for you to keep your home. Continue making mortgage payments until refinancing, if applicable, is approved. You should consult with an attorney before signing this contract.

If you sign a promissory note, lien, mortgage, deed of trust, or deed, you could lose your home and be unable to get it back."

(2) At the time of execution, the distressed home consultant shall provide the distressed homeowner with a copy of the written agreement, and the distressed home consultant shall keep a separate copy of the written agreement on file for at least five years following the completion or other termination of the agreement.

(3) This section does not relieve any duty or obligation imposed upon a distressed home consultant by any other law including, but not limited to, the duties of a credit service organization under chapter 19.134 RCW or a person required to be licensed under chapter 19.146 RCW.

NEW SECTION. Sec. 3. A distressed home consultant has a fiduciary relationship with the distressed homeowner, and each distressed home consultant is subject to all requirements for fiduciaries otherwise applicable under state law. A distressed home consultant's fiduciary duties include, but are not limited to, the following:

(1) To act in the distressed homeowner's best interest and in utmost good faith toward the distressed homeowner, and not compromise a distressed homeowner's right or interest in favor of another's right or interest, including a right or interest of the distressed home consultant;

(2) To disclose to the distressed homeowner all material facts of which the distressed home consultant has knowledge that might reasonably affect the distressed homeowner's rights, interests, or ability to receive the distressed homeowner's intended benefit from the residential mortgage loan;

(3) To use reasonable care in performing his or her duties; and

(4) To provide an accounting to the distressed homeowner for all money and property received from the distressed homeowner.

NEW SECTION. Sec. 4. (1) A person may not induce or attempt to induce a distressed homeowner to waive his or her rights under this chapter.

(2) Any waiver by a homeowner of the provisions of this chapter is void and unenforceable as contrary to public policy.

NEW SECTION. Sec. 5. A distressed home purchaser shall enter into a distressed home reconveyance in the form of a written contract. The contract must be written in at least twelve-point boldface type in the same language principally used by the distressed home purchaser and distressed homeowner to negotiate the sale of the distressed home, and must be fully completed, signed, and dated by the distressed homeowner and distressed home purchaser before the execution of any instrument of conveyance of the distressed home.

NEW SECTION. Sec. 6. The contract required in section 5 of this act must contain the entire agreement of the parties and must include the following:

- (1) The name, business address, and telephone number of the distressed home purchaser;
- (2) The address of the distressed home;
- (3) The total consideration to be provided by the distressed home purchaser in connection with or incident to the sale;
- (4) A complete description of the terms of payment or other consideration including, but not limited to, any services of any nature that the distressed home purchaser represents that he or she will perform for the distressed homeowner before or after the sale;
- (5) The time at which possession is to be transferred to the distressed home purchaser;
- (6) A complete description of the terms of any related agreement designed to allow the distressed homeowner to remain in the home, such as a rental agreement, repurchase agreement, or lease with option to buy;
- (7) A complete description of the interest, if any, the distressed homeowner maintains in the proceeds of, or consideration to be paid upon, the resale of the distressed home;
- (8) A notice of cancellation as provided in section 8 of this act; and
- (9) The following notice in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed, and completed with the name of the distressed home purchaser, immediately above the statement required in section 8 of this act;

"NOTICE REQUIRED BY WASHINGTON LAW

Until your right to cancel this contract has ended,
(Name) or anyone working for (Name) CANNOT
ask you to sign or have you sign any deed or any other
document."

The contract required by this section survives delivery of any instrument of conveyance of the distressed home and has no effect on persons other than the parties to the contract.

NEW SECTION. Sec. 7. (1) In addition to any other right of rescission, a distressed homeowner has the right to cancel any contract with a distressed home purchaser until midnight of the fifth business day following the day on which the distressed homeowner signs a contract that complies with this chapter or until 8:00 a.m. on the last day of the period during which the distressed homeowner has a right of redemption, whichever occurs first.

(2) Cancellation occurs when the distressed homeowner delivers to the distressed home purchaser, by any means, a written notice of cancellation to the address specified in the contract.

(3) A notice of cancellation provided by the distressed homeowner is not required to take the particular form as provided with the contract.

(4) Within ten days following the receipt of a notice of cancellation under this section, the distressed home purchaser shall return without condition any original contract and any other documents signed by the distressed homeowner.

NEW SECTION. Sec. 8. (1) The contract required in section 5 of this act must contain, in immediate proximity to the space reserved for the distressed homeowner's signature, the following conspicuous statement in at least fourteen-point boldface type if the contract is printed, or in capital letters if the contract is typed:

"You may cancel this contract for the sale of your house
without any penalty or obligation at any time before
.....
(Date and time of day)

See the attached notice of cancellation form for an
explanation of this right."

The distressed home purchaser shall accurately enter the date and time of day on which the cancellation right ends.

(2) The contract must be accompanied by a completed form in duplicate, captioned "NOTICE OF CANCELLATION" in twelve-point boldface type if the contract is printed, or in capital letters if the contract is typed, followed by a space in which the distressed home purchaser shall enter the date on which the distressed homeowner executes any contract. This form must be attached to the contract, must be easily detachable, and must contain in at least twelve-point type if the contract is printed, or in capital letters if the contract is typed, the following statement written in the same language as used in the contract:

"NOTICE OF CANCELLATION

.....
(Enter date contract signed)
You may cancel this contract for the sale of your house,
without any penalty or obligation, at any time before
.....
(Enter date and time of day)
To cancel this transaction, personally deliver a signed and
dated copy of this cancellation notice to

.....
(Name of purchaser)
at

.....
(Street address of purchaser's place of business)
NOT LATER THAN

.....
(Enter date and time of day)
I hereby cancel this transaction.

.....(Date)

.....
(Seller's signature)"

(3) The distressed home purchaser shall provide the distressed homeowner with a copy of the contract and the attached notice of cancellation at the time the contract is executed by all parties.

(4) The five-business-day period during which the distressed homeowner may cancel the contract must not begin to run until all parties to the contract have executed the contract and the distressed home purchaser has complied with this section.

NEW SECTION. Sec. 9. (1) Any provision in a contract that attempts or purports to require arbitration of any dispute arising under this chapter is void at the option of the distressed homeowner.

(2) This section applies to any contract entered into on or after the effective date of this act.

NEW SECTION. Sec. 10. A distressed home purchaser shall not:

(1) Enter into, or attempt to enter into, a distressed home conveyance with a distressed homeowner unless the distressed home purchaser verifies and can demonstrate that the distressed homeowner has a reasonable ability to pay for the subsequent conveyance of an interest back to the distressed homeowner. In the case of a lease with an option to purchase, payment ability also includes the reasonable ability to make the lease payments and purchase the property within the term of the option to purchase. An evaluation of a distressed homeowner's reasonable ability to pay includes debt to income ratios, fair market value of the distressed home, and the distressed homeowner's payment and credit history. There is a rebuttable presumption that the distressed home purchaser has not verified a distressed homeowner's reasonable ability to pay if the distressed home purchaser has not obtained documentation of assets, liabilities, and income, other than an undocumented statement, of the distressed homeowner;

(2) Fail to either:

(a) Ensure that title to the distressed home has been reconveyed to the distressed homeowner; or

(b) Make payment to the distressed homeowner so that the distressed homeowner has received consideration in an amount of at least eighty-two percent of the fair market value of the property as of the date of the eviction or voluntary relinquishment of possession of the distressed home by the distressed homeowner. For the purposes of this subsection (2)(b), the following applies:

(i) There is a rebuttable presumption that an appraisal by a person licensed or certified by an agency of the federal government or this state to appraise real estate constitutes the fair market value of the distressed home;

(ii) "Consideration" means any payment or thing of value provided to the distressed homeowner, including unpaid rent owed by the distressed homeowner before the date of eviction or voluntary relinquishment of the distressed home, reasonable costs paid to independent third parties necessary to complete the distressed home conveyance transaction, the payment of money to satisfy a debt or legal obligation of the distressed homeowner, or the reasonable cost of repairs for damage to the distressed home caused by the distressed homeowner. "Consideration" does not include amounts imputed as a down payment or fee to the distressed home purchaser or a person acting in participation with the distressed home purchaser;

(3) Enter into repurchase or lease terms as part of the distressed home conveyance that are unfair or commercially unreasonable, or engage in any other unfair or deceptive acts or practices;

(4) Represent, directly or indirectly, that (a) the distressed home purchaser is acting as an advisor or consultant, (b) the distressed home purchaser is acting on behalf of or in the interests of the distressed homeowner, or (c) the distressed home purchaser is assisting the distressed homeowner to save the distressed home, buy time, or use other substantially similar language;

(5) Misrepresent the distressed home purchaser's status as to licensure or certification;

(6) Perform any of the following until after the time during which the distressed homeowner may cancel the transaction has expired:

(a) Accept from any distressed homeowner an execution of, or induce any distressed homeowner to execute, any instrument of conveyance of any interest in the distressed home;

(b) Record with the county auditor any document, including any instrument of conveyance, signed by the distressed homeowner; or

(c) Transfer or encumber or purport to transfer or encumber any interest in the distressed home;

(7) Fail to reconvey title to the distressed home when the terms of the distressed home conveyance contract have been fulfilled;

(8) Enter into a distressed home conveyance where any party to the transaction is represented by a power of attorney;

(9) Fail to extinguish or assume all liens encumbering the distressed home immediately following the conveyance of the distressed home;

(10) Fail to close a distressed home conveyance in person before an independent third party who is authorized to conduct real estate closings within the state.

Sec. 11. RCW 61.34.040 and 1988 c 33 s 3 are each amended to read as follows:

(1) In addition to the criminal penalties provided in RCW 61.34.030, the legislature finds ((and declares)) that ((equity skimming substantially affects)) the practices covered by this chapter are matters vitally affecting the public interest((- The commission by any person of an act of equity skimming or a pattern of equity skimming is an unfair or deceptive act or practice and unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020)) for the purpose of applying chapter 19.86 RCW. A violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair method of competition for the purpose of applying chapter 19.86 RCW.

(2) In a private right of action under chapter 19.86 RCW for a violation of this chapter, the court may double or triple the award of damages pursuant to RCW 19.86.090, subject to the statutory limit. If, however, the court determines that the defendant acted in bad faith, the limit for doubling or tripling the award of damages may be increased, but shall not exceed one hundred thousand dollars. Any claim for damages brought under this chapter must be commenced within four years after the date of the alleged violation.

(3) The remedies provided in this chapter are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law. An action under this chapter shall not affect the rights in the distressed home held by a distressed home purchaser for value under this chapter or other applicable law.

Sec. 12. RCW 59.18.030 and 1998 c 276 s 1 are each amended to read as follows:

As used in this chapter:

(1) "Distressed home" has the same meaning as in RCW 61.34.020.

(2) "Distressed home conveyance" has the same meaning as in RCW 61.34.020.

(3) "Distressed home purchaser" has the same meaning as in RCW 61.34.020.

(4) "Dwelling unit" is a structure or that part of a structure which is used as a home, residence, or sleeping place by one person or by two or more persons maintaining a common household, including but not limited to single family residences and units of multiplexes, apartment buildings, and mobile homes.

~~((2))~~ (5) "In danger of foreclosure" means any of the following:

(a) The homeowner has defaulted on the mortgage and, under the terms of the mortgage, the mortgagee has the right to accelerate full payment of the mortgage and repossess, sell, or cause to be sold the property;

(b) The homeowner is at least thirty days delinquent on any loan that is secured by the property; or

(c) The homeowner has a good faith belief that he or she is likely to default on the mortgage within the upcoming four months due to a lack of funds, and the homeowner has reported this belief to:

(i) The mortgagee;

(ii) A person licensed or required to be licensed under chapter 19.134 RCW;

(iii) A person licensed or required to be licensed under chapter 19.146 RCW;

(iv) A person licensed or required to be licensed under chapter 18.85 RCW;

(v) An attorney-at-law;

(vi) A mortgage counselor or other credit counselor licensed or certified by any federal, state, or local agency; or

(vii) Any other party to a distressed property conveyance.

(6) "Landlord" means the owner, lessor, or sublessor of the dwelling unit or the property of which it is a part, and in addition means any person designated as representative of the landlord.

~~((3))~~ (7) "Mortgage" is used in the general sense and includes all instruments, including deeds of trust, that are used to secure an obligation by an interest in real property.

(8) "Person" means an individual, group of individuals, corporation, government, or governmental agency, business trust, estate, trust, partnership, or association, two or more persons having a joint or common interest, or any other legal or commercial entity.

~~((4))~~ (9) "Owner" means one or more persons, jointly or severally, in whom is vested:

(a) All or any part of the legal title to property; or

(b) All or part of the beneficial ownership, and a right to present use and enjoyment of the property.

~~((5))~~ (10) "Premises" means a dwelling unit, appurtenances thereto, grounds, and facilities held out for the use of tenants generally and any other area or facility which is held out for use by the tenant.

~~((6))~~ (11) "Rental agreement" means all agreements which establish or modify the terms, conditions, rules, regulations, or any other provisions concerning the use and occupancy of a dwelling unit.

~~((7))~~ (12) A "single family residence" is a structure maintained and used as a single dwelling unit. Notwithstanding that a dwelling unit shares one or more walls with another dwelling unit, it shall be

deemed a single family residence if it has direct access to a street and shares neither heating facilities nor hot water equipment, nor any other essential facility or service, with any other dwelling unit.

~~((8))~~ (13) A "tenant" is any person who is entitled to occupy a dwelling unit primarily for living or dwelling purposes under a rental agreement.

~~((9))~~ (14) "Reasonable attorney's fees", where authorized in this chapter, means an amount to be determined including the following factors: The time and labor required, the novelty and difficulty of the questions involved, the skill requisite to perform the legal service properly, the fee customarily charged in the locality for similar legal services, the amount involved and the results obtained, and the experience, reputation and ability of the lawyer or lawyers performing the services.

~~((10))~~ (15) "Gang" means a group that: (a) Consists of three or more persons; (b) has identifiable leadership or an identifiable name, sign, or symbol; and (c) on an ongoing basis, regularly conspires and acts in concert mainly for criminal purposes.

~~((11))~~ (16) "Gang-related activity" means any activity that occurs within the gang or advances a gang purpose.

NEW SECTION. Sec. 13. A new section is added to chapter 59.18 RCW to read as follows:

In an unlawful detainer action involving property that was a distressed home:

(1) The plaintiff shall disclose to the court whether the defendant previously held title to the property that was a distressed home, and explain how the plaintiff came to acquire title;

(2) A defendant who previously held title to the property that was a distressed home shall not be required to escrow any money pending trial when a material question of fact exists as to whether the plaintiff acquired title from the defendant directly or indirectly through a distressed home conveyance;

(3) There must be both an automatic stay of the action and a consolidation of the action with a pending or subsequent quiet title action when a defendant claims that the plaintiff acquired title to the property through a distressed home conveyance.

NEW SECTION. Sec. 14. Sections 2 through 10 of this act are each added to chapter 61.34 RCW."

On page 1, line 1 of the title, after "conveyances;" strike the remainder of the title and insert "amending RCW 61.34.020, 61.34.040, and 59.18.030; adding new sections to chapter 61.34 RCW; adding a new section to chapter 59.18 RCW; and prescribing penalties."

and the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to HOUSE BILL NO. 2791 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2858 with the following amendment:

Strike everything after the enacting clause and insert the following:

Sec. 1. RCW 19.290.010 and 2007 c 377 s 1 are each amended to read as follows:

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

(1) "Commercial account" means a relationship between a scrap metal business and a commercial enterprise that is ongoing and properly documented under RCW 19.290.030.

(2) "Commercial enterprise" means a corporation, partnership, limited liability company, association, state agency, political subdivision of the state, public corporation, or any other legal or commercial entity.

(3) "Commercial metal property" means: Utility access covers; street light poles and fixtures; road and bridge guardrails; highway or street signs; water meter covers; traffic directional and control signs; traffic light signals; any metal property marked with the name of a commercial enterprise, including but not limited to a telephone, commercial mobile radio services, cable, electric, water, natural gas, or other utility, or railroad; unused or undamaged building construction materials consisting of copper pipe, tubing, or wiring, or aluminum wire, siding, downspouts, or gutters; aluminum or stainless steel fence panels made from one inch tubing, forty-two inches high with four-inch gaps; aluminum decking, bleachers, or risers; historical markers; statue plaques; grave markers and funeral vases; or agricultural irrigation wheels, sprinkler heads, and pipes.

(4) "Nonferrous metal property" means metal property for which the value of the metal property is derived from the property's content of copper, brass, aluminum, bronze, lead, zinc, nickel, and their alloys. "Nonferrous metal property" does not include precious metals.

(5) "Precious metals" means gold, silver, and platinum.

(6) "Private metal property" means catalytic converters, either singly or in bundles, bales, or bulk, that have been removed from vehicles for sale as a specific commodity.

(7) "Record" means a paper, electronic, or other method of storing information.

~~((7))~~ (8) "Scrap metal business" means a scrap metal supplier, scrap metal recycling center, and scrap metal processor.

~~((8))~~ (9) "Scrap metal processor" means a person with a current business license that conducts business from a permanent location, that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of altering the metal in preparation for its use as feedstock in the manufacture of new products, and that maintains a hydraulic bailer, shearing device, or shredding device for recycling.

~~((9))~~ (10) "Scrap metal recycling center" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property, nonferrous metal property, and commercial metal property for the purpose of aggregation and sale to another scrap metal business and that maintains a fixed place of business within the state.

~~((10))~~ (11) "Scrap metal supplier" means a person with a current business license that is engaged in the business of purchasing or receiving private metal property or nonferrous metal property for the purpose of aggregation and sale to a scrap metal recycling center or scrap metal processor and that does not maintain a fixed business location in the state.

~~((11))~~ (12) "Transaction" means a pledge, or the purchase of, or the trade of any item of private metal property or nonferrous metal property by a scrap metal business from a member of the general public. "Transaction" does not include donations or the purchase or receipt of private metal property or nonferrous metal property by a scrap metal business from a commercial enterprise, from another scrap metal business, or from a duly authorized employee or agent of the commercial enterprise or scrap metal business.

Sec. 2. RCW 19.290.020 and 2007 c 377 s 2 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, including the property's classification code as provided in the institute of scrap recycling industries scrap specifications circular, 2006, and weight, quantity, or volume.

(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 one year following the date of the transaction.

Sec. 3. RCW 19.290.030 and 2007 c 377 s 3 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) No transaction involving private metal property or nonferrous metal property valued at greater than thirty dollars may be made in cash or with any person who does not provide a street address under the requirements of RCW 19.290.020. For transactions valued at greater than thirty dollars, 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 ten days after the transaction was made. A transaction occurs on the date provided in the record required under RCW 19.290.020.

(5) No scrap metal business may purchase or receive beer kegs from anyone except a manufacturer of beer kegs or licensed brewery.

Sec. 4. RCW 19.290.040 and 2007 c 377 s 4 are each amended to read as follows:

(1) Every scrap metal business must create and maintain a permanent record with a commercial enterprise, including another scrap metal business, in order to establish a commercial account. That record, at a minimum, must include the following information:

(a) The full name of the commercial enterprise or commercial account;

(b) The business address and telephone number of the commercial enterprise or commercial account; and

(c) The full name of the person employed by the commercial enterprise who is authorized to deliver private metal property, nonferrous metal property, and commercial metal property to the scrap metal business.

(2) The record maintained by a scrap metal business for a commercial account must document every purchase or receipt of private metal property, nonferrous metal property, and commercial metal property from the commercial enterprise. The documentation must include, at a minimum, the following information:

(a) The time, date, and value of the property being purchased or received;

(b) A description of the predominant types of property being purchased or received; and

(c) The signature of the person delivering the property to the scrap metal business.

Sec. 5. RCW 19.290.050 and 2007 c 377 s 5 are each amended to read as follows:

(1) Upon request by any commissioned law enforcement officer of the state or any of its political subdivisions, every scrap metal business shall furnish a full, true, and correct transcript of the records

from the purchase or receipt of private metal property, nonferrous metal property, and commercial metal property involving a specific individual, vehicle, or item of private metal property, nonferrous metal property, or commercial metal property. This information may be transmitted within a specified time of not less than two business days to the applicable law enforcement agency electronically, by facsimile transmission, or by modem or similar device, or by delivery of computer disk subject to the requirements of, and approval by, the chief of police or the county's chief law enforcement officer.

(2) If the scrap metal business has good cause to believe that any private metal property, nonferrous metal property, or commercial metal property in his or her possession has been previously lost or stolen, the scrap metal business shall promptly report that fact to the applicable commissioned law enforcement officer of the state, the chief of police, or the county's chief law enforcement officer, together with the name of the owner, if known, and the date when and the name of the person from whom it was received.

Sec. 6. RCW 19.290.060 and 2007 c 377 s 6 are each amended to read as follows:

(1) Following notification, either verbally or in writing, from a commissioned law enforcement officer of the state or any of its political subdivisions that an item of private metal property, nonferrous metal property, or commercial metal property has been reported as stolen, a scrap metal business shall hold that property intact and safe from alteration, damage, or commingling, and shall place an identifying tag or other suitable identification upon the property. The scrap metal business shall hold the property for a period of time as directed by the applicable law enforcement agency up to a maximum of ten business days.

(2) A commissioned law enforcement officer of the state or any of its political subdivisions shall not place on hold any item of private metal property, nonferrous metal property, or commercial metal property unless that law enforcement agency reasonably suspects that the property is a lost or stolen item. Any hold that is placed on the property must be removed within ten business days after the property on hold is determined not to be stolen or lost and the property must be returned to the owner or released.

Sec. 7. RCW 19.290.070 and 2007 c 377 s 7 are each amended to read as follows:

It is a gross misdemeanor under chapter 9A.20 RCW for:

(1) 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) 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) 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) 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 years or any person who is discernibly under the influence of intoxicating liquor or drugs;

(5) 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 ten years whether the person is acting in his or her own behalf or as the agent of another;

(6) 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) 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; or

(8) Any scrap metal business to engage in a series of transactions valued at less than thirty dollars with the same seller for the purposes of avoiding the requirements of RCW 19.290.030(4).

Sec. 8. RCW 19.290.090 and 2007 c 377 s 9 are each amended to read as follows:

The provisions of this chapter do not apply to transactions conducted by the following:

(1) Motor vehicle dealers licensed under chapter 46.70 RCW;

(2) ~~((Vehicle wreckers or hulk haulers licensed under chapter 46.79 or 46.80 RCW;~~

~~—((3))~~ Persons in the business of operating an automotive repair facility as defined under RCW 46.71.011; and

~~((4))~~ (3) Persons in the business of buying or selling empty food and beverage containers, including metal food and beverage containers.

Sec. 9. RCW 9.94A.535 and 2007 c 377 s 10 are each amended to read as follows:

The court may impose a sentence outside the standard sentence range for an offense if it finds, considering the purpose of this chapter, that there are substantial and compelling reasons justifying an exceptional sentence. Facts supporting aggravated sentences, other than the fact of a prior conviction, shall be determined pursuant to the provisions of RCW 9.94A.537.

Whenever a sentence outside the standard sentence range is imposed, the court shall set forth the reasons for its decision in written findings of fact and conclusions of law. A sentence outside the standard sentence range shall be a determinate sentence.

If the sentencing court finds that an exceptional sentence outside the standard sentence range should be imposed, the sentence is subject to review only as provided for in RCW 9.94A.585(4).

A departure from the standards in RCW 9.94A.589 (1) and (2) governing whether sentences are to be served consecutively or concurrently is an exceptional sentence subject to the limitations in this section, and may be appealed by the offender or the state as set forth in RCW 9.94A.585 (2) through (6).

(1) Mitigating Circumstances - Court to Consider

The court may impose an exceptional sentence below the standard range if it finds that mitigating circumstances are established

by a preponderance of the evidence. The following are illustrative only and are not intended to be exclusive reasons for exceptional sentences.

(a) To a significant degree, the victim was an initiator, willing participant, aggressor, or provoker of the incident.

(b) Before detection, the defendant compensated, or made a good faith effort to compensate, the victim of the criminal conduct for any damage or injury sustained.

(c) The defendant committed the crime under duress, coercion, threat, or compulsion insufficient to constitute a complete defense but which significantly affected his or her conduct.

(d) The defendant, with no apparent predisposition to do so, was induced by others to participate in the crime.

(e) The defendant's capacity to appreciate the wrongfulness of his or her conduct, or to conform his or her conduct to the requirements of the law, was significantly impaired. Voluntary use of drugs or alcohol is excluded.

(f) The offense was principally accomplished by another person and the defendant manifested extreme caution or sincere concern for the safety or well-being of the victim.

(g) The operation of the multiple offense policy of RCW 9.94A.589 results in a presumptive sentence that is clearly excessive in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(h) The defendant or the defendant's children suffered a continuing pattern of physical or sexual abuse by the victim of the offense and the offense is a response to that abuse.

(2) Aggravating Circumstances - Considered and Imposed by the Court

The trial court may impose an aggravated exceptional sentence without a finding of fact by a jury under the following circumstances:

(a) The defendant and the state both stipulate that justice is best served by the imposition of an exceptional sentence outside the standard range, and the court finds the exceptional sentence to be consistent with and in furtherance of the interests of justice and the purposes of the sentencing reform act.

(b) The defendant's prior unscored misdemeanor or prior unscored foreign criminal history results in a presumptive sentence that is clearly too lenient in light of the purpose of this chapter, as expressed in RCW 9.94A.010.

(c) The defendant has committed multiple current offenses and the defendant's high offender score results in some of the current offenses going unpunished.

(d) The failure to consider the defendant's prior criminal history which was omitted from the offender score calculation pursuant to RCW 9.94A.525 results in a presumptive sentence that is clearly too lenient.

(3) Aggravating Circumstances - Considered by a Jury - Imposed by the Court

Except for circumstances listed in subsection (2) of this section, the following circumstances are an exclusive list of factors that can support a sentence above the standard range. Such facts should be determined by procedures specified in RCW 9.94A.537.

(a) The defendant's conduct during the commission of the current offense manifested deliberate cruelty to the victim.

(b) The defendant knew or should have known that the victim of the current offense was particularly vulnerable or incapable of resistance.

(c) The current offense was a violent offense, and the defendant knew that the victim of the current offense was pregnant.

(d) The current offense was a major economic offense or series of offenses, so identified by a consideration of any of the following factors:

(i) The current offense involved multiple victims or multiple incidents per victim;

(ii) The current offense involved attempted or actual monetary loss substantially greater than typical for the offense;

(iii) The current offense involved a high degree of sophistication or planning or occurred over a lengthy period of time; or

(iv) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(e) The current offense was a major violation of the Uniform Controlled Substances Act, chapter 69.50 RCW (VUCSA), related to trafficking in controlled substances, which was more onerous than the typical offense of its statutory definition: The presence of ANY of the following may identify a current offense as a major VUCSA:

(i) The current offense involved at least three separate transactions in which controlled substances were sold, transferred, or possessed with intent to do so;

(ii) The current offense involved an attempted or actual sale or transfer of controlled substances in quantities substantially larger than for personal use;

(iii) The current offense involved the manufacture of controlled substances for use by other parties;

(iv) The circumstances of the current offense reveal the offender to have occupied a high position in the drug distribution hierarchy;

(v) The current offense involved a high degree of sophistication or planning, occurred over a lengthy period of time, or involved a broad geographic area of disbursement; or

(vi) The offender used his or her position or status to facilitate the commission of the current offense, including positions of trust, confidence or fiduciary responsibility (e.g., pharmacist, physician, or other medical professional).

(f) The current offense included a finding of sexual motivation pursuant to RCW 9.94A.835.

(g) The offense was part of an ongoing pattern of sexual abuse of the same victim under the age of eighteen years manifested by multiple incidents over a prolonged period of time.

(h) The current offense involved domestic violence, as defined in RCW 10.99.020, and one or more of the following was present:

(i) The offense was part of an ongoing pattern of psychological, physical, or sexual abuse of the victim manifested by multiple incidents over a prolonged period of time;

(ii) The offense occurred within sight or sound of the victim's or the offender's minor children under the age of eighteen years; or

(iii) The offender's conduct during the commission of the current offense manifested deliberate cruelty or intimidation of the victim.

(i) The offense resulted in the pregnancy of a child victim of rape.

(j) The defendant knew that the victim of the current offense was a youth who was not residing with a legal custodian and the defendant established or promoted the relationship for the primary purpose of victimization.

(k) The offense was committed with the intent to obstruct or impair human or animal health care or agricultural or forestry research or commercial production.

(l) The current offense is trafficking in the first degree or trafficking in the second degree and any victim was a minor at the time of the offense.

(m) The offense involved a high degree of sophistication or planning.

(n) The defendant used his or her position of trust, confidence, or fiduciary responsibility to facilitate the commission of the current offense.

(o) The defendant committed a current sex offense, has a history of sex offenses, and is not amenable to treatment.

(p) The offense involved an invasion of the victim's privacy.

(q) The defendant demonstrated or displayed an egregious lack of remorse.

(r) The offense involved a destructive and foreseeable impact on persons other than the victim.

(s) The defendant committed the offense to obtain or maintain his or her membership or to advance his or her position in the hierarchy of an organization, association, or identifiable group.

(t) The defendant committed the current offense shortly after being released from incarceration.

(u) The current offense is a burglary and the victim of the burglary was present in the building or residence when the crime was committed.

(v) The offense was committed against a law enforcement officer who was performing his or her official duties at the time of the offense, the offender knew that the victim was a law enforcement officer, and the victim's status as a law enforcement officer is not an element of the offense.

(w) The defendant committed the offense against a victim who was acting as a good samaritan.

(x) The defendant committed the offense against a public official or officer of the court in retaliation of the public official's performance of his or her duty to the criminal justice system.

(y) The victim's injuries substantially exceed the level of bodily harm necessary to satisfy the elements of the offense. This aggravator is not an exception to RCW 9.94A.530(2).

(z)(i)(A) The current offense is theft in the first degree, theft in the second degree, possession of stolen property in the first degree, or possession of stolen property in the second degree; (B) the stolen property involved is metal property; and (C) the property damage to the victim caused in the course of the theft of metal property is more than three times the value of the stolen metal property, or the theft of the metal property creates a public hazard.

(ii) For purposes of this subsection, "metal property" means commercial metal property, private metal property, or nonferrous metal property, as defined in RCW 19.290.010."

On page 1, line 1 of the title, after "provisions;" strike the remainder of the title and insert "amending RCW 19.290.010, 19.290.020, 19.290.030, 19.290.040, 19.290.050, 19.290.060, 19.290.070, 19.290.090, and 9.94A.535; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2858 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1031 with the following amendment:

and the same is herewith transmitted.

Thomas Hoemann, Secretary

Strike everything after the enacting clause and insert the following:

SENATE AMENDMENT TO HOUSE BILL

"NEW SECTION. Sec. 1. The legislature finds that Washington state, from its inception, has recognized the importance of maintaining individual privacy. The legislature further finds that protecting the confidentiality and privacy of an individual's personal information, especially when collected from the individual without his or her knowledge or consent, is critical to maintaining the safety and well-being of its citizens. The legislature recognizes that inclusion of identification devices that broadcast data or enable data or information to be collected or scanned either secretly or remotely, or both, may greatly magnify the potential risk to individual privacy, safety, and economic well-being that can occur from unauthorized interception and use of personal information. The legislature further recognizes that these types of technologies, whether offered by the private sector or issued by the government, can be pervasive.

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1031 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Morris and Crouse spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1031, as amended by the Senate.

MOTIONS

On motion of Representative Santos, Representatives Williams and Eickmeyer were excused. On motion of Representative Schindler, Representatives Hailey and Sump were excused.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1031, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1031, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

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

(1) "Identification device" means an item that uses radio frequency identification technology or facial recognition technology.

(2) "Person" means a natural person who resides in Washington.

(3) "Personal information" has the same meaning as in RCW 19.255.010.

(4) "Data" means personal information, numerical values associated with a person's facial features, or unique personal identifier numbers stored on an identification device.

(5) "Radio frequency identification" means a technology that uses radio waves to transmit data remotely to readers.

(6) "Reader" means a scanning device that is capable of using radio waves to communicate with an identification device and read the data transmitted by that identification device.

(7) "Remotely" means that no physical contact between the identification device and the reader is necessary in order to transmit data.

(8) "Unique personal identifier number" means a randomly assigned string of numbers or symbols that is encoded on the identification device and is intended to identify the identification device.

NEW SECTION. Sec. 3. A person that intentionally scans another person's identification device remotely, without that person's prior knowledge and prior consent, for the purpose of fraud, identity theft, or for any other illegal purpose, shall be guilty of a class C felony.

NEW SECTION. Sec. 4. If any provision of this act is found to be in conflict with federal law or regulations, the conflicting provision of this act is declared to be inoperative solely to the extent of the conflict, and that finding or determination shall not affect the operation of the remainder of this act.

NEW SECTION. Sec. 5. Sections 2 and 3 of this act constitute a new chapter in Title 19 RCW."

On page 1, line 1 of the title, after "devices;" strike the remainder of the title and insert "adding a new chapter to Title 19 RCW; creating new sections; and prescribing penalties."

March 5, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1621 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that:

(a) Manufactured/mobile home communities provide a significant source of homeownership opportunities for Washington residents. However, the increasing closure and conversion of manufactured/mobile home communities to other uses, combined with increasing mobile home lot rents, low vacancy rates in existing manufactured/mobile home communities, and the extremely high cost of moving homes when manufactured/mobile home communities close, increasingly make manufactured/mobile home community living insecure for manufactured/mobile home tenants.

(b) Many tenants who reside in manufactured/mobile home communities are low-income households and senior citizens and are, therefore, those residents most in need of reasonable security in the siting of their manufactured/mobile homes because of the adverse impacts on the health, safety, and welfare of tenants forced to move due to closure, change of use, or discontinuance of manufactured/mobile home communities.

(c) The preservation of manufactured/mobile home communities:

(i) Is a more economical alternative than providing new replacement housing units for tenants who are displaced from closing manufactured/mobile home communities;

(ii) Is a strategy by which all local governments can meet the affordable housing needs of their residents;

(iii) Is a strategy by which local governments planning under RCW 36.70A.040 may meet the housing element of their comprehensive plans as it relates to the provision of housing affordable to all economic sectors; and

(iv) Should be a goal of all housing authorities and local governments.

(d) The loss of manufactured/mobile home communities should not result in a net loss of affordable housing, thus compromising the ability of local governments to meet the affordable housing needs of its residents and the ability of these local governments planning under RCW 36.70A.040 to meet affordable housing goals under chapter 36.70A RCW.

(e) The closure of manufactured/mobile home communities has serious environmental, safety, and financial impacts, including:

(i) Homes that cannot be moved to other locations add to Washington's landfills;

(ii) Homes that are abandoned might attract crime; and

(iii) Vacant homes that will not be reoccupied need to be tested for asbestos and lead, and these toxic materials need to be removed prior to demolition.

(f) The self-governance aspect of tenants owning manufactured/mobile home communities results in a lesser usage of police resources as tenants experience fewer societal conflicts when they own the real estate as well as their homes.

(g) Housing authorities, by their creation and purpose, are the public body corporate and politic of the city or county responsible for addressing the availability of safe and sanitary dwelling

accommodations available to persons of low income, senior citizens, and others.

(2) It is the intent of the legislature to encourage and facilitate the preservation of existing manufactured/mobile home communities in the event of voluntary sales of manufactured/mobile home communities and, to the extent necessary and possible, to involve manufactured/mobile home community tenants or an eligible organization representing the interests of tenants, such as a nonprofit organization, housing authority, or local government, in the preservation of manufactured/mobile home communities.

Sec. 2. RCW 59.20.030 and 2003 c 127 s 1 are each amended to read as follows:

For purposes of this chapter:

(1) "Abandoned" as it relates to a mobile home, manufactured home, or park model owned by a tenant in a mobile home park, mobile home park cooperative, or mobile home park subdivision or tenancy in a mobile home lot means the tenant has defaulted in rent and by absence and by words or actions reasonably indicates the intention not to continue tenancy;

(2) "Eligible organization" includes local governments, local housing authorities, nonprofit community or neighborhood-based organizations, federally recognized Indian tribes in the state of Washington, and regional or statewide nonprofit housing assistance organizations;

(3) "Housing authority" or "authority" means any of the public body corporate and politic created in RCW 35.82.030;

(4) "Landlord" means the owner of a mobile home park and includes the agents of a landlord;

~~((3))~~ (5) "Local government" means a town government, city government, code city government, or county government in the state of Washington;

(6) "Manufactured home" means a single-family dwelling built according to the United States department of housing and urban development manufactured home construction and safety standards act, which is a national preemptive building code. A manufactured home also: (a) Includes plumbing, heating, air conditioning, and electrical systems; (b) is built on a permanent chassis; and (c) can be transported in one or more sections with each section at least eight feet wide and forty feet long when transported, or when installed on the site is three hundred twenty square feet or greater;

~~((4))~~ (7) "Manufactured/mobile home" means either a manufactured home or a mobile home;

(8) "Mobile home" means a factory-built dwelling built prior to June 15, 1976, to standards other than the United States department of housing and urban development code, and acceptable under applicable state codes in effect at the time of construction or introduction of the home into the state. Mobile homes have not been built since the introduction of the United States department of housing and urban development manufactured home construction and safety act;

~~((5))~~ (9) "Mobile home lot" means a portion of a mobile home park or manufactured housing community designated as the location of one mobile home, manufactured home, or park model and its accessory buildings, and intended for the exclusive use as a primary residence by the occupants of that mobile home, manufactured home, or park model;

~~((6))~~ (10) "Mobile home park" ~~((or))~~ "manufactured housing community" or "manufactured/mobile home community" means any real property which is rented or held out for rent to others for the placement of two or more mobile homes, manufactured homes, or park models for the primary purpose of production of income, except

where such real property is rented or held out for rent for seasonal recreational purpose only and is not intended for year-round occupancy;

~~((7))~~ (11) "Mobile home park cooperative" or "manufactured housing cooperative" means real property consisting of common areas and two or more lots held out for placement of mobile homes, manufactured homes, or park models in which both the individual lots and the common areas are owned by an association of shareholders which leases or otherwise extends the right to occupy individual lots to its own members;

~~((8))~~ (12) "Mobile home park subdivision" or "manufactured housing subdivision" means real property, whether it is called a subdivision, condominium, or planned unit development, consisting of common areas and two or more lots held for placement of mobile homes, manufactured homes, or park models in which there is private ownership of the individual lots and common, undivided ownership of the common areas by owners of the individual lots;

~~((9))~~ (13) "Notice of sale" means a notice required under section 4 of this act to be delivered to all tenants of a manufactured/mobile home community and other specified parties within fourteen days after the date on which any advertisement, multiple listing, or public notice advertises that a manufactured/mobile home community is for sale;

(14) "Park model" means a recreational vehicle intended for permanent or semi-permanent installation and is used as a primary residence;

~~((10))~~ (15) "Qualified sale of manufactured/mobile home community" means the sale, as defined in RCW 82.45.010, of land and improvements comprising a manufactured/mobile home community that is transferred in a single purchase to a qualified tenant organization or to an eligible organization for the purpose of preserving the property as a manufactured/mobile home community;

(16) "Qualified tenant organization" means a formal organization of tenants within a manufactured/mobile home community, with the only requirement for membership consisting of being a tenant;

(17) "Recreational vehicle" means a travel trailer, motor home, truck camper, or camping trailer that is primarily designed and used as temporary living quarters, is either self-propelled or mounted on or drawn by another vehicle, is transient, is not occupied as a primary residence, and is not immobilized or permanently affixed to a mobile home lot;

~~((11))~~ (18) "Tenant" means any person, except a transient, who rents a mobile home lot;

~~((12))~~ (19) "Transient" means a person who rents a mobile home lot for a period of less than one month for purposes other than as a primary residence;

~~((13))~~ (20) "Occupant" means any person, including a live-in care provider, other than a tenant, who occupies a mobile home, manufactured home, or park model and mobile home lot.

Sec. 3. RCW 82.45.010 and 2000 2nd sp.s. c 4 s 26 are each amended to read as follows:

(1) As used in this chapter, the term "sale" shall have its ordinary meaning and shall include 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) The term "sale" also includes the transfer or acquisition within any twelve-month period of a controlling interest in any entity with an interest in real property located in this state for a valuable consideration. For purposes of this subsection, all acquisitions of persons acting in concert shall be aggregated for purposes of determining whether a transfer or acquisition of a controlling interest has taken place. The department of revenue shall adopt standards by rule to determine when persons are acting in concert. In adopting a rule for this purpose, the department shall consider the following:

(a) Persons shall 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

(b) When persons are not commonly owned or controlled, they shall 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 shall be considered separate acquisitions.

(3) The term "sale" shall not include:

(a) A transfer by gift, devise, or inheritance.

(b) A transfer of any leasehold interest other than of the type mentioned above.

(c) 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.

(d) The partition of property by tenants in common by agreement or as the result of a court decree.

(e) The assignment of property or interest in property from one spouse to the other in accordance with the terms of a decree of divorce or in fulfillment of a property settlement agreement.

(f) 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.

(g) Transfers by appropriation or decree in condemnation proceedings brought by the United States, the state or any political subdivision thereof, or a municipal corporation.

(h) A mortgage or other transfer of an interest in real property merely to secure a debt, or the assignment thereof.

(i) 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.

(j) 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.

(k) 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.

(l) The sale of any grave or lot in an established cemetery.

(m) A sale by the United States, this state or any political subdivision thereof, or a municipal corporation of this state.

(n) 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.

(o) 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 children: PROVIDED, That if thereafter such transferee corporation or partnership voluntarily transfers such real property, or such transferor, spouse, or children voluntarily transfer stock in the transferee corporation or interest in the transferee partnership capital, as the case may be, to other than (1) the transferor and/or the transferor's spouse or children, (2) a trust having the transferor and/or the transferor's spouse or children as the only beneficiaries at the time of the transfer to the trust, or (3) a corporation or partnership wholly owned by the original transferor and/or the transferor's spouse or children, 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 shall become due and payable on the original transfer as otherwise provided by law.

(p)(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 section 332, 337, 351, 368(a)(1), 721, or 731 of the Internal Revenue Code of 1986, as amended.

(ii) However, the transfer described in (p)(i) of this subsection cannot be preceded or followed within a twelve-month period by another transfer or series of transfers, that, when combined with the otherwise exempt transfer or transfers described in (p)(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)(p)(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)(p)(ii) is imposed upon the person or persons who previously held a controlling interest in the entity.

(q) A qualified sale of a manufactured/mobile home community, as defined in RCW 59.20.030, that takes place on or after the effective date of this act but before December 31, 2018.

NEW SECTION. Sec. 4. A new section is added to chapter 59.20 RCW to read as follows:

(1) A landlord must provide a written notice of sale of a manufactured/mobile home community by certified mail or personal delivery to:

- (a) Each tenant of the manufactured/mobile home community;
- (b) The officers of any known qualified tenant organization;
- (c) The office of manufactured housing;
- (d) The local government within whose jurisdiction all or part of the manufactured/mobile home community exists;
- (e) The housing authority within whose jurisdiction all or part of the manufactured/mobile home community exists; and
- (f) The Washington state housing finance commission.

(2) A notice of sale must include:

- (a) A statement that the landlord intends to sell the manufactured/mobile home community; and
- (b) The contact information of the landlord or landlord's agent who is responsible for communicating with the qualified tenant organization or eligible organization regarding the sale of the property.

NEW SECTION. Sec. 5. A new section is added to chapter 59.20 RCW to read as follows:

A landlord intending to sell a manufactured/mobile home community is encouraged to negotiate in good faith with qualified tenant organizations and eligible organizations.

Sec. 6. RCW 59.22.050 and 2007 c 432 s 9 are each amended to read as follows:

(1) In order to provide general assistance to manufactured/mobile home resident organizations, qualified tenant organizations, manufactured/mobile home community or park owners, and landlords and tenants, the department shall establish an office of (~~mobile home affairs~~) manufactured housing.

This office will provide (~~an ombudsman service to mobile home park owners and mobile home tenants with respect to problems and disputes between park owners and park residents and to provide~~), either directly or through contracted services, technical assistance to qualified tenant organizations as defined in RCW 59.20.030 and resident organizations or persons in the process of forming a resident organization pursuant to chapter 59.22 RCW. The office will keep records of its activities in this area.

(2) The office shall administer the mobile home relocation assistance program established in chapter 59.21 RCW, including verifying the eligibility of tenants for relocation assistance.

NEW SECTION. Sec. 7. The following acts or parts of acts are each repealed:

- (1) RCW 59.23.005 (Findings--Intent) and 1993 c 66 s 1;
- (2) RCW 59.23.010 (Obligation of good faith) and 1993 c 66 s 2;
- (3) RCW 59.23.015 (Application of chapter--Definition of "notice") and 1993 c 66 s 3;
- (4) RCW 59.23.020 (Definitions) and 1993 c 66 s 4;
- (5) RCW 59.23.025 (Notice to qualified tenant organization of sale of mobile home park--Time frame for negotiations--Terms--Transfer or sale to relatives) and 1993 c 66 s 5;
- (6) RCW 59.23.030 (Improper notice by mobile home park owner--Sale may be set aside--Attorneys' fees) and 1993 c 66 s 6;
- (7) RCW 59.23.035 (Notice to mobile home park owner of sale of tenant's mobile home--Time frame for negotiations--Terms--Transfer or sale to relatives) and 1993 c 66 s 7; and
- (8) RCW 59.23.040 (Improper notice by mobile home owner--Sale may be set aside--Attorneys' fees) and 1993 c 66 s 8.

NEW SECTION. Sec. 8. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected."

On page 1, line 2 of the title, after "communities;" strike the remainder of the title and insert "amending RCW 59.20.030, 82.45.010, and 59.22.050; adding new sections to chapter 59.20 RCW; creating a new section; and repealing RCW 59.23.005,

59.23.010, 59.23.015, 59.23.020, 59.23.025, 59.23.030, 59.23.035, and 59.23.040."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1621 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Hunter and Orcutt spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 1621, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 1621, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1621, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2557 with the following amendment:

Strike everything after the enacting clause and insert the following:

"JURISDICTIONAL PROVISIONS

Sec. 1. RCW 3.66.020 and 2007 c 46 s 1 are each amended to read as follows:

If the value of the claim or the amount at issue does not exceed ~~((fifty))~~ seventy-five thousand dollars, exclusive of interest, costs, and attorneys' fees, the district court shall have jurisdiction and cognizance of the following civil actions and proceedings:

- (1) Actions arising on contract for the recovery of money;
- (2) Actions for damages for injuries to the person, or for taking or detaining personal property, or for injuring personal property, or for an injury to real property when no issue raised by the answer involves the plaintiff's title to or possession of the same and actions to recover the possession of personal property;
- (3) Actions for a penalty;
- (4) Actions upon a bond conditioned for the payment of money, when the amount claimed does not exceed fifty thousand dollars, though the penalty of the bond exceeds that sum, the judgment to be given for the sum actually due, not exceeding the amount claimed in the complaint;
- (5) Actions on an undertaking or surety bond taken by the court;
- (6) Actions for damages for fraud in the sale, purchase, or exchange of personal property;
- (7) Proceedings to take and enter judgment on confession of a defendant;
- (8) Proceedings to issue writs of attachment, garnishment and replevin upon goods, chattels, moneys, and effects;
- (9) Actions arising under the provisions of chapter 19.190 RCW;
- (10) Proceedings to civilly enforce any money judgment entered in any municipal court or municipal department of a district court organized under the laws of this state; and
- (11) All other actions and proceedings of which jurisdiction is specially conferred by statute, when the title to, or right of possession of, real property is not involved.

Sec. 2. RCW 12.40.010 and 2001 c 154 s 1 are each amended to read as follows:

In every district court there shall be created and organized by the court a department to be known as the "small claims department of the district court." The small claims department shall have jurisdiction, but not exclusive, in cases for the recovery of money only if the amount claimed does not exceed ~~((four))~~ five thousand dollars.

MUNICIPAL COURT CONTRACTING

Sec. 3. RCW 3.50.003 and 1984 c 258 s 125 are each amended to read as follows:

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

- (1) "City" means an incorporated city or town.
- (2) "Contracting city" means any city that contracts with a hosting jurisdiction for the delivery of judicial services.

(3) "Hosting jurisdiction" means a county or city designated in an interlocal agreement as receiving compensation for providing judicial services to a contracting city.

(4) "Mayor(-)" ((as used in this chapter,)) means the mayor, city manager, or other chief administrative officer of the city.

NEW SECTION. Sec. 4. A new section is added to chapter 3.50 RCW to read as follows:

A city may meet the requirements of RCW 39.34.180 by entering into an interlocal agreement with the county in which the city is located or with one or more cities.

Sec. 5. RCW 3.50.020 and 2005 c 282 s 14 are each amended to read as follows:

The municipal court shall have exclusive original jurisdiction over traffic infractions arising under city ordinances and exclusive original criminal jurisdiction of all violations of city ordinances duly adopted by the city ~~((in which the municipal court is located))~~ and shall have original jurisdiction of all other actions brought to enforce or recover license penalties or forfeitures declared or given by such ordinances or by state statutes. A hosting jurisdiction shall have exclusive original criminal and other jurisdiction as described in this section for all matters filed by a contracting city. The municipal court shall also have the jurisdiction as conferred by statute. The municipal court is empowered to forfeit cash bail or bail bonds and issue execution thereon; and in general to hear and determine all causes, civil or criminal, including traffic infractions, arising under such ordinances and to pronounce judgment in accordance therewith. A municipal court participating in the program established by the administrative office of the courts pursuant to RCW 2.56.160 shall have jurisdiction to take recognizance, approve bail, and arraign defendants held within its jurisdiction on warrants issued by any court of limited jurisdiction participating in the program.

COURT COMMISSIONERS

Sec. 6. RCW 3.42.020 and 1984 c 258 s 31 are each amended to read as follows:

Each district court commissioner shall have such power, authority, and jurisdiction in criminal and civil matters as the appointing judges possess and shall prescribe, except that when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.

Sec. 7. RCW 3.34.110 and 1984 c 258 s 17 are each amended to read as follows:

(1) A district ((judge)) court judicial officer shall not ((act as judge)) preside in any of the following cases:

~~((1))~~ (a) In an action to which the ((judge)) judicial officer is a party, or in which the ((judge)) judicial officer is directly interested, or in which the ((judge)) judicial officer has been an attorney for a party.

~~((2))~~ (b) When the ((judge)) judicial officer or one of the parties believes that the parties cannot have an impartial trial or hearing before the ((judge)) judicial officer. The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or

proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of ((judges shall be)) judicial officer is allowed each party ((under this subsection)) in an action or proceeding.

(2) When a ((judge)) judicial officer is disqualified under this section, the case shall be heard before another ((judge or judge pro tempore)) judicial officer of the same county.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

Sec. 8. RCW 3.50.075 and 1994 c 10 s 1 are each amended to read as follows:

(1) One or more court commissioners may be appointed by a judge of the municipal court.

(2) Each commissioner holds office at the pleasure of the appointing judge.

(3) A commissioner authorized to hear or dispose of cases must be a lawyer who is admitted to practice law in the state of Washington or a nonlawyer who has passed, by January 1, 2003, the qualifying examination for lay judges for courts of limited jurisdiction under RCW 3.34.060.

(4) On or after July 1, 2010, when serving as a commissioner, the commissioner does not have authority to preside over trials in criminal matters, or jury trials in civil matters unless agreed to on the record by all parties.

(5) A commissioner need not be a resident of the city or of the county in which the municipal court is created. When a court commissioner has not been appointed and the municipal court is presided over by a part-time appointed judge, the judge need not be a resident of the city or of the county in which the municipal court is created.

NEW SECTION. Sec. 9. A new section is added to chapter 3.50 RCW to read as follows:

(1) A municipal court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer or one of the parties believes that the parties cannot have an impartial trial or hearing before the judicial officer. The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.

(2) When a judicial officer is disqualified under this section, the case shall be heard before another judicial officer of the municipality.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

NEW SECTION. Sec. 10. A new section is added to chapter 35.20 RCW to read as follows:

(1) A municipal court judicial officer shall not preside in any of the following cases:

(a) In an action to which the judicial officer is a party, or in which the judicial officer is directly interested, or in which the judicial officer has been an attorney for a party.

(b) When the judicial officer or one of the parties believes that the parties cannot have an impartial trial or hearing before the judicial officer. The judicial officer shall disqualify himself or herself under the provisions of this section if, before any discretionary ruling has been made, a party files an affidavit that the party cannot have a fair and impartial trial or hearing by reason of the interest or prejudice of the judicial officer. The following are not considered discretionary rulings: (i) The arrangement of the calendar; (ii) the setting of an action, motion, or proceeding for hearing or trial; (iii) the arraignment of the accused; or (iv) the fixing of bail and initially setting conditions of release. Only one change of judicial officer is allowed each party in an action or proceeding.

(2) When a judicial officer is disqualified under this section, the case shall be heard before another judicial officer of the municipality.

(3) For the purposes of this section, "judicial officer" means a judge, judge pro tempore, or court commissioner.

MUNICIPAL DEPARTMENTS

NEW SECTION. Sec. 11. A new section is added to chapter 3.46 RCW to read as follows:

A municipality operating a municipal department under this chapter prior to July 1, 2008, may continue to operate as if this act was not adopted. Such municipal departments shall remain subject to the provisions of this chapter as this chapter was written prior to the adoption of this act.

NEW SECTION. Sec. 12. The following acts or parts of acts are each repealed:

(1) RCW 3.46.010 (Municipal department authorized) and 1984 c 258 s 72 & 1961 c 299 s 35;

(2) RCW 3.46.020 (Judges) and 1987 c 3 s 1, 1984 c 258 s 73, & 1961 c 299 s 36;

(3) RCW 3.46.030 (Jurisdiction) and 2005 c 282 s 13, 2000 c 111 s 5, 1985 c 303 s 13, & 1961 c 299 s 37;

(4) RCW 3.46.040 (Petition) and 1984 c 258 s 74 & 1961 c 299 s 38;

(5) RCW 3.46.050 (Selection of full time judges) and 1975 c 33 s 2 & 1961 c 299 s 39;

(6) RCW 3.46.060 (Selection of part time judges) and 1984 c 258 s 75 & 1961 c 299 s 40;

(7) RCW 3.46.063 (Judicial positions--Filling--Circumstances permitted) and 1993 c 317 s 3;

(8) RCW 3.46.067 (Judges--Residency requirement) and 1993 c 317 s 5;

(9) RCW 3.46.070 (Election) and 1984 c 258 s 76 & 1961 c 299 s 41;

(10) RCW 3.46.080 (Term and removal) and 1984 c 258 s 77 & 1961 c 299 s 42;

(11) RCW 3.46.090 (Salary--City cost) and 1984 c 258 s 78, 1969 ex.s. c 66 s 5, & 1961 c 299 s 43;

(12) RCW 3.46.100 (Vacancy) and 1984 c 258 s 79 & 1961 c 299 s 44;

(13) RCW 3.46.110 (Night sessions) and 1961 c 299 s 45;

(14) RCW 3.46.120 (Revenue--Disposition--Interest) and 2004 c 15 s 7, 1995 c 291 s 2, 1988 c 169 s 1, 1985 c 389 s 3, 1984 c 258 s 303, 1975 1st ex.s. c 241 s 4, & 1961 c 299 s 46;

(15) RCW 3.46.130 (Facilities) and 1961 c 299 s 47;

(16) RCW 3.46.140 (Personnel) and 1961 c 299 s 48;

(17) RCW 3.46.145 (Court commissioners) and 1969 ex.s. c 66 s 6;

(18) RCW 3.46.150 (Termination of municipal department--Transfer agreement--Notice) and 2005 c 433 s 33, 2001 c 68 s 2, 1984 c 258 s 210, & 1961 c 299 s 49;

(19) RCW 3.46.160 (City trial court improvement account--Contributions to account by city--Use of funds) and 2005 c 457 s 2;

(20) RCW 3.42.030 (Transfer of cases to district judge) and 2000 c 164 s 1, 1984 c 258 s 32, & 1961 c 299 s 33; and

(21) RCW 3.50.007 (Cities and towns of four hundred thousand or less to operate municipal court under this chapter or chapter 3.46 RCW--Municipal judges in office on July 1, 1984--Terms) and 1984 c 258 s 102.

MISCELLANEOUS PROVISIONS

NEW SECTION. Sec. 13. This act takes effect July 1, 2008.

NEW SECTION. Sec. 14. Subheadings used in this act are not any part of the law."

On page 1, line 1 of the title, after "courts;" strike the remainder of the title and insert "amending RCW 3.66.020, 12.40.010, 3.50.003, 3.50.020, 3.42.020, 3.34.110, and 3.50.075; adding new sections to chapter 3.50 RCW; adding a new section to chapter 35.20 RCW; adding a new section to chapter 3.46 RCW; creating a new section; repealing RCW 3.46.010, 3.46.020, 3.46.030, 3.46.040, 3.46.050, 3.46.060, 3.46.063, 3.46.067, 3.46.070, 3.46.080, 3.46.090, 3.46.100, 3.46.110, 3.46.120, 3.46.130, 3.46.140, 3.46.145, 3.46.150, 3.46.160, 3.42.030, and 3.50.007; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2557 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Lantz and Rodne spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 2557, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 2557, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND SUBSTITUTE HOUSE BILL NO. 2557, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2602 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) It is in the public interest to reduce domestic violence, sexual assault, and stalking by enabling victims to maintain the financial independence necessary to leave abusive situations, achieve safety, and minimize physical and emotional injuries, and to reduce the devastating economic consequences of domestic violence, sexual assault, and stalking to employers and employees. Victims of domestic violence, sexual assault, and stalking should be able to recover from and cope with the effects of such violence and participate in criminal and civil justice processes without fear of adverse economic consequences.

(2) One of the best predictors of whether a victim of domestic violence, sexual assault, or stalking will be able to stay away from an abuser is his or her degree of economic independence. However, domestic violence, sexual assault, and stalking often negatively impact victims' ability to maintain employment.

(3) An employee who is a victim of domestic violence, sexual assault, or stalking, or an employee whose family member is a victim, must often take leave from work due to injuries, court proceedings, or safety concerns requiring legal protection.

(4) Thus, it is in the public interest to provide reasonable leave from employment for employees who are victims of domestic violence, sexual assault, or stalking, or for employees whose family members are victims, to participate in legal proceedings, receive medical treatment, or obtain other necessary services.

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

(1) "Child," "spouse," "parent," "parent-in-law," "grandparent," and "sick leave and other paid time off" have the same meanings as in RCW 49.12.265.

(2) "Dating relationship" has the same meaning as in RCW 26.50.010.

(3) "Department," "director," "employer," and "employee" have the same meanings as in RCW 49.12.005.

(4) "Domestic violence" has the same meaning as in RCW 26.50.010.

(5) "Family member" means any individual whose relationship to the employee can be classified as a child, spouse, parent, parent-in-law, grandparent, or person with whom the employee has a dating relationship.

(6) "Intermittent leave" and "reduced leave schedule" have the same meanings as in RCW 49.78.020.

(7) "Sexual assault" has the same meaning as in RCW 70.125.030.

(8) "Stalking" has the same meaning as in RCW 9A.46.110.

NEW SECTION. Sec. 3. An employee may take reasonable leave from work, intermittent leave, or leave on a reduced leave schedule, with or without pay, to:

(1) Seek legal or law enforcement assistance or remedies to ensure the health and safety of the employee or employee's family members including, but not limited to, preparing for, or participating in, any civil or criminal legal proceeding related to or derived from domestic violence, sexual assault, or stalking;

(2) Seek treatment by a health care provider for physical or mental injuries caused by domestic violence, sexual assault, or stalking, or to attend to health care treatment for a victim who is the employee's family member;

(3) Obtain, or assist a family member in obtaining, services from a domestic violence shelter, rape crisis center, or other social services program for relief from domestic violence, sexual assault, or stalking;

(4) Obtain, or assist a family member in obtaining, mental health counseling related to an incident of domestic violence, sexual assault, or stalking, in which the employee or the employee's family member was a victim of domestic violence, sexual assault, or stalking; or

(5) Participate in safety planning, temporarily or permanently relocate, or take other actions to increase the safety of the employee or employee's family members from future domestic violence, sexual assault, or stalking.

NEW SECTION. Sec. 4. (1) As a condition of taking leave for any purpose described in section 3 of this act, an employee shall give an employer advance notice of the employee's intention to take leave. The timing of the notice shall be consistent with the employer's stated policy for requesting such leave, if the employer has such a policy. When advance notice cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, the employee or his or her designee must give notice to the employer no later than the end of the first day that the employee takes such leave.

(2) When an employee requests leave under section 3 of this act the employer may require that the request be supported by verification that:

(a) The employee or employee's family member is a victim of domestic violence, sexual assault, or stalking; and

(b) The leave taken was for one of the purposes described in section 3 of this act.

(3) If an employer requires verification, verification must be provided in a timely manner. In the event that advance notice of the

leave cannot be given because of an emergency or unforeseen circumstances due to domestic violence, sexual assault, or stalking, and the employer requires verification, verification must be provided to the employer within a reasonable time period during or after the leave.

(4) An employee may satisfy the verification requirement of this section by providing the employer with one or more of the following:

(a) A police report indicating that the employee or employee's family member was a victim of domestic violence, sexual assault, or stalking;

(b) A court order protecting or separating the employee or employee's family member from the perpetrator of the act of domestic violence, sexual assault, or stalking, or other evidence from the court or the prosecuting attorney that the employee or employee's family member appeared, or is scheduled to appear, in court in connection with an incident of domestic violence, sexual assault, or stalking;

(c) Documentation that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking, from any of the following persons from whom the employee or employee's family member sought assistance in addressing the domestic violence, sexual assault, or stalking: An advocate for victims of domestic violence, sexual assault, or stalking; an attorney; a member of the clergy; or a medical or other professional. The provision of documentation under this section does not waive or diminish the confidential or privileged nature of communications between a victim of domestic violence, sexual assault, or stalking with one or more of the individuals named in this subsection (4)(c) pursuant to RCW 5.60.060, 70.123.075, 70.123.076, or 70.125.065; or

(d) An employee's written statement that the employee or the employee's family member is a victim of domestic violence, sexual assault, or stalking and that the leave taken was for one of the purposes described in section 3 of this act.

(5) If the victim of domestic violence, sexual assault, or stalking is the employee's family member, verification of the familial relationship between the employee and the victim may include, but is not limited to, a statement from the employee, a birth certificate, a court document, or other similar documentation.

(6) An employee who is absent from work pursuant to section 3 of this act may elect to use the employee's sick leave and other paid time off, compensatory time, or unpaid leave time.

(7) An employee is required to provide only the information enumerated in subsection (2) of this section to establish that the employee's leave is protected under this chapter. An employee is not required to produce or discuss any information with the employer that is beyond the scope of subsection (2) of this section, or that would compromise the employee's safety or the safety of the employee's family member in any way, and an employer is prohibited from requiring any such disclosure.

(8)(a) Except as provided in (b) of this subsection, an employer shall maintain the confidentiality of all information provided by the employee under this section, including the fact that the employee or employee's family member is a victim of domestic violence, sexual assault, or stalking, that the employee has requested or obtained leave under this chapter, and any written or oral statement, documentation, record, or corroborating evidence provided by the employee.

(b) Information given by an employee may be disclosed by an employer only if:

- (i) Requested or consented to by the employee;
- (ii) Ordered by a court or administrative agency; or
- (iii) Otherwise required by applicable federal or state law.

NEW SECTION. Sec. 5. (1) The taking of leave under section 3 of this act may not result in the loss of any pay or benefits to the employee that accrued before the date on which the leave commenced.

(2) Upon an employee's return, an employer shall either:

(a) Restore the employee to the position of employment held by the employee when the leave commenced; or

(b) Restore the employee to an equivalent position with equivalent employment benefits, pay, and other terms and conditions of employment.

(3)(a) This section does not apply if the employment from which the individual takes leave is with a staffing company and the individual is assigned on a temporary basis to perform work at or services for another organization to support or supplement the other organization's workforces, or to provide assistance in special work situations such as, but not limited to, employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects, all under the direction and supervision of the organization to which the individual is assigned.

(b) This section does not apply if an employee was hired for a specific term or only to perform work on a discrete project, the employment term or project is over, and the employer would not otherwise have continued to employ the employee.

(4) To the extent allowed by law, an employer shall maintain coverage under any health insurance plan for an employee who takes leave under section 3 of this act. The coverage must be maintained for the duration of the leave at the level and under the conditions coverage would have been provided if the employee had not taken the leave.

NEW SECTION. Sec. 6. (1) The rights provided in this act are in addition to any other rights provided by state and federal law.

(2) Nothing in this chapter shall be construed to discourage employers from adopting policies that provide greater leave rights to employees who are victims of domestic violence, sexual assault, or stalking than those required by this act.

(3) Nothing in this act shall be construed to diminish an employer's obligation to comply with any collective bargaining agreement, or any employment benefit program or plan, that provides greater leave rights to employees than the rights provided by this act.

NEW SECTION. Sec. 7. Upon complaint by an employee, the director shall investigate to determine if there has been compliance with this chapter and the rules adopted under this chapter. If the investigation indicates that a violation has occurred, the director shall issue a notice of infraction. Appeal from the director's decision is governed by chapter 34.05 RCW.

NEW SECTION. Sec. 8. Any finding, determination, conclusion, declaration, or notice of infraction made for the purposes of enforcing this chapter by the director or by an appeal tribunal, administrative law judge, or reviewing officer is neither conclusive nor binding in any civil action filed pursuant to section 12 of this act or in any other common law or civil action, regardless of whether the prior action was between the same or related parties or involved the same facts.

NEW SECTION. Sec. 9. (1) If an employer is found to have committed an infraction under section 7 of this act, the director may impose upon the employer a fine of up to five hundred dollars for the first infraction and a fine of up to one thousand dollars for each

subsequent infraction committed within three years of a previous infraction.

(2) The director may also order an employer found to have committed an infraction under section 7 of this act to comply with section 5(2) of this act.

NEW SECTION. Sec. 10. (1) Except as provided in subsection (2) of this section, information contained in the department's complaint files and records of employees under this chapter is confidential and shall not be open to public inspection.

(2) Except as limited by state or federal statute or regulations:

(a) The information in subsection (1) of this section may be provided to public employees in the performance of their official duties; and

(b) A complainant or a representative of a complainant, be it an individual or an organization, may review a complaint file or receive specific information therefrom upon the presentation of the signed authorization of the complainant.

NEW SECTION. Sec. 11. No employer may discharge, threaten to discharge, demote, deny a promotion to, sanction, discipline, retaliate against, harass, or otherwise discriminate against an employee with respect to compensation, terms, conditions, or privileges of employment because the employee:

(1) Exercised rights under section 3 of this act;

(2) Filed or communicated to the employer an intent to file a complaint under section 7 or 12 of this act; or

(3) Participated or assisted, as a witness or otherwise, in another employee's attempt to exercise rights under section 3, 7, or 12 of this act.

NEW SECTION. Sec. 12. (1) Any employee deeming herself or himself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees.

(2) The remedy provided by this section is in addition to any common law remedy or other remedy that may be available to an employee.

(3) An employee is not required to exhaust administrative remedies before filing a civil action to enforce this chapter.

NEW SECTION. Sec. 13. The department shall include notice of the provisions of this chapter in the next reprinting of employment posters printed under RCW 49.78.340. Employers shall post this notice as required in RCW 49.78.340.

NEW SECTION. Sec. 14. Prosecuting attorney and victim/witness offices are encouraged to make information regarding this chapter available for distribution at their offices.

NEW SECTION. Sec. 15. The director shall adopt rules as necessary to implement this chapter.

Sec. 16. RCW 7.69.030 and 2004 c 120 s 8 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 section 2 of this act, shall be notified of their right to reasonable leave from employment under chapter 49. . . . RCW (sections 1 through 15 of this act);

(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, 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, to present a statement personally or by representation, at the sentencing hearing for felony convictions;

(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; and

(16) With respect to victims and survivors of victims, to present a statement in person, via audio or videotape, in writing or by representation at any hearing conducted regarding an application for pardon or commutation of sentence.

NEW SECTION. Sec. 17. Sections 1 through 15 of this act constitute a new chapter in Title 49 RCW.

NEW SECTION. Sec. 18. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately."

On page 1, line 2 of the title, after "stalking;" strike the remainder of the title and insert "amending RCW 7.69.030; adding a new chapter to Title 49 RCW; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2602 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Kessler and Condotta spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2602, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2602, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse,

Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2602, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2779 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 76.48 RCW to read as follows:

(1) Except as otherwise provided in this section, no person may sell, or attempt to sell, any amount of raw or unprocessed huckleberries without first obtaining a specialized forest products permit as provided in RCW 76.48.060, regardless if the huckleberries were harvested with the consent of the landowner.

(2) If the possessor of the huckleberries being offered for sale is able to show that the huckleberries originated on land owned by the United States forest service, then the requirements of this section may be satisfied with the display of a valid permit from the United States forest service that lawfully entitles the possessor to harvest the huckleberries in question.

(3) Nothing in this section creates a requirement that a specialized forest products permit is required for an individual to harvest, possess, or transport huckleberries.

(4) Compliance with this section allows an individual to sell, or offer for sale, raw or unprocessed huckleberries. Possession of a specialized forest products permit does not create a right or privilege to harvest huckleberries. Huckleberries may be harvested only with the permission of the landowner and under the terms and conditions established between the landowner and the harvester.

Sec. 2. RCW 76.48.050 and 2005 c 401 s 2 are each amended to read as follows:

(1) Except as otherwise provided in subsection (3) of this section, specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the issuance of the permits

shall be by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the ~~((permittor [permittor]))~~ permittor.

(2) A properly completed specialized forest products permit form shall include:

~~((1))~~ (a) The date of its execution and expiration;

~~((2))~~ (b) The name, address, telephone number, if any, and signature of the ~~((permittor [permittor]))~~ permittor;

~~((3))~~ (c) The name, address, telephone number, if any, and signature of the permittee;

~~((4))~~ (d) The type of specialized forest products to be harvested or transported;

~~((5))~~ (e) The approximate amount or volume of specialized forest products to be harvested or transported;

~~((6))~~ (f) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

~~((7))~~ (g) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

~~((8))~~ (h) For cedar products, cedar salvage, and specialty wood, a copy of a map or aerial photograph, with defined permitted boundaries, included as an attachment to the permit;

~~((9))~~ (i) A copy of a valid picture identification; and

~~((10))~~ (j) Any other condition or limitation which the ~~((permittor [permittor]))~~ permittor may specify.

(3) For permits intended to satisfy the requirements of section 1 of this act relating only to the sale of huckleberries, the specialized forest products permit:

(a) May be obtained from the department of natural resources or the sheriff of any county in the state;

(b) Must, in addition to the requirements of subsection (2) of this section, also contain information relating to where the huckleberries were, or plan to be, harvested, and the approximate amount of huckleberries that are going to be offered for sale; and

(c) Must include a statement designed to inform the possessor that permission from the landowner is still required prior to the harvesting of huckleberries.

(4) Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and the permittee's agents and be available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site.

Sec. 3. RCW 76.48.060 and 2005 c 401 s 3 are each amended to read as follows:

(1) A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to:

(a) Harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than five United States gallons of a single species of wild edible mushroom; or

(b) Selling, or offering for sale, any amount of raw or unprocessed huckleberries.

(2) Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or ~~((permittors [permittors]))~~ permittors in reasonable quantities. A permit form shall be completed in triplicate for each ~~((permittor's [permittor's]))~~

permittor's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested.

(3) Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp.

(4) Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products and the sale of huckleberries, subject to any other conditions or limitations which the ~~((permittor [permittor]))~~ permittor may specify. Two copies of the permit shall be given or mailed to the ~~((permittor [permittor]))~~ permittor, or one copy shall be given or mailed to the ~~((permittor [permittor]))~~ permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit.

(5) In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county.

(6) While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit.

Sec. 4. RCW 76.48.085 and 2005 c 401 s 6 are each amended to read as follows:

(1) Buyers who purchase specialized forest products or huckleberries are required to record:

~~((1))~~ (a) The permit number;

~~((2))~~ (b) The type of forest product purchased, and whether huckleberries were purchased;

~~((3))~~ (c) The permit holder's name; and

~~((4))~~ (d) The amount of forest product or huckleberries purchased.

(2) The buyer or processor shall keep a record of this information for a period of one year from the date of purchase and must make the records available for inspection upon demand by authorized enforcement officials.

(3) The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products or huckleberries on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

(4) This section shall not apply to buyers of specialized forest products at the retail sales level.

Sec. 5. RCW 76.48.086 and 1995 c 366 s 16 are each amended to read as follows:

Records of buyers of specialized forest products and huckleberries collected under the requirements of RCW 76.48.085 may be made available to colleges and universities for the purpose of research.

Sec. 6. RCW 76.48.110 and 2005 c 401 s 11 are each amended to read as follows:

(1) Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products, or selling or attempting to

sell huckleberries, in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products or huckleberries found. If the specialized forest product is a cedar product, cedar salvage, or specialty wood, at the time of making an arrest the law enforcement officer may seize and take possession of any equipment, vehicles, tools, or paperwork. The law enforcement officer shall provide reasonable protection for the equipment, vehicles, tools, paperwork, or specialized forest products involved during the period of litigation or he or she shall dispose of the equipment, vehicles, tools, paperwork, or specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

(2) Upon any disposition of the case by the court, the court shall make a reasonable effort to return the equipment, vehicles, tools, paperwork, huckleberries, or specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products or huckleberries less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the equipment, vehicles, tools, paperwork, or specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter.

Sec. 7. RCW 76.48.120 and 2003 c 53 s 373 are each amended to read as follows:

(1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, or the sale of huckleberries, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified.

Sec. 8. RCW 76.48.200 and 1995 c 366 s 17 are each amended to read as follows:

Minority groups have long been participants in the specialized forest products and huckleberry harvesting industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products and huckleberry harvesting industry, and other interested groups to work cooperatively to accomplish the following purposes:

(1) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products and huckleberries;

(2) To hold clinics to teach techniques for effective picking; and

(3) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

To the extent practicable within their existing resources, the commission on Asian-American affairs, the commission on Hispanic affairs, and the department of natural resources are encouraged to coordinate this effort.

Sec. 9. RCW 76.48.020 and 2007 c 392 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) "Authorization" means a properly completed preprinted form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Bill of lading" means a written or printed itemized list or statement of particulars pertinent to the transportation or possession of a specialized forest product.

(3) "Cascara bark" means the bark of a Cascara tree.

(4) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(5) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(6) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(7) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(8) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry foliage, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones, berries, any foliage that does not remain green year-round, or seeds.

(9) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(10) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(11) "Huckleberry" means the following species of edible berries, if they are not nursery grown: *Vaccinium membranaceum*, *Vaccinium deliciosum*, *Vaccinium ovatum*, *Vaccinium parvifolium*, *Vaccinium globulare*, *Vaccinium ovalifolium*, *Vaccinium alaskaense*, *Vaccinium caespitosum*, *Vaccinium occidentale*, *Vaccinium uliginosum*, *Vaccinium myrtillos*, and *Vaccinium scoparium*.

(12) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision,

the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(13) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(14) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(15) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(16) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(17) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(18) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, specialty wood, wild edible mushrooms, and Cascara bark.

(19) "Specialized forest products permit" means a printed document in a form printed by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as (~~"permitters"~~) "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the (~~permitter~~) permitter and that is located in the county where the permit is issued, or sell raw or unprocessed huckleberries.

(20) "Specialty wood" means wood that is:

(a) In logs less than eight feet in length, chunks, slabs, stumps, or burls; and

(b) One or more of the following:

(i) Of the species western red cedar, Englemann spruce, Sitka spruce, big leaf maple, or western red alder;

(ii) Without knots in a portion of the surface area at least twenty-one inches long and seven and a quarter inches wide when measured from the outer surface toward the center; or

(iii) Suitable for the purposes of making musical instruments or ornamental boxes.

(21) "Specialty wood buyer" means the first person that receives any specialty wood product after it leaves the harvest site.

(22) "Specialty wood processor" means any person who purchases, takes, or retains possession of specialty wood products or specialty wood salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(23) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(24) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and (~~permitter~~) permitter signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and (~~permitter~~) permitter specify an earlier date. A (~~permitter~~) permitter may require the actual signatures

of both the permittee and (~~permitter~~) permitter for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and (~~permitter~~) permitter, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(25) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means."

On page 1, line 1 of the title, after "huckleberries;" strike the remainder of the title and insert "amending RCW 76.48.050, 76.48.060, 76.48.085, 76.48.086, 76.48.110, 76.48.120, 76.48.200, and 76.48.020; and adding a new section to chapter 76.48 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2779 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Orcutt and Blake spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2779, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2779, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2779, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2781 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The study of the state's history and government is vital to providing a well-rounded education to students. It is important for students to have a firm understanding of where we have come from as a state and the institutions that guide and serve citizens of the state. It is equally important to provide students with context for the information that enables them to apply it to the present and future, with an understanding of Washington's place in our country and the broader global community.

The legislature finds that the current high school graduation requirements for coursework in Washington state history and government should be enhanced to ensure students understand the complex issues of today's world and Washington's place in the global community. It is therefore the intent of the legislature to modernize high school graduation requirements for coursework in Washington state history and government.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.230 RCW to read as follows:

Beginning with the 2009-10 school year, school districts shall ensure that any course in Washington state history and government offered to fulfill high school requirements includes, but is not limited to, the following content:

(1) Commerce in Washington state and Washington's place in a global economy;

(2) The Constitution of the state of Washington and Washington state politics. Educators are encouraged to incorporate instruction on the meaning and history of the pledge of allegiance into existing coursework on state politics. The superintendent of public instruction shall adopt rules to provide guidance for complying with this subsection;

(3) Washington state geography; and

(4) Washington state history and culture."

On page 1, line 2 of the title, after "graduation;" strike the remainder of the title and insert "adding a new section to chapter 28A.230 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2781 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Quall and Priest spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2781, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2781, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 89, Nays - 4, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 89.

Voting nay: Representatives Appleton, Chase, Jarrett, and Schual-Berke - 4.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

HOUSE BILL NO. 2781, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2887 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 41.40.124 and 2007 c 123 s 1 are each amended to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an

additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election in lieu of future employee and employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

~~(2)((a))~~ A member who ~~((chooses to make))~~ made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by an additional one and one-half percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for ~~((up to seventy percent of))~~ that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit ~~((accrued by age sixty-four for members of plan 1, and age sixty-six for members of plan 2)).~~ The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus ~~((interest as determined by the director))~~ five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement ~~((and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director)),~~ subject to rules adopted by the department.

~~((b))~~ (3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

Sec. 2. RCW 41.40.127 and 2007 c 123 s 2 are each amended to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 1 or plan 2 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional benefit equal to one and one-half percent of average final compensation for each year of future service credit from the date of the election.

~~(2)((a))~~ A member who ~~((chooses to make))~~ made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by one and one-half percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for ~~((up to seventy percent of))~~ that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a seventy-five percent of average final compensation benefit ~~((accrued by age sixty-four for members of plan 1, and age sixty-six for members of plan 2)).~~ The member shall pay five percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus ~~((interest as determined by the director))~~ five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement ~~((and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director)),~~ subject to rules adopted by the department.

~~((b))~~ (3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional one and one-half percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 1 or plan 2 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 1 or plan 2 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another

plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

Sec. 3. RCW 41.40.870 and 2007 c 123 s 3 are each amended to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a supreme court justice, court of appeals judge, or superior court judge may make a one-time irrevocable election, filed in writing with the member's employer, the department, and the administrative office of the courts, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election in lieu of future employer contributions to the judicial retirement account plan under chapter 2.14 RCW.

(2)~~((a))~~ A member who ~~((chooses to make))~~ made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a justice or judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for ~~((up to seventy percent of))~~ that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit ~~((accrued by age sixty-six))~~. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus ~~((interest as determined by the director))~~ five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement ~~((and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director))~~, subject to rules adopted by the department.

~~((b))~~ (3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a supreme court justice, court of appeals judge, or superior court judge, and who have past service as a supreme court justice, court of appeals judge, or superior court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a supreme court justice, court of appeals judge, or superior court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an

eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

~~((3))~~ (5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account.

Sec. 4. RCW 41.40.873 and 2007 c 123 s 4 are each amended to read as follows:

(1) Between January 1, 2007, and December 31, 2007, a member of plan 3 employed as a district court judge or municipal court judge may make a one-time irrevocable election, filed in writing with the member's employer and the department, to accrue an additional plan 3 defined benefit equal to six-tenths percent of average final compensation for each year of future service credit from the date of the election.

(2)~~((a))~~ A member who ~~((chooses to make))~~ made the election under subsection (1) of this section may apply, at the time of filing a written application for retirement with the department, to the department to increase the member's benefit multiplier by six-tenths percent per year of service for the period in which the member served as a judge prior to the election. The member may purchase, beginning with the most recent judicial service, the higher benefit multiplier for ~~((up to seventy percent of))~~ that portion of the member's prior judicial service for which the higher benefit multiplier was not previously purchased, and that would ensure that the member has no more than a thirty-seven and one-half percent of average final compensation benefit ~~((accrued by age sixty-six))~~. The member shall pay two and one-half percent of the salary earned for each month of service for which the higher benefit multiplier is being purchased, plus ~~((interest as determined by the director))~~ five and one-half percent interest applied from the dates that the service was earned. The purchase price shall not exceed the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier. This payment must be made prior to retirement ~~((and prior to December 31, 2007. After December 31, 2007, a member may purchase the higher benefit multiplier for any of the member's prior judicial service at the actuarially equivalent value of the increase in the member's benefit resulting from the increase in the benefit multiplier, as determined by the director))~~, subject to rules adopted by the department.

~~((b))~~ (3) From January 1, 2009, through June 30, 2009, the following members may apply to the department to increase their benefit multiplier by an additional six-tenths percent per year of service for the period in which they served as a justice or judge:

(a) Active members of plan 3 who are not currently employed as a district court judge or municipal court judge, and who have past service as a district court judge or municipal court judge; and

(b) Inactive vested members of plan 3 who have separated, have not yet retired, and who have past service as a district court judge or municipal court judge.

A member eligible under this subsection may purchase the higher benefit multiplier for all or part of the member's prior judicial service beginning with the most recent judicial service. The member shall pay, for the applicable period of service, the actuarially equivalent value of the increase in the member's benefit resulting

from the increase in the benefit multiplier as determined by the director.

(4) Subject to rules adopted by the department, a member applying to increase the member's benefit multiplier under this section may pay all or part of the cost with a lump sum payment, eligible rollover, direct rollover, or trustee-to-trustee transfer from an eligible retirement plan. The department shall adopt rules to ensure that all lump sum payments, rollovers, and transfers comply with the requirements of the internal revenue code and regulations adopted by the internal revenue service. The rules adopted by the department may condition the acceptance of a rollover or transfer from another plan on the receipt of information necessary to enable the department to determine the eligibility of any transferred funds for tax-free rollover treatment or other treatment under federal income tax law.

((3)) (5) A member who chooses to make the election under subsection (1) of this section shall contribute a minimum of seven and one-half percent of pay to the member's defined contribution account."

On page 1, line 3 of the title, after "system;" strike the remainder of the title and insert "and amending RCW 41.40.124, 41.40.127, 41.40.870, and 41.40.873."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2887 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Fromhold and Bailey spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of House Bill No. 2887, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2887, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby,

Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

HOUSE BILL NO. 2887, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2963 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature acknowledges the ability of student employees who provide instructional, research, and related academic services at the University of Washington to collectively bargain and recognizes that student employees performing equivalent services at Washington State University do not enjoy collective bargaining rights. The legislature further recognizes that while the titles of the student employees may differ between the two institutions, student employees at Washington State University should enjoy the same collective bargaining rights as their counterparts at the University of Washington. The legislature therefore intends to grant bargaining rights to student employees at Washington State University to the same extent such rights are granted to student employees at the University of Washington.

(2) This act is intended to promote cooperative labor relations between Washington State University and the employees who provide instructional, research, and related academic services, and who are enrolled as students at the university by extending collective bargaining rights under chapter 41.56 RCW and using the orderly procedures administered by the public employment relations commission. To achieve this end, the legislature intends that under chapter 41.56 RCW the university will exclusively bargain in good faith over all matters within the scope of bargaining under section 2 of this act.

(3) The legislature recognizes the importance of the shared governance practices developed at Washington State University. The legislature does not intend to restrict, limit, or prohibit the exercise of the functions of the faculty in any shared governance mechanisms or practices, including the faculty senate, faculty councils, and faculty codes of Washington State University; nor does the legislature intend to restrict, limit, or prohibit the exercise of the functions of the graduate and professional student association, the associated students of Washington State University, or any other student organization in matters outside the scope of bargaining covered by chapter 41.56 RCW.

(4) The legislature intends that nothing in this act will restrict, limit, or prohibit Washington State University from consideration of the merits, necessity, or organization of any program, activity, or service established by Washington State University, including, but

not limited to, any decision to establish, modify, or discontinue any such program, activity, or service. The legislature further intends that nothing in this act will restrict, limit, or prohibit Washington State University from having sole discretion over admission requirements for students, criterion for the award of certificates and degrees to students, academic criterion for selection of employees covered by this act, initial appointment of students, and the content, conduct, and supervision of courses, curricula, grading requirements, and research programs.

(5) The legislature does not intend to limit the matters excluded from collective bargaining to those items specified in section 2 of this act.

NEW SECTION. Sec. 2. A new section is added to chapter 41.56 RCW to read as follows:

(1) In addition to the entities listed in RCW 41.56.020, this chapter applies to Washington State University with respect to employees who are enrolled in an academic program and are in a classification in (a) through (g) of this subsection on any Washington State University campus. The employees in (a) through (g) of this subsection constitute an appropriate bargaining unit:

- (a) Graduate teaching assistant;
- (b) Graduate staff assistant;
- (c) Graduate project assistant;
- (d) Graduate veterinary assistant;
- (e) Tutor, reader, and graders in all academic units and tutoring centers;

(f) Except as provided in this subsection (1)(f), graduate research assistant. The employees that constitute an appropriate bargaining unit under this subsection (1) do not include graduate research assistants who are performing research primarily related to their dissertation and who have incidental or no service expectations placed upon them by the university; and

(g) All employees enrolled in an academic program whose duties and responsibilities are substantially equivalent to those employees in (a) through (f) of this subsection.

(2)(a) The scope of bargaining for employees at Washington State University under this section excludes:

- (i) The ability to terminate the employment of any individual if the individual is not meeting academic requirements as determined by Washington State University;
- (ii) The amount of tuition or fees at Washington State University. However, tuition and fee remission and waiver is within the scope of bargaining;
- (iii) The academic calendar of Washington State University; and
- (iv) The number of students to be admitted to a particular class or class section at Washington State University.

(b)(i) Except as provided in (b)(ii) of this subsection, provisions of collective bargaining agreements relating to compensation must not exceed the amount or percentage established by the legislature in the appropriations act. If any compensation provision is affected by subsequent modification of the appropriations act by the legislature, both parties must immediately enter into collective bargaining for the sole purpose of arriving at a mutually agreed upon replacement for the affected provision.

(ii) Washington State University may provide additional compensation to student employees covered by this section that exceeds that provided by the legislature.

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, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "programs;" strike the remainder of the title and insert "adding a new section to chapter 41.56 RCW; and creating new sections." and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2963 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Conway spoke in favor of passage of the bill.

Representative Anderson spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2963, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2963, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 63, Nays - 30, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunn, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Lias, Linville, Loomis, McCoy, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 63.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Ericksen, Haler, Hankins, Herrera, Hinkle, Kretz, Kristiansen, McCune, McDonald, Newhouse, Orcutt, Pearson, Priest, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 30.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2963, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 3166 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that, according to a recent report from a consultant retained by the state board of education, end-of-course assessments have certain advantages over comprehensive assessments such as the current form of the Washington assessment of student learning, and in most other areas end-of-course assessments are comparable to comprehensive assessments in meeting public policy objectives for a statewide assessment system. The legislature further finds that because the state's assessment contract will be renegotiated before the end of 2008, the 2008 legislature has an opportunity to provide policy direction in the design of the state assessment system and the design of the Washington assessment of student learning.

Sec. 2. RCW 28A.655.070 and 2007 c 354 s 5 are each amended to read as follows:

(1) The superintendent of public instruction shall develop essential academic learning requirements that identify the knowledge and skills all public school students need to know and be able to do based on the student learning goals in RCW 28A.150.210, develop student assessments, and implement the accountability recommendations and requests regarding assistance, rewards, and recognition of the state board of education.

(2) The superintendent of public instruction shall:

(a) Periodically revise the essential academic learning requirements, as needed, based on the student learning goals in RCW 28A.150.210. Goals one and two shall be considered primary. To the maximum extent possible, the superintendent shall integrate goal four and the knowledge and skill areas in the other goals in the essential academic learning requirements; and

(b) Review and prioritize the essential academic learning requirements and identify, with clear and concise descriptions, the grade level content expectations to be assessed on the Washington assessment of student learning and used for state or federal accountability purposes. The review, prioritization, and identification shall result in more focus and targeting with an emphasis on depth over breadth in the number of grade level content expectations assessed at each grade level. Grade level content expectations shall be articulated over the grades as a sequence of expectations and performances that are logical, build with increasing depth after foundational knowledge and skills are acquired, and reflect, where appropriate, the sequential nature of the discipline. The office of the superintendent of public instruction, within seven working days, shall post on its web site any grade level content expectations provided to an assessment vendor for use in constructing the Washington assessment of student learning.

(3)(a) In consultation with the state board of education, the superintendent of public instruction shall maintain and continue to develop and revise a statewide academic assessment system in the

content areas of reading, writing, mathematics, and science for use in the elementary, middle, and high school years designed to determine if each student has mastered the essential academic learning requirements identified in subsection (1) of this section. School districts shall administer the assessments under guidelines adopted by the superintendent of public instruction. The academic assessment system may include a variety of assessment methods, including criterion-referenced and performance-based measures.

(b) Effective with the 2009 administration of the Washington assessment of student learning, the superintendent shall redesign the assessment in the content areas of reading, mathematics, and science in all grades except high school by shortening test administration and reducing the number of short answer and extended response questions.

(4) If the superintendent proposes any modification to the essential academic learning requirements or the statewide assessments, then the superintendent shall, upon request, provide opportunities for the education committees of the house of representatives and the senate to review the assessments and proposed modifications to the essential academic learning requirements before the modifications are adopted.

(5) The assessment system shall be designed so that the results under the assessment system are used by educators as tools to evaluate instructional practices, and to initiate appropriate educational support for students who have not mastered the essential academic learning requirements at the appropriate periods in the student's educational development.

(6) By September 2007, the results for reading and mathematics shall be reported in a format that will allow parents and teachers to determine the academic gain a student has acquired in those content areas from one school year to the next.

(7) To assist parents and teachers in their efforts to provide educational support to individual students, the superintendent of public instruction shall provide as much individual student performance information as possible within the constraints of the assessment system's item bank. The superintendent shall also provide to school districts:

(a) Information on classroom-based and other assessments that may provide additional achievement information for individual students; and

(b) A collection of diagnostic tools that educators may use to evaluate the academic status of individual students. The tools shall be designed to be inexpensive, easily administered, and quickly and easily scored, with results provided in a format that may be easily shared with parents and students.

(8) To the maximum extent possible, the superintendent shall integrate knowledge and skill areas in development of the assessments.

(9) Assessments for goals three and four of RCW 28A.150.210 shall be integrated in the essential academic learning requirements and assessments for goals one and two.

(10) The superintendent shall develop assessments that are directly related to the essential academic learning requirements, and are not biased toward persons with different learning styles, racial or ethnic backgrounds, or on the basis of gender.

(11) The superintendent shall consider methods to address the unique needs of special education students when developing the assessments under this section.

(12) The superintendent shall consider methods to address the unique needs of highly capable students when developing the assessments under this section.

(13) The superintendent shall post on the superintendent's web site lists of resources and model assessments in social studies, the arts, and health and fitness.

NEW SECTION. Sec. 3. A new section is added to chapter 28A.655 RCW to read as follows:

(1) In consultation with the state board of education, the superintendent of public instruction shall develop statewide end-of-course assessments for high school mathematics that measure student achievement of the state mathematics standards. The superintendent shall take steps to ensure that the language of the assessments is responsive to a diverse student population. The superintendent shall develop end-of-course assessments in algebra I, geometry, integrated mathematics I, and integrated mathematics II. The superintendent shall make the algebra I and integrated mathematics I end-of-course assessments available to school districts on an optional basis in the 2009-10 school year. The end-of-course assessments in algebra I, geometry, integrated mathematics I, and integrated mathematics II shall be implemented statewide in the 2010-11 school year.

(2) For the graduating class of 2013 and for purposes of the certificate of academic achievement under RCW 28A.655.061, results from the algebra I end-of-course assessment plus the geometry end-of-course assessment or results from the integrated mathematics I end-of-course assessment plus the integrated mathematics II end-of-course assessment may be used to demonstrate that a student meets the state standard on the mathematics content area of the high school Washington assessment of student learning.

(3) Beginning with the graduating class of 2014 and for purposes of the certificate of academic achievement under RCW 28A.655.061, the mathematics content area of the Washington assessment of student learning shall be assessed using either the algebra I end-of-course assessment plus the geometry end-of-course assessment or the integrated mathematics I end-of-course assessment plus the integrated mathematics II end-of-course assessment. All of the objective alternative assessments available to students under RCW 28A.655.061 and 28A.655.065 shall be available to any student who has taken the sequence of end-of-course assessments once but does not meet the state mathematics standard on the sequence of end-of-course assessments.

(4) The superintendent of public instruction shall report at least annually or more often if necessary to keep the education committees of the legislature informed on each step of the development and implementation process under this section.

NEW SECTION. Sec. 4. If specific funding for the purposes of section 3 of this act, referencing section 3 of this act by bill or chapter number and section number, is not provided by June 30, 2008, in the omnibus appropriations act, section 3 of this act is null and void."

On page 1, line 2 of the title, after "learning;" strike the remainder of the title and insert "amending RCW 28A.655.070; adding a new section to chapter 28A.655 RCW; and creating new sections."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 3166 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Quall and Priest spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 3166, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 3166, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 92, Nays - 1, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 92.

Voting nay: Representative Dunn - 1.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3166, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3186 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 36.61.010 and 1987 c 432 s 1 are each amended to read as follows:

The legislature finds that the environmental, recreational, and aesthetic values of many of the state's lakes are threatened by eutrophication and other deterioration and that existing governmental authorities are unable to adequately improve and maintain the quality of the state's lakes.

The legislature intends that an ecosystem-based beach management approach should be used to help promote the health of aquatic ecosystems and that such a management approach be undertaken in a manner that retains ecosystem values within the state. This management approach should use long-term strategies that focus on reducing nutrient inputs from human activities affecting the aquatic ecosystem, such as decreasing nutrients into storm water sewers, decreasing fertilizer application, promoting the proper disposal of pet waste, promoting the use of vegetative borders, promoting the reduction of nutrients from on-site septic systems where appropriate, and protecting riparian areas. Organic debris, including vegetation, driftwood, seaweed, kelp, and organisms, are extremely important to beach ecosystems.

It is the purpose of this chapter to establish a governmental mechanism by which property owners can embark on a program of lake or beach improvement and maintenance for their and the general public's benefit, health, and welfare. Public property, including state property, shall be considered the same as private property in this chapter, except liens for special assessments and liens for rates and charges shall not extend to public property. Lake bottom property and marine property below the line of the ordinary high water mark shall not be considered to be benefited, shall not be subject to special assessments or rates and charges, and shall not receive voting rights under this chapter.

NEW SECTION. Sec. 2. A new section is added to chapter 36.61 RCW to read as follows:

(1) Beach management districts may be created for the purpose of controlling and removing aquatic plants or vegetation. These districts must develop a plan for these activities, in consultation with appropriate federal, state, and local agencies. The plan must include an element addressing nutrient loading from land use activities in a subbasin that is a tributary to the area targeted for management. The plan must be consistent with the action agenda approved by the Puget Sound partnership, where applicable.

(2) Plans for the control and removal of aquatic plants or vegetation must, to the greatest extent possible, meet the following requirements:

(a) Avoid or minimize the excess removal of living and nonliving nontarget native vegetation and organisms;

(b) Avoid or minimize management activities that will result in compacting beach sand, gravel, and substrate;

(c) Minimize adverse impacts to: (i) The project site when disposing of excessive accumulations of vegetation; and (ii) other areas of the beach or deep water environment; and

(d) Retain all natural habitat features on the beach, including retaining trees, stumps, logs, and large rocks in their natural location.

(3) Seaweed removal under this section may only occur on the shore of a saltwater body that lies between the extreme low tide and the ordinary high water mark, as those terms are defined in RCW 90.58.030.

(4) The control or removal of native aquatic plants or vegetation shall be authorized in the following areas:

(a) Beaches or near shore areas located within at least one mile of a ferry terminal that are in a county with a population of one million or more residents; and

(b) Beaches or near shore areas in a city that meets the following:

(i) Is adjacent to Puget Sound;

(ii) Has at least eighty-five thousand residents;

(iii) Shares a common boundary with a neighboring county; and

(iv) Is in a county with a population of one million or more residents.

Sec. 3. RCW 36.61.020 and 2000 c 184 s 5 are each amended to read as follows:

Any county may create lake or beach management districts to finance the improvement and maintenance of lakes or beaches located within or partially within the boundaries of the county. All or a portion of a lake or beach and the adjacent land areas may be included within one or more lake or beach management districts. More than one lake or beach, or portions of lakes or beaches, and the adjacent land areas may be included in a single lake or beach management district.

Special assessments or rates and charges may be imposed on the property included within a lake or beach management district to finance lake or beach improvement and maintenance activities, including: (1) ~~((The control or removal of))~~ Controlling or removing aquatic plants and vegetation; (2) improving water quality; (3) ~~((the control of))~~ controlling water levels; (4) treating and diverting storm water ~~((diversion and treatment))~~; (5) controlling agricultural waste ~~((control))~~; (6) studying lake or marine water quality problems and solutions; (7) cleaning and maintaining ditches and streams entering the lake or marine waters or leaving the lake; ~~((and))~~ (8) monitoring air quality; and (9) the related administrative, engineering, legal, and operational costs, including the costs of creating the lake or beach management district.

Special assessments or rates and charges may be imposed annually on all the land in a lake or beach management district for the duration of the lake or beach management district without a related issuance of lake or beach management district bonds or revenue bonds. Special assessments also may be imposed in the manner of special assessments in a local improvement district with each landowner being given the choice of paying the entire special assessment in one payment, or to paying installments, with lake or beach management district bonds being issued to obtain moneys not derived by the initial full payment of the special assessments, and the installments covering all of the costs related to issuing, selling, and redeeming the lake or beach management district bonds.

Sec. 4. RCW 36.61.025 and 2000 c 184 s 4 are each amended to read as follows:

To improve the ability of counties to finance long-term lake or beach management objectives, lake or beach management districts may be created for any needed period of time.

Sec. 5. RCW 36.61.030 and 1987 c 432 s 3 are each amended to read as follows:

A lake or beach management district may be initiated upon either the adoption of a resolution of intention by a county legislative authority or the filing of a petition signed by ten landowners or the owners of at least fifteen percent of the acreage contained within the proposed lake or beach management district, whichever is greater. A petition or resolution of intention shall set forth: (1) The nature of the lake or beach improvement or maintenance activities proposed to

be financed; (2) the amount of money proposed to be raised by special assessments or rates and charges; (3) if special assessments are to be imposed, whether the special assessments will be imposed annually for the duration of the lake or beach management district, or the full special assessments will be imposed at one time, with the possibility of installments being made to finance the issuance of lake or beach management district bonds, or both methods; (4) if rates and charges are to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; (5) the number of years proposed for the duration of the lake or beach management district; and (6) the proposed boundaries of the lake or beach management district.

The county legislative authority may require the posting of a bond of up to five thousand dollars before the county considers the proposed creation of a lake or beach management district initiated by petition. The bond may only be used by the county to finance its costs in studying, holding hearings, making notices, preparing special assessment rolls or rolls showing the rates and charges on each parcel, and conducting elections related to the lake or beach management district if the proposed lake or beach management district is not created.

A resolution of intention shall also designate the number of the proposed lake or beach management district, and fix a date, time, and place for a public hearing on the formation of the proposed lake or beach management district. The date for the public hearing shall be at least thirty days and no more than ninety days after the adoption of the resolution of intention unless an emergency exists.

Petitions shall be filed with the county legislative authority. The county legislative authority shall determine the sufficiency of the signatures, which shall be conclusive upon all persons. No person may withdraw his or her name from a petition after it is filed. If the county legislative authority determines a petition to be sufficient and the proposed lake or beach management district appears to be in the public interest and the financing of the lake or beach improvement or maintenance activities is feasible, it shall adopt a resolution of intention, setting forth all of the details required to be included when a resolution of intention is initiated by the county legislative authority.

Sec. 6. RCW 36.61.040 and 1994 c 264 s 9 are each amended to read as follows:

Notice of the public hearing shall be published in at least two consecutive issues of a newspaper of general circulation in the proposed lake or beach management district, the date of the first publication to be at least fifteen days prior to the date fixed for the public hearing by the resolution of intention. Notice of the public hearing shall also be given to the owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake or beach management district by mailing the notice at least fifteen days before the date fixed for the public hearing to the owner or reputed owner of the property as shown on the tax rolls of the county assessor at the address shown thereon. Notice of the public hearing shall also be mailed to the departments of fish and wildlife, natural resources, and ecology at least fifteen days before the date fixed for the public hearing.

Notices of the public hearing shall: (1) Refer to the resolution of intention; (2) designate the proposed lake or beach management district by number; (3) set forth a proposed plan describing: (a) The nature of the proposed lake or beach improvement or maintenance activities; (b) the amount of special assessments or rates and charges proposed to be raised by the lake or beach management district; (c) if special assessments are proposed to be imposed, whether the

special assessments will be imposed annually for the duration of the lake or beach management district, or the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake or beach management bonds being issued, or both; (d) if rates and charges are proposed to be imposed, the annual amount of revenue proposed to be collected and whether revenue bonds payable from the rates and charges are proposed to be issued; and (e) the proposed duration of the lake or beach management district; and (4) indicate the date, time, and place of the public hearing designated in the resolution of intention.

If the case of the notice sent to each owner or reputed owner by mail, the notice shall set forth the estimated amount of the cost of the lake or beach improvement or maintenance activities to be borne by special assessment, or annual special assessments, or rates and charges on the lot, tract, parcel of land, or other property owned by the owner or reputed owner.

If the county legislative authority has designated a committee of itself or an officer to hear complaints and make recommendations to the full county legislative authority, as provided in RCW 36.61.060, the notice shall also describe this additional step before the full county legislative authority may adopt a resolution creating the lake or beach management district.

Sec. 7. RCW 36.61.050 and 1994 c 264 s 10 are each amended to read as follows:

The county legislative authority shall hold a public hearing on the proposed lake or beach management district at the date, time, and place designated in the resolution of intention.

At this hearing the county legislative authority shall hear objections from any person affected by the formation of the lake or beach management district. Representatives of the departments of fish and wildlife, natural resources, and ecology shall be afforded opportunities to make presentations on and comment on the proposal. Members of the public shall be afforded an opportunity to comment on the proposal. The county legislative authority must consider recommendations provided to it by the departments of fish and wildlife, natural resources, and ecology. The public hearing may be extended to other times and dates declared at the public hearing. The county legislative authority may make such changes in the boundaries of the lake or beach management district or such modification in plans for the proposed lake or beach improvement or maintenance activities as it deems necessary. The county legislative authority may not change boundaries of the lake or beach management district to include property that was not included previously without first passing an amended resolution of intention and giving new notice to the owners or reputed owners of property newly included in the proposed lake or beach management district in the manner and form and within the time provided for the original notice. The county legislative authority shall not alter the plans for the proposed lake or beach improvement or maintenance activities to result in an increase in the amount of money proposed to be raised, and shall not increase the amount of money proposed to be raised, without first passing an amended resolution of intention and giving new notice to property owners in the manner and form and within the time provided for the original notice.

Sec. 8. RCW 36.61.060 and 1985 c 398 s 10 are each amended to read as follows:

A county legislative authority may adopt an ordinance providing for a committee of itself, or an officer, to hold public hearings on the proposed formation of a lake or beach management district and hear objections to the proposed formation as provided in RCW 36.61.050.

The committee or officer shall make a recommendation to the full legislative authority, which need not hold a public hearing on the proposed creation of the lake or beach management district. The full county legislative authority by resolution may approve or disapprove the recommendation and submit the question of creating the lake or beach management district to the property owners as provided in RCW 36.61.070 through 36.61.100.

Sec. 9. RCW 36.61.070 and 1987 c 432 s 5 are each amended to read as follows:

After the public hearing, the county legislative authority may adopt a resolution submitting the question of creating the lake or beach management district to the owners of land within the proposed lake or beach management district, including publicly owned land, if the county legislative authority finds that it is in the public interest to create the lake or beach management district and the financing of the lake or beach improvement and maintenance activities is feasible. The resolution shall also include: (1) A plan describing the proposed lake or beach improvement and maintenance activities which avoid adverse impacts on fish and wildlife and provide for appropriate measures to protect and enhance fish and wildlife; (2) the number of years the lake or beach management district will exist; (3) the amount to be raised by special assessments or rates and charges; (4) if special assessments are to be imposed, whether the special assessments shall be imposed annually for the duration of the lake or beach management district or only once with the possibility of installments being imposed and lake or beach management bonds being issued, or both, and, if both types of special assessments are proposed to be imposed, the lake or beach improvement or maintenance activities proposed to be financed by each type of special assessment; (5) if rates and charges are to be imposed, a description of the rates and charges and the possibility of revenue bonds being issued that are payable from the rates and charges; and (6) the estimated special assessment or rate and charge proposed to be imposed on each parcel included in the proposed lake or beach management district.

No lake or beach management district may be created by a county that includes territory located in another county without the approval of the legislative authority of the other county.

Sec. 10. RCW 36.61.080 and 1987 c 432 s 6 are each amended to read as follows:

(1) A ballot shall be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed lake management district, including publicly owned land, which ballot shall contain the following proposition:

"Shall lake management district No. . . . be formed?
Yes
No"

(2) A ballot shall be mailed to each owner or reputed owner of any lot, tract, parcel of land, or other property within the proposed beach management district, including publicly owned land, which ballot shall contain the following proposition:

"Shall beach management district No. . . . be formed?
Yes
No"

(3) In addition, the ballot shall contain appropriate spaces for the signatures of the landowner or landowners, or officer authorized to cast such a ballot. Each ballot shall include a description of the

property owner's property and the estimated special assessment, or rate and charge, proposed to be imposed upon the property. A copy of the instructions and the resolution submitting the question to the landowners shall also be included.

Sec. 11. RCW 36.61.090 and 1987 c 432 s 7 are each amended to read as follows:

The balloting shall be subject to the following conditions, which shall be included in the instructions mailed with each ballot, as provided in RCW 36.61.080: (1) All ballots must be signed by the owner or reputed owner of property according to the assessor's tax rolls; (2) each ballot must be returned to the county legislative authority not later than ~~((five o'clock))~~ 5:00 p.m. of a specified day, which shall be at least twenty but not more than thirty days after the ballots are mailed; (3) each property owner shall mark his or her ballot for or against the creation of the proposed lake or beach management district, with the ballot weighted so that the property owner has one vote for each dollar of estimated special assessment or rate and charge proposed to be imposed on his or her property; and (4) the valid ballots shall be tabulated and a simple majority of the votes cast shall determine whether the proposed lake or beach management district shall be approved or rejected.

Sec. 12. RCW 36.61.100 and 1987 c 432 s 8 are each amended to read as follows:

If the proposal receives a simple majority vote in favor of creating the lake or beach management district, the county legislative authority shall adopt an ordinance creating the lake or beach management district and may proceed with establishing the special assessments or rates and charges, collecting the special assessments or rates and charges, and performing the lake or beach improvement or maintenance activities. If a proposed lake management district includes more than one lake and its adjacent areas, the lake management district may only be established if the proposal receives a simple majority vote in favor of creating it by the voters on each lake and its adjacent areas. The county legislative authority shall publish a notice in a newspaper of general circulation in a lake or beach management district indicating that such an ordinance has been adopted within ten days of the adoption of the ordinance.

The ballots shall be available for public inspection after they are counted.

Sec. 13. RCW 36.61.110 and 1985 c 398 s 11 are each amended to read as follows:

No lawsuit may be maintained challenging the jurisdiction or authority of the county legislative authority to proceed with the lake or beach improvement and maintenance activities and creating the lake or beach management district or in any way challenging the validity of the actions or decisions or any proceedings relating to the actions or decisions unless the lawsuit is served and filed no later than forty days after publication of a notice that the ordinance has been adopted ordering the lake or beach improvement and maintenance activities and creating the lake or beach management district. Written notice of the appeal shall be filed with the county legislative authority and clerk of the superior court in the county in which the property is situated.

Sec. 14. RCW 36.61.115 and 1987 c 432 s 9 are each amended to read as follows:

A special assessment, or rate and charge, on any lot, tract, parcel of land, or other property shall not be increased beyond one hundred ten percent of the estimated special assessment, or rate and charge,

proposed to be imposed as provided in the resolution adopted in RCW 36.61.070, unless the creation of a lake or beach management district is approved under another mailed ballot election that reflects the weighted voting arising from such increases.

Sec. 15. RCW 36.61.120 and 1985 c 398 s 12 are each amended to read as follows:

After a lake or beach management district is created, the county shall prepare a proposed special assessment roll. A separate special assessment roll shall be prepared for annual special assessments if both annual special assessments and special assessments paid at one time are imposed. The proposed special assessment roll shall list: (1) Each separate lot, tract, parcel of land, or other property in the lake or beach management district; (2) the acreage of such property, and the number of feet of lake or beach frontage, if any; (3) the name and address of the owner or reputed owner of each lot, tract, parcel of land, or other property as shown on the tax rolls of the county assessor; and (4) the special assessment proposed to be imposed on each lot, tract, parcel of land, or other property, or the annual special assessments proposed to be imposed on each lot, tract, parcel of land, or other property.

At the time, date, and place fixed for a public hearing, the county legislative authority shall act as a board of equalization and hear objections to the special assessment roll, and at the times to which the public hearing may be adjourned, the county legislative authority may correct, revise, raise, lower, change, or modify the special assessment roll or any part thereof, or set the proposed special assessment roll aside and order a new proposed special assessment roll to be prepared. The county legislative authority shall confirm and approve a special assessment roll by adoption of a resolution.

If a proposed special assessment roll is amended to raise any special assessment appearing thereon or to include omitted property, a new public hearing shall be held. The new public hearing shall be limited to considering the increased special assessments or omitted property. Notices shall be sent to the owners or reputed owners of the affected property in the same manner and form and within the time provided for the original notice.

Objections to a proposed special assessment roll must be made in writing, shall clearly state the grounds for objections, and shall be filed with the governing body prior to the public hearing. Objections to a special assessment or annual special assessments that are not made as provided in this section shall be deemed waived and shall not be considered by the governing body or a court on appeal.

Sec. 16. RCW 36.61.140 and 1985 c 398 s 14 are each amended to read as follows:

Notice of the original public hearing on the proposed special assessment roll, and any public hearing held as a result of raising special assessments or including omitted property, shall be published and mailed to the owner or reputed owner of the property as provided in RCW 36.61.040 for the public hearing on the formation of the lake or beach management district. However, the notice need only provide the total amount to be collected by the special assessment roll and shall state that: (1) A public hearing on the proposed special assessment roll will be held, giving the time, date, and place of the public hearing; (2) the proposed special assessment roll is available for public perusal, giving the times and location where the proposed special assessment roll is available for public perusal; (3) objections to the proposed special assessment must be in writing, include clear grounds for objections, and must be filed prior to the public hearing; and (4) failure to so object shall be deemed to waive an objection.

Notices mailed to the owners or reputed owners shall additionally indicate the amount of special assessment ascribed to the particular lot, tract, parcel of land, or other property owned by the person so notified.

Sec. 17. RCW 36.61.160 and 1987 c 432 s 10 are each amended to read as follows:

Whenever special assessments are imposed, all property included within a lake or beach management district shall be considered to be the property specially benefited by the lake or beach improvement or maintenance activities and shall be the property upon which special assessments are imposed to pay the costs and expenses of the lake or beach improvement or maintenance activities, or such part of the costs and expenses as may be chargeable against the property specially benefited. The special assessments shall be imposed on property in accordance with the special benefits conferred on the property up to but not in excess of the total costs and expenses of the lake or beach improvement or maintenance activities as provided in the special assessment roll.

Special assessments may be measured by front footage, acreage, the extent of improvements on the property, or any other factors that are deemed to fairly reflect special benefits, including those authorized under RCW 35.51.030. Special assessments may be calculated by using more than one factor. Zones around the public improvement may be used that reflect different levels of benefit in each zone that are measured by a front footage, acreage, the extent of improvements, or other factors.

Public property, including property owned by the state of Washington, shall be subject to special assessments to the same extent that private property is subject to the special assessments, except no lien shall extend to public property.

Sec. 18. RCW 36.61.170 and 1985 c 398 s 17 are each amended to read as follows:

The total annual special assessments may not exceed the estimated cost of the lake or beach improvement or maintenance activities proposed to be financed by such special assessments, as specified in the resolution of intention. The total of special assessments imposed in a lake or beach management district that are of the nature of special assessments imposed in a local improvement district shall not exceed one hundred fifty percent of the estimated total cost of the lake or beach improvement or maintenance activities that are proposed to be financed by the lake or beach management district as specified in the resolution of intention. After a lake or beach management district has been created, the resolution of intention may be amended to increase the amount to be financed by the lake or beach management district by using the same procedure in which a lake or beach management district is created.

Sec. 19. RCW 36.61.190 and 1985 c 398 s 19 are each amended to read as follows:

Special assessments and installments on any special assessment shall be collected by the county treasurer.

The county treasurer shall publish a notice indicating that the special assessment roll has been confirmed and that the special assessments are to be collected. The notice shall indicate the duration of the lake or beach management district and shall describe whether the special assessments will be paid in annual payments for the duration of the lake or beach management district, or whether the full special assessments will be payable at one time, with the possibility of periodic installments being paid and lake or beach management bonds being issued, or both.

If the special assessments are to be payable at one time, the notice additionally shall indicate that all or any portion of the special assessments may be paid within thirty days from the date of publication of the first notice without penalty or interest. This notice shall be published in a newspaper of general circulation in the lake or beach management district.

Within ten days of the first newspaper publication, the county treasurer shall notify each owner or reputed owner of property whose name appears on the special assessment roll, at the address shown on the special assessment roll, for each item of property described on the list: (1) Whether one special assessment payable at one time or special assessments payable annually have been imposed; (2) the amount of the property subject to the special assessment or annual special assessments; and (3) the total amount of the special assessment due at one time, or annual amount of special assessments due. If the special assessment is due at one time, the notice shall also describe the thirty-day period during which the special assessment may be paid without penalty, interest, or cost.

Sec. 20. RCW 36.61.200 and 1985 c 398 s 20 are each amended to read as follows:

If the special assessments are to be payable at one time, all or any portion of any special assessment may be paid without interest, penalty, or costs during this thirty-day period and placed into a special fund to defray the costs of the lake or beach improvement or maintenance activities. The remainder shall be paid in installments as provided in a resolution adopted by the county legislative authority, but the last installment shall be due at least two years before the maximum term of the bonds issued to pay for the improvements or maintenance. The installments shall include amounts sufficient to redeem the bonds issued to pay for the lake or beach improvement and maintenance activities. A twenty-day period shall be allowed after the due date of any installment within which no interest, penalty, or costs on the installment may be imposed.

The county shall establish by ordinance an amount of interest that will be imposed on late special assessments imposed annually or at once, and on installments of a special assessment. The ordinance shall also specify the penalty, in addition to the interest, that will be imposed on a late annual special assessment, special assessment, or installment which shall not be less than five percent of the delinquent special assessment or installment.

The owner of any lot, tract, parcel of land, or other property charged with a special assessment may redeem it from all liability for the unpaid amount of the installments by paying, to the county treasurer, the remaining portion of the installments that is attributable to principal on the lake or beach management district bonds.

Sec. 21. RCW 36.61.220 and 1985 c 398 s 22 are each amended to read as follows:

Within fifteen days after a county creates a lake or beach management district, the county shall cause to be filed with the county treasurer, a description of the lake or beach improvement and maintenance activities proposed that the lake or beach management district finances, the lake or beach management district number, and a copy of the diagram or print showing the boundaries of the lake or beach management district and preliminary special assessment roll or abstract of same showing thereon the lots, tracts, parcels of land, and other property that will be specially benefited thereby and the estimated cost and expense of such lake or beach improvement and maintenance activities to be borne by each lot, tract, parcel of land, or other property. The treasurer shall immediately post the proposed special assessment roll upon his or her index of special assessments

against the properties affected by the lake or beach improvement or maintenance activities.

Sec. 22. RCW 36.61.230 and 1985 c 398 s 23 are each amended to read as follows:

The special assessment or annual special assessments imposed upon the respective lots, tracts, parcels of land, and other property in the special assessment roll or annual special assessment roll confirmed by resolution of the county legislative authority for the purpose of paying the cost and expense in whole or in part of any lake or beach improvement or maintenance activities shall be a lien upon the property assessed from the time the special assessment roll is placed in the hands of the county treasurer for collection, but as between the grantor and grantee, or vendor and vendee of any real property, when there is no express agreement as to payment of the special assessments against the real property, the lien of such special assessments shall attach thirty days after the filing of the diagram or print and the estimated cost and expense of such lake or beach improvement or maintenance activities to be borne by each lot, tract, parcel of land, or other property, as provided in RCW 36.61.220. Interest and penalty shall be included in and shall be a part of the special assessment lien. No lien shall extend to public property subjected to special assessments.

The special assessment lien shall be paramount and superior to any other lien or encumbrance theretofore or thereafter created except a lien for general taxes.

Sec. 23. RCW 36.61.260 and 2000 c 184 s 6 are each amended to read as follows:

(1) Counties may issue lake or beach management district bonds in accordance with this section. Lake or beach management district bonds may be issued to obtain money sufficient to cover that portion of the special assessments that are not paid within the thirty-day period provided in RCW 36.61.190.

Whenever lake or beach management district bonds are proposed to be issued, the county legislative authority shall create a special fund or funds for the lake or beach management district from which all or a portion of the costs of the lake or beach improvement and maintenance activities shall be paid. Lake or beach management district bonds shall not be issued in excess of the costs and expenses of the lake or beach improvement and maintenance activities and shall not be issued prior to twenty days after the thirty days allowed for the payment of special assessments without interest or penalties.

Lake or beach management district bonds shall be exclusively payable from the special fund or funds and from a guaranty fund that the county may have created out of a portion of proceeds from the sale of the lake or beach management district bonds.

(2) Lake or beach management district bonds shall not constitute a general indebtedness of the county issuing the bond nor an obligation, general or special, of the state. The owner of any lake or beach management district bond shall not have any claim for the payment thereof against the county that issues the bonds except for payment from the special assessments made for the lake or beach improvement or maintenance activities for which the lake or beach management district bond was issued and from a lake or beach management district guaranty fund that may have been created. The county shall not be liable to the owner of any lake or beach management district bond for any loss to the lake or beach management district guaranty fund occurring in the lawful operation of the fund. The owner of a lake or beach management district bond shall not have any claim against the state arising from the lake or beach management district bond, special assessments, or guaranty

fund. Tax revenues shall not be used to secure or guarantee the payment of the principal of or interest on lake or beach management district bonds.

The substance of the limitations included in this subsection shall be plainly printed, written, engraved, or reproduced on: (a) Each lake or beach management district bond that is a physical instrument; (b) the official notice of sale; and (c) each official statement associated with the lake or beach management district bonds.

(3) If the county fails to make any principal or interest payments on any lake or beach management district bond or to promptly collect any special assessment securing the bonds when due, the owner of the lake or beach management district bond may obtain a writ of mandamus from any court of competent jurisdiction requiring the county to collect the special assessments, foreclose on the related lien, and make payments out of the special fund or guaranty fund if one exists. Any number of owners of lake or beach management districts may join as plaintiffs.

(4) A county may create a lake or beach management district bond guaranty fund for each issue of lake or beach management district bonds. The guaranty fund shall only exist for the life of the lake or beach management district bonds with which it is associated. A portion of the bond proceeds may be placed into a guaranty fund. Unused moneys remaining in the guaranty fund during the last two years of the installments shall be used to proportionally reduce the required level of installments and shall be transferred into the special fund into which installment payments are placed.

(5) Lake or beach management district bonds shall be issued and sold in accordance with chapter 39.46 RCW. The authority to create a special fund or funds shall include the authority to create accounts within a fund.

Sec. 24. RCW 36.61.270 and 1987 c 432 s 11 are each amended to read as follows:

Whenever rates and charges are to be imposed in a lake or beach management district, the county legislative authority shall prepare a roll of rates and charges that includes those matters required to be included in a special assessment roll and shall hold a public hearing on the proposed roll of rates and charges as provided under RCW 36.61.120 through 36.61.150 for a special assessment roll. The county legislative authority shall have full jurisdiction and authority to fix, alter, regulate, and control the rates and charges imposed by a lake or beach management district and may classify the rates or charges by any reasonable factor or factors, including benefit, use, front footage, acreage, the extent of improvements on the property, the type of improvements on the property, uses to which the property is put, service to be provided, and any other reasonable factor or factors. The flexibility to establish rates and charges includes the authority to reduce rates and charges on property owned by low-income persons.

Except as provided in this section, the collection of rates and charges, lien status of unpaid rates and charges, and method of foreclosing on such liens shall be subject to the provisions of chapter 36.94 RCW. Public property, including state property, shall be subject to the rates and charges to the same extent that private property is subject to them, except that liens may not be foreclosed on the public property, and the procedure for imposing such rates and charges on state property shall conform with the procedure provided for in chapter 79.44 RCW concerning the imposition of special assessments upon state property. The total amount of rates and charges cannot exceed the cost of lake or beach improvement or maintenance activities proposed to be financed by such rates and charges, as specified in the resolution of intention. Revenue bonds

exclusively payable from the rates and charges may be issued by the county under chapter 39.46 RCW.

Sec. 25. RCW 36.94.020 and 1997 c 447 s 11 are each amended to read as follows:

The construction, operation, and maintenance of a system of sewerage and/or water is a county purpose. Subject to the provisions of this chapter, every county has the power, individually or in conjunction with another county or counties to adopt, provide for, accept, establish, condemn, purchase, construct, add to, operate, and maintain a system or systems of sanitary and storm sewers, including outfalls, interceptors, plans, and facilities and services necessary for sewerage treatment and disposal, and/or system or systems of water supply within all or a portion of the county. However, counties shall not have power to condemn sewerage and/or water systems of any municipal corporation or private utility.

Such county or counties shall have the authority to control, regulate, operate, and manage such system or systems and to provide funds therefor by general obligation bonds, revenue bonds, local improvement district bonds, utility local improvement district or local improvement district assessments, and in any other lawful fiscal manner. Rates or charges for on-site inspection and maintenance services may not be imposed under this chapter on the development, construction, or reconstruction of property.

Under this chapter, after July 1, 1998, any requirements for pumping the septic tank of an on-site sewage system should be based, among other things, on actual measurement of accumulation of sludge and scum by a trained inspector, trained owner's agent, or trained owner. Training must occur in a program approved by the state board of health or by a local health officer.

Before adopting on-site inspection and maintenance utility services, or incorporating residences into an on-site inspection and maintenance or sewer utility under this chapter, notification must be provided, prior to the applicable public hearing, to all residences within the proposed service area that have on-site systems permitted by the local health officer. The notice must clearly state that the residence is within the proposed service area and must provide information on estimated rates or charges that may be imposed for the service.

A county shall not provide on-site sewage system inspection, pumping services, or other maintenance or repair services under this section using county employees unless the on-site system is connected by a publicly owned collection system to the county's sewerage system, and the on-site system represents the first step in the sewage disposal process. Nothing in this section shall affect the authority of a state or local health officer to carry out their responsibilities under any other applicable law.

A county may, as part of a system of sewerage established under this chapter, provide for, finance, and operate any of the facilities and services and may exercise the powers expressly authorized for county storm water, flood control, pollution prevention, and drainage services and activities under chapters 36.89, 86.12, 86.13, and 86.15 RCW. A county also may provide for, finance, and operate the facilities and services and may exercise any of the powers authorized for aquifer protection areas under chapter 36.36 RCW; for lake or beach management districts under chapter 36.61 RCW; for diking districts, and diking, drainage, and sewerage improvement districts under chapters 85.05, 85.08, 85.15, 85.16, and 85.18 RCW; and for shellfish protection districts under chapter 90.72 RCW. However, if a county by reference to any of those statutes assumes as part of its system of sewerage any powers granted to such areas or districts and not otherwise available to a county under this chapter, then (1) the

procedures and restrictions applicable to those areas or districts apply to the county's exercise of those powers, and (2) the county may not simultaneously impose rates and charges under this chapter and under the statutes authorizing such areas or districts for substantially the same facilities and services, but must instead impose uniform rates and charges consistent with RCW 36.94.140. By agreement with such an area or district that is not part of a county's system of sewerage, a county may operate that area's or district's services or facilities, but a county may not dissolve any existing area or district except in accordance with any applicable provisions of the statute under which that area or district was created.

Sec. 26. RCW 39.34.190 and 2003 c 327 s 2 are each amended to read as follows:

(1) The legislative authority of a city or county and the governing body of any special purpose district enumerated in subsection (2) of this section may authorize up to ten percent of its water-related revenues to be expended in the implementation of watershed management plan projects or activities that are in addition to the county's, city's, or district's existing water-related services or activities. Such limitation on expenditures shall not apply (~~to additional revenues for watershed plan implementation that are authorized by voter approval under section 5 of this act or~~) to water-related revenues of a public utility district organized according to Title 54 RCW. Water-related revenues include rates, charges, and fees for the provision of services relating to water supply, treatment, distribution, and management generally, and those general revenues of the local government that are expended for water management purposes. A local government may not expend for this purpose any revenues that were authorized by voter approval for other specified purposes or that are specifically dedicated to the repayment of municipal bonds or other debt instruments.

(2) The following special purpose districts may exercise the authority provided by this section:

- (a) Water districts, sewer districts, and water-sewer districts organized under Title 57 RCW;
- (b) Public utility districts organized under Title 54 RCW;
- (c) Irrigation, reclamation, conservation, and similar districts organized under Titles 87 and 89 RCW;
- (d) Port districts organized under Title 53 RCW;
- (e) Diking, drainage, and similar districts organized under Title 85 RCW;
- (f) Flood control and similar districts organized under Title 86 RCW;
- (g) Lake or beach management districts organized under chapter 36.61 RCW;
- (h) Aquifer protection areas organized under chapter 36.36 RCW; and
- (i) Shellfish protection districts organized under chapter 90.72 RCW.

(3) The authority for expenditure of local government revenues provided by this section shall be applicable broadly to the implementation of watershed management plans addressing water supply, water transmission, water quality treatment or protection, or any other water-related purposes. Such plans include but are not limited to plans developed under the following authorities:

- (a) Watershed plans developed under chapter 90.82 RCW;
- (b) Salmon recovery plans developed under chapter 77.85 RCW;
- (c) Watershed management elements of comprehensive land use plans developed under the growth management act, chapter 36.70A RCW;

(d) Watershed management elements of shoreline master programs developed under the shoreline management act, chapter 90.58 RCW;

(e) Nonpoint pollution action plans developed under the Puget Sound water quality management planning authorities of chapter 90.71 RCW and chapter 400-12 WAC;

(f) Other comprehensive management plans addressing watershed health at a WRIA level or sub-WRIA basin drainage level;

(g) Coordinated water system plans under chapter 70.116 RCW and similar regional plans for water supply; and

(h) Any combination of the foregoing plans in an integrated watershed management plan.

(4) The authority provided by this section to expend revenues for watershed management plan implementation shall be construed broadly to include, but not be limited to:

(a) The coordination and oversight of plan implementation, including funding a watershed management partnership for this purpose;

(b) Technical support, monitoring, and data collection and analysis;

(c) The design, development, construction, and operation of projects included in the plan; and

(d) Conducting activities and programs included as elements in the plan.

Sec. 27. RCW 86.09.151 and 1986 c 278 s 52 are each amended to read as follows:

(1) Said flood control districts shall have full authority to carry out the objects of their creation and to that end are authorized to acquire, purchase, hold, lease, manage, improve, repair, occupy, and sell real and personal property or any interest therein, either inside or outside the boundaries of the district, to enter into and perform any and all necessary contracts, to appoint and employ the necessary officers, agents and employees, to sue and be sued, to exercise the right of eminent domain, to levy and enforce the collection of special assessments and in the manner herein provided against the lands within the district, for district revenues, and to do any and all lawful acts required and expedient to carry out the purpose of this chapter.

(2) In addition to the powers conferred in this chapter and those in chapter 85.38 RCW, flood control districts may engage in activities authorized under RCW 36.61.020 for lake or beach management districts using procedures granted in this chapter and in chapter 85.38 RCW.

Sec. 28. RCW 35.21.403 and 1985 c 398 s 27 are each amended to read as follows:

Any city or town may establish lake and beach management districts within its boundaries as provided in chapter 36.61 RCW. When a city or town establishes a lake or beach management district pursuant to chapter 36.61 RCW, the term "county legislative authority" shall be deemed to mean the city or town governing body, the term "county" shall be deemed to mean the city or town, and the term "county treasurer" shall be deemed to mean the city or town treasurer or other fiscal officer.

NEW SECTION. **Sec. 29.** A new section is added to chapter 43.21A RCW to read as follows:

(1) The department shall, within available funds, provide technical assistance to community groups and county and city legislative authorities requesting assistance with the development of beach management programs. The department shall work with the departments of fish and wildlife, natural resources, and the Puget

Sound partnership in coordinating agency assistance to community groups and county and city legislative authorities.

(2) The department shall coordinate with relevant state agencies and marine resources committees established in the area of beach management districts to provide technical assistance to beach management districts.

(3) The department shall, within available funds, coordinate with relevant state agencies to provide technical assistance to beach management districts so that beach management districts are able to ensure that proposed beach improvement and maintenance plans and activities of these districts are consistent with applicable federal, state, and local laws, and federal, state, and local resource management plans including, but not limited to:

- (a) Shoreline master programs;
- (b) Development regulations adopted to protect critical areas;
- (c) State and federally identified habitat conservation plans and species recovery plans;
- (d) State marine species management plans; and
- (e) Shoreline and nearshore protection and restoration plans.

(4) The department, in consultation with the Puget Sound partnership, shall monitor and assess the results of the removal of native aquatic plants and vegetation in areas designated in section 2(4) of this act, and provide recommendations regarding areas for future designations.

NEW SECTION. Sec. 30. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 1 of the title, after "districts;" strike the remainder of the title and insert "amending RCW 36.61.010, 36.61.020, 36.61.025, 36.61.030, 36.61.040, 36.61.050, 36.61.060, 36.61.070, 36.61.080, 36.61.090, 36.61.100, 36.61.110, 36.61.115, 36.61.120, 36.61.140, 36.61.160, 36.61.170, 36.61.190, 36.61.200, 36.61.220, 36.61.230, 36.61.260, 36.61.270, 36.94.020, 39.34.190, 86.09.151, and 35.21.403; adding a new section to chapter 36.61 RCW; adding a new section to chapter 43.21A RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3186 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representative Nelson spoke in favor of passage of the bill.

Representative Warnick spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 3186, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 3186, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 64, Nays - 29, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunn, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Lias, Linville, Loomis, McCoy, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Ormsby, Pedersen, Pettigrew, Priest, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 64.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Ericksen, Haler, Herrera, Hinkle, Kretz, Kristiansen, McCune, McDonald, Newhouse, O'Brien, Orcutt, Pearson, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 29.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 3186, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 3283 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 2. A new section is added to chapter 82.32 RCW to read as follows:

(1) Subject to the requirements in subsections (2) through (4) of this section, the department shall waive or cancel interest and penalties imposed under this chapter if the interest and penalties are:

- (a) Imposed during any period of armed conflict; and
- (b) Imposed on a taxpayer where a majority owner of the taxpayer is an individual who is on active duty in the military, and the individual is participating in a conflict and assigned to a duty station outside the territorial boundaries of the United States.

(2) To receive a waiver or cancellation of interest and penalties under this section, the taxpayer must submit to the department a copy

of the individual's deployment orders for deployment outside the territorial boundaries of the United States.

(3) The department may not waive or cancel interest and penalties under this section if the gross income of the business exceeded one million dollars in the calendar year prior to the individual's initial deployment outside the United States for the armed conflict. The department may not waive or cancel interest and penalties under this section for a taxpayer for more than twenty-four months.

(4) During any period of armed conflict, for any notice sent to a taxpayer that requires a payment of interest, penalties, or both, the notice must clearly indicate on or in the notice that interest and penalties may be waived under this section for qualifying taxpayers.

On page 1, line 2 of the title, after "taxes;" strike the remainder of the title and insert "and adding a new section to chapter 82.32 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 3283 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Herrera and Hasegawa spoke in favor of passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Substitute House Bill No. 3283, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 3283, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer,

Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 3283, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

The Speaker (Representative Moeller presiding) called upon Representative Morris to preside.

MESSAGES FROM THE SENATE

March 8, 2008

Mr. Speaker:

The Senate concurred in the House amendments to the following bills and passed the bills as amended by the House:

SECOND ENGROSSED SUBSTITUTE SENATE BILL NO. 5100,
SUBSTITUTE SENATE BILL NO. 5104,
ENGROSSED SUBSTITUTE SENATE BILL NO. 5261,
SECOND SUBSTITUTE SENATE BILL NO. 5642,
ENGROSSED SECOND SUBSTITUTE SENATE BILL NO. 6111,
SENATE BILL NO. 6187,
SENATE BILL NO. 6215,
SENATE BILL NO. 6261,
SENATE BILL NO. 6289,

and the same are herewith transmitted.

Thomas Hoemann, Secretary

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 1273 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** A new section is added to chapter 43.330 RCW to read as follows:

(1) The financial fraud and identity theft crimes investigation and prosecution program is created in the department of community, trade, and economic development. The department shall:

(a) Appoint members of the financial fraud task forces created in subsection (2) of this section;

(b) Administer the account created in subsection (3) of this section; and

(c) By December 31st of each year submit a report to the appropriate committees of the legislature and the governor regarding the progress of the program and task forces. The report must include recommendations on changes to the program, including expansion.

(2)(a) The department shall establish two regional financial fraud and identity theft crime task forces that include a central Puget Sound task force that includes King and Pierce counties, and a Spokane county task force. Each task force must be comprised of local law enforcement, county prosecutors, representatives of the office of the attorney general, financial institutions, and other state and local law enforcement.

(b) The department shall appoint: (i) Representatives of local law enforcement from a list provided by the Washington association of sheriffs and police chiefs; (ii) representatives of county prosecutors from a list provided by the Washington association of prosecuting attorneys; and (iii) representatives of financial institutions.

(c) Each task force shall:

(i) Hold regular meetings to discuss emerging trends and threats of local financial fraud and identity theft crimes;

(ii) Set priorities for the activities for the task force;

(iii) Apply to the department for funding to (A) hire prosecutors and/or law enforcement personnel dedicated to investigating and prosecuting financial fraud and identity theft crimes; and (B) acquire other needed resources to conduct the work of the task force;

(iv) Establish outcome-based performance measures; and

(v) Twice annually report to the department regarding the activities and performance of the task force.

(3) The financial fraud and identity theft crimes investigation and prosecution account is created in the state treasury. Moneys in the account may be spent only after appropriation. Revenue to the account may include appropriations, federal funds, and any other gifts or grants. Expenditures from the account may be used only to support the activities of the financial fraud and identity theft crime investigation and prosecution task forces and the program administrative expenses of the department, which may not exceed ten percent of the amount appropriated.

(4) For purposes of this section, "financial fraud and identity theft crimes" includes those that involve: Check fraud, chronic unlawful issuance of bank checks, embezzlement, credit/debit card fraud, identity theft, forgery, counterfeit instruments such as checks or documents, organized counterfeit check rings, and organized identification theft rings.

NEW SECTION. Sec. 2. This act expires July 1, 2015."

On page 1, line 1 of the title, after "fraud;" strike the remainder of the title and insert "adding a new section to chapter 43.330 RCW; and providing an expiration date." as the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendments to SECOND SUBSTITUTE HOUSE BILL NO. 1273 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2598 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**NEW SECTION. Sec. 1.** The office of the superintendent of public instruction shall develop and issue a request for proposals for private vendors or nonprofit organizations to adapt an existing mathematics curriculum to be aligned with Washington's essential

academic learning requirements and grade level expectations and make the curriculum available online at no cost to school districts. At a minimum, the proposed curriculum shall cover course content in grades kindergarten through twelve and the state's college readiness standards. Proposals shall address cost and timelines for adaptation and implementation of the curriculum. The office of the superintendent of public instruction shall review the responses, including an analysis of the qualifications of the respondents, and report the results of the request for proposals under this section to the governor and the education and fiscal committees of the legislature by December 1, 2008.

Sec. 2. RCW 28A.305.215 and 2007 c 396 s 1 are each amended to read as follows:

(1) The activities in this section revise and strengthen the state learning standards that implement the goals of RCW 28A.150.210, known as the essential academic learning requirements, and improve alignment of school district curriculum to the standards.

(2) The state board of education shall be assisted in its work under subsections (3) and (5) of this section by: (a) An expert national consultant in each of mathematics and science retained by the state board; and (b) the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, which shall provide review and formal comment on proposed recommendations to the superintendent of public instruction and the state board of education on new revised standards and curricula.

(3) By September 30, 2007, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in mathematics. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of:

(i) Standards used in countries whose students demonstrate high performance on the trends in international mathematics and science study and the programme for international student assessment;

(ii) College readiness standards;

(iii) The national council of teachers of mathematics focal points and the national assessment of educational progress content frameworks; and

(iv) Standards used by three to five other states, including California, and the nation of Singapore; and

(c) Consideration of information presented during public comment periods.

(4) By January 31, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for mathematics and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2008 legislative session.

(5) By June 30, 2008, the state board of education shall recommend to the superintendent of public instruction revised essential academic learning requirements and grade level expectations in science. The recommendations shall be based on:

(a) Considerations of clarity, rigor, content, depth, coherence from grade to grade, specificity, accessibility, and measurability;

(b) Study of standards used by three to five other states and in countries whose students demonstrate high performance on the trends

in international mathematics and science study and the programme for international student assessment; and

(c) Consideration of information presented during public comment periods.

(6) By December 1, 2008, the superintendent of public instruction shall revise the essential academic learning requirements and the grade level expectations for science and present the revised standards to the state board of education and the education committees of the senate and the house of representatives as required by RCW 28A.655.070(4). The superintendent shall adopt the revised essential academic learning requirements and grade level expectations unless otherwise directed by the legislature during the 2009 legislative session.

(7)(a) ~~((By May 15, 2008))~~ Within six months after the standards under subsection (4) of this section are adopted, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic mathematics curricula each for elementary, middle, and high school grade spans.

(b) ~~((By June 30, 2008))~~ Within two months after the presentation of the recommended curricula, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended mathematics curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(c) By May 15, 2009, the superintendent of public instruction shall present to the state board of education recommendations for no more than three basic science curricula each for elementary, middle, and high school grade spans.

(d) By June 30, 2009, the state board of education shall provide official comment and recommendations to the superintendent of public instruction regarding the recommended science curricula. The superintendent of public instruction shall make any changes based on the comment and recommendations from the state board of education and adopt the recommended curricula.

(e) In selecting the recommended curricula under this subsection (7), the superintendent of public instruction shall provide information to the mathematics and science advisory panels created under RCW 28A.305.219, as appropriate, and seek the advice of the appropriate panel regarding the curricula that shall be included in the recommendations.

(f) The recommended curricula under this subsection (7) shall align with the revised essential academic learning requirements and grade level expectations. In addition to the recommended basic curricula, appropriate diagnostic and supplemental materials shall be identified as necessary to support each curricula.

(g) Subject to funds appropriated for this purpose and availability of the curricula, at least one of the curricula in each grade span and in each of mathematics and science shall be available to schools and parents online at no cost to the school or parent.

(8) By December 1, 2007, the state board of education shall revise the high school graduation requirements under RCW 28A.230.090 to include a minimum of three credits of mathematics, one of which may be a career and technical course equivalent in mathematics, and prescribe the mathematics content in the three required credits.

(9) Nothing in this section requires a school district to use one of the recommended curricula under subsection (7) of this section. However, the statewide accountability plan adopted by the state board of education under RCW 28A.305.130 shall recommend conditions under which school districts should be required to use one

of the recommended curricula. The plan shall also describe the conditions for exception to the curriculum requirement, such as the use of integrated academic and career and technical education curriculum. Required use of the recommended curricula as an intervention strategy must be authorized by the legislature as required by RCW 28A.305.130(4)(e) before implementation.

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, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 1 of the title, after "curriculum;" strike the remainder of the title and insert "amending RCW 28A.305.215; and creating new sections."

as the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendments to SECOND SUBSTITUTE HOUSE BILL NO. 2598 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2719 with the following amendments:

On page 8, line 33, after "community" strike "placement" and insert "~~((placement))~~ custody"

On page 8, line 33, after "point." insert "For purposes of this subsection, community custody includes community placement or postrelease supervision, as defined in chapter 9.-- RCW (the new chapter created in section 57 of this act)."

On page 10, line 14, after "of" strike "this section" and insert "sections 1 through 5 of this act"

On page 10, after line 14, insert the following:

NEW SECTION. Sec. 7. The existing sentencing reform act contains numerous provisions for supervision of different types of offenders. This duplication has caused great confusion for judges, lawyers, offenders, and the department of corrections, and often results in inaccurate sentences. The clarifications in this act are intended to support continued discussions by the sentencing guidelines commission with the courts and the criminal justice community to identify and propose policy changes that will further simplify and improve the sentencing reform act relating to the supervision of offenders. The sentencing guidelines commission shall submit policy change proposals to the legislature on or before December 1, 2008.

Sections 8 through 59 of this act are intended to simplify the supervision provisions of the sentencing reform act and increase the uniformity of its application. These sections are not intended to either increase or decrease the authority of sentencing courts or the

department relating to supervision, except for those provisions instructing the court to apply the provisions of the current community custody law to offenders sentenced after July 1, 2009, but who committed their crime prior to the effective date of this section to the extent that such application is constitutionally permissible.

This will effect a change for offenders who committed their crimes prior to the offender accountability act, chapter 196, Laws of 1999. These offenders will be ordered to a term of community custody rather than community placement or community supervision. To the extent constitutionally permissible, the terms of the offender's supervision will be as provided in current law. With the exception of this change, the legislature does not intend to make, and no provision of sections 8 through 59 of this act may be construed as making, a substantive change to the supervision provisions of the sentencing reform act.

It is the intent of the legislature to reaffirm that section 3, chapter 379, Laws of 2003, expires July 1, 2010.

NEW SECTION. Sec. 8. A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender is sentenced to the custody of the department for one of the following crimes, the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer:

- (a) A sex offense not sentenced under RCW 9.94A.712;
- (b) A violent offense;
- (c) A crime against persons under RCW 9.94A.411(2);
- (d) A felony offender under chapter 69.50 or 69.52 RCW.

(2) If an offender is sentenced to a term of confinement of one year or less for a violation of RCW 9A.44.130(1)(a), the court shall impose a term of community custody for the community custody range established under RCW 9.94A.850 or up to the period of earned release awarded pursuant to RCW 9.94A.728 (1) and (2), whichever is longer.

(3) If an offender is sentenced under the drug offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.660.

(4) If an offender is sentenced under the special sexual offender sentencing alternative, the court shall impose community custody as provided in RCW 9.94A.670.

(5) If an offender is sentenced to a work ethic camp, the court shall impose community custody as provided in RCW 9.94A.690.

(6) If a sex offender is sentenced as a nonpersistent offender pursuant to RCW 9.94A.712, the court shall impose community custody as provided in that section.

NEW SECTION. Sec. 9. A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender is sentenced to a term of confinement for one year or less for one of the following offenses, the court may impose up to one year of community custody:

- (a) A sex offense, other than failure to register under RCW 9A.44.130(1);
- (b) A violent offense;
- (c) A crime against a person under RCW 9.94A.411; or
- (d) A felony violation of chapter 69.50 or 69.52 RCW, or an attempt, conspiracy, or solicitation to commit such a crime.

(2) If an offender is sentenced to a first-time offender waiver, the court may impose community custody as provided in RCW 9.94A.650.

NEW SECTION. Sec. 10. A new section is added to chapter 9.94A RCW to read as follows:

When a court sentences a person to a term of community custody, the court shall impose conditions of community custody as provided in this section.

(1) **Mandatory conditions.** As part of any term of community custody, the court shall:

- (a) Require the offender to inform the department of court-ordered treatment upon request by the department;
- (b) Require the offender to comply with any conditions imposed by the department under section 11 of this act;
- (c) If the offender was sentenced under RCW 9.94A.712 for an offense listed in RCW 9.94A.712(1)(a), and the victim of the offense was under eighteen years of age at the time of the offense, prohibit the offender from residing in a community protection zone.

(2) **Waivable conditions.** Unless waived by the court, as part of any term of community custody, the court shall order an offender to:

- (a) Report to and be available for contact with the assigned community corrections officer as directed;
- (b) Work at department-approved education, employment, or community restitution, or any combination thereof;
- (c) Refrain from possessing or consuming controlled substances except pursuant to lawfully issued prescriptions;
- (d) Pay supervision fees as determined by the department; and
- (e) Obtain prior approval of the department for the offender's residence location and living arrangements.

(3) **Discretionary conditions.** As part of any term of community custody, the court may order an offender to:

- (a) Remain within, or outside of, a specified geographical boundary;
- (b) Refrain from direct or indirect contact with the victim of the crime or a specified class of individuals;
- (c) Participate in crime-related treatment or counseling services;
- (d) Participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community;
- (e) Refrain from consuming alcohol; or
- (f) Comply with any crime-related prohibitions.

(4) **Special conditions.**

(a) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.

(b)(i) In sentencing an offender convicted of an alcohol or drug related traffic offense, the court shall require the offender to complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, defined under RCW 46.61.516, that has been approved by the department of social and health services. If the offense was pursuant to chapter 46.61 RCW, the report shall be forwarded to the department of licensing. If the offender is found to have an alcohol or drug problem that requires treatment, the offender shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the offender is found not to have an alcohol or drug problem that requires treatment, the offender shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The offender shall pay all costs for any

evaluation, education, or treatment required by this section, unless the offender is eligible for an existing program offered or approved by the department of social and health services.

(ii) For purposes of this section, "alcohol or drug related traffic offense" means the following: Driving while under the influence as defined by RCW 46.61.502, actual physical control while under the influence as defined by RCW 46.61.504, vehicular homicide as defined by RCW 46.61.520(1)(a), vehicular assault as defined by RCW 46.61.522(1)(b), homicide by watercraft as defined by RCW 79A.60.050, or assault by watercraft as defined by RCW 79A.60.060.

(iii) This subsection (4)(b) does not require the department of social and health services to add new treatment or assessment facilities nor affect its use of existing programs and facilities authorized by law.

NEW SECTION. Sec. 11. A new section is added to chapter 9.94A RCW to read as follows:

(1) Every person who is sentenced to a period of community custody shall report to and be placed under the supervision of the department, subject to RCW 9.94A.501.

(2)(a) The department shall assess the offender's risk of reoffense and may establish and modify additional conditions of community custody based upon the risk to community safety.

(b) Within the funds available for community custody, the department shall determine conditions and duration of community custody on the basis of risk to community safety, and shall supervise offenders during community custody on the basis of risk to community safety and conditions imposed by the court. The secretary shall adopt rules to implement the provisions of this subsection (2)(b).

(3) If the offender is supervised by the department, the department shall at a minimum instruct the offender to:

- (a) Report as directed to a community corrections officer;
- (b) Remain within prescribed geographical boundaries;
- (c) Notify the community corrections officer of any change in the offender's address or employment;
- (d) Pay the supervision fee assessment; and
- (e) Disclose the fact of supervision to any mental health or chemical dependency treatment provider, as required by RCW 9.94A.722.

(4) The department may require the offender to participate in rehabilitative programs, or otherwise perform affirmative conduct, and to obey all laws.

(5) If the offender was sentenced pursuant to a conviction for a sex offense, the department may impose electronic monitoring. Within the resources made available by the department for this purpose, the department shall carry out any electronic monitoring using the most appropriate technology given the individual circumstances of the offender. As used in this section, "electronic monitoring" means the monitoring of an offender using an electronic offender tracking system including, but not limited to, a system using radio frequency or active or passive global positioning system technology.

(6) The department may not impose conditions that are contrary to those ordered by the court and may not contravene or decrease court imposed conditions.

(7)(a) The department shall notify the offender in writing of any additional conditions or modifications.

(b) By the close of the next business day after receiving notice of a condition imposed or modified by the department, an offender may request an administrative review under rules adopted by the department. The condition shall remain in effect unless the reviewing

officer finds that it is not reasonably related to the crime of conviction, the offender's risk of reoffending, or the safety of the community.

(8) The department may require offenders to pay for special services rendered including electronic monitoring, day reporting, and telephone reporting, dependent on the offender's ability to pay. The department may pay for these services for offenders who are not able to pay.

(9)(a) When a sex offender has been sentenced pursuant to RCW 9.94A.712, the board shall exercise the authority prescribed in RCW 9.95.420 through 9.95.435.

(b) The department shall assess the offender's risk of recidivism and shall recommend to the board any additional or modified conditions based upon the risk to community safety. The board must consider and may impose department-recommended conditions.

(c) If the department finds that an emergency exists requiring the immediate imposition of additional conditions in order to prevent the offender from committing a crime, the department may impose such conditions. The department may not impose conditions that are contrary to those set by the board or the court and may not contravene or decrease court-imposed or board-imposed conditions. Conditions imposed under this subsection shall take effect immediately after notice to the offender by personal service, but shall not remain in effect longer than seven working days unless approved by the board.

(10) In setting, modifying, and enforcing conditions of community custody, the department shall be deemed to be performing a quasi-judicial function.

NEW SECTION. Sec. 12. A new section is added to chapter 9.94A RCW to read as follows:

No offender sentenced to a term of community custody under the supervision of the department may own, use, or possess firearms or ammunition. Offenders who own, use, or are found to be in actual or constructive possession of firearms or ammunition shall be subject to the violation process and sanctions under sections 16 and 22 of this act and RCW 9.94A.737.

"Constructive possession" as used in this section means the power and intent to control the firearm or ammunition. "Firearm" as used in this section has the same definition as in RCW 9.41.010.

NEW SECTION. Sec. 13. A new section is added to chapter 9.94A RCW to read as follows:

(1) Community custody shall begin: (a) Upon completion of the term of confinement; (b) at such time as the offender is transferred to community custody in lieu of earned release in accordance with RCW 9.94A.728 (1) or (2); or (c) at the time of sentencing if no term of confinement is ordered.

(2) When an offender is sentenced to community custody, the offender is subject to the conditions of community custody as of the date of sentencing, unless otherwise ordered by the court.

(3) When an offender is sentenced to a community custody range pursuant to section 8 (1) or (2) of this act, the department shall discharge the offender from community custody on a date determined by the department, which the department may modify, based on risk and performance of the offender, within the range or at the end of the period of earned release, whichever is later.

NEW SECTION. Sec. 14. A new section is added to chapter 9.94A RCW to read as follows:

(1) When an offender is under community custody, 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.

(2) An offender under community custody 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 for the duration of his or her period of community custody. During any period of inpatient mental health treatment that falls within the period of community custody, 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.

NEW SECTION. Sec. 15. A new section is added to chapter 9.94A RCW to read as follows:

(1) At any time prior to the completion or termination of a sex offender's term of community custody, if the court finds that public safety would be enhanced, the court may impose and enforce an order extending any or all of the conditions of community custody for a period up to the maximum allowable sentence for the crime as it is classified in chapter 9A.20 RCW, regardless of the expiration of the offender's term of community custody.

(2) If a violation of a condition extended under this section occurs after the expiration of the offender's term of community custody, it shall be deemed a violation of the sentence for the purposes of RCW 9.94A.631 and may be punishable as contempt of court as provided for in RCW 7.21.040.

(3) If the court extends a condition beyond the expiration of the term of community custody, the department is not responsible for supervision of the offender's compliance with the condition.

NEW SECTION. Sec. 16. A new section is added to chapter 9.94A RCW to read as follows:

(1)(a) An offender who violates any condition or requirement of a sentence may be sanctioned with up to sixty days' confinement for each violation.

(b) In lieu of confinement, an offender may be sanctioned with 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, or any other sanctions available in the community.

(2) If an offender was under community custody pursuant to one of the following statutes, the offender may be sanctioned as follows:

(a) If the offender was transferred to community custody in lieu of earned early release in accordance with RCW 9.94A.728(2), the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

(b) If the offender was sentenced under the drug offender sentencing alternative set out in RCW 9.94A.660, the offender may be sanctioned in accordance with that section.

(c) If the offender was sentenced under the special sexual offender sentencing alternative set out in RCW 9.94A.670, the suspended sentence may be revoked and the offender committed to serve the original sentence of confinement.

(d) If the offender was sentenced to a work ethic camp pursuant to RCW 9.94A.690, the offender may be reclassified to serve the unexpired term of his or her sentence in total confinement.

(e) If a sex offender was sentenced pursuant to RCW 9.94A.712, the offender may be transferred to a more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation.

NEW SECTION. Sec. 17. A new section is added to chapter 9.94A RCW to read as follows:

(1) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing pursuant to RCW 9.94A.737 for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.

(2) The department may work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody.

(3) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees are immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.

NEW SECTION. Sec. 18. A new section is added to chapter 9.94A RCW to read as follows:

(1) If a sanction of confinement is imposed by the court, the following applies:

(a) If the sanction was imposed pursuant to section 16(1) of this act, the sanction shall be served in a county facility.

(b) If the sanction was imposed pursuant to section 16(2) of this act, the sanction shall be served in a state facility.

(2) If a sanction of confinement is imposed by the department, and if the offender is an inmate as defined by RCW 72.09.015, no more than eight days of the sanction, including any credit for time served, may be served in a county facility. The balance of the sanction shall be served in a state facility. In computing the eight-day period, weekends and holidays shall be excluded. The department may negotiate with local correctional authorities for an additional period of detention.

(3) If a sanction of confinement is imposed by the board, it shall be served in a state facility.

(4) Sanctions imposed pursuant to RCW 9.94A.670(3) shall be served in a county facility.

(5) As used in this section, "county facility" means a facility operated, licensed, or utilized under contract by the county, and "state facility" means a facility operated, licensed, or utilized under contract by the state.

NEW SECTION. Sec. 19. A new section is added to chapter 9.94A RCW to read as follows:

The procedure for imposing sanctions for violations of sentence conditions or requirements is as follows:

(1) If the offender was sentenced under the drug offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.660.

(2) If the offender was sentenced under the special sexual offender sentencing alternative, any sanctions shall be imposed by the department or the court pursuant to RCW 9.94A.670.

(3) If a sex offender was sentenced pursuant to RCW 9.94A.712, any sanctions shall be imposed by the board pursuant to RCW 9.95.435.

(4) In any other case, if the offender is being supervised by the department, any sanctions shall be imposed by the department pursuant to RCW 9.94A.737.

(5) If the offender is not being supervised by the department, any sanctions shall be imposed by the court pursuant to section 20 of this act.

NEW SECTION. Sec. 20. A new section is added to chapter 9.94A RCW 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 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 section 16(1) of this act. Alternatively, the court may:

(i) Convert a term of partial confinement to total confinement;

(ii) Convert community restitution obligation to total or partial confinement; or

(iii) Convert monetary obligations, except restitution and the crime victim penalty assessment, to community restitution hours at the rate of the state minimum wage as established in RCW 49.46.020 for each hour of community restitution;

(d) If the court finds that the violation was not willful, the court may modify its previous order regarding payment of legal financial obligations and regarding community 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) Any time served in confinement awaiting a hearing on noncompliance shall be credited against any confinement ordered by the court.

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

Sec. 21. RCW 9.94A.737 and 2007 c 483 s 305 are each amended to read as follows:

(1) ~~(If an offender violates any condition or requirement of community custody, the department may transfer the offender to a~~

~~more restrictive confinement status to serve up to the remaining portion of the sentence, less credit for any period actually spent in community custody or in detention awaiting disposition of an alleged violation and subject to the limitations of subsection (3) of this section.~~

~~— (2) If an offender has not completed his or her maximum term of total confinement and is subject to a third violation hearing for any violation of community custody and is found to have committed the violation, the department shall return the offender to total confinement in a state correctional facility to serve up to the remaining portion of his or her sentence, unless it is determined that returning the offender to a state correctional facility would substantially interfere with the offender's ability to maintain necessary community supports or to participate in necessary treatment or programming and would substantially increase the offender's likelihood of reoffending.~~

~~— (3)(a) For a sex offender sentenced to a term of community custody under RCW 9.94A.670 who violates any condition of community custody, the department may impose a sanction of up to sixty days' confinement in a local correctional facility for each violation. If the department imposes a sanction, the department shall submit within seventy-two hours a report to the court and the prosecuting attorney outlining the violation or violations and the sanctions imposed.~~

~~— (b) For a sex offender sentenced to a term of community custody under RCW 9.94A.710 who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in a local correctional facility for each violation.~~

~~— (c) For an offender sentenced to a term of community custody under RCW 9.94A.505(2)(b), 9.94A.650, or 9.94A.715, or under RCW 9.94A.545, for a crime committed on or after July 1, 2000, who violates any condition of community custody after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. 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, or any other sanctions available in the community.~~

~~— (d) For an offender sentenced to a term of community placement under RCW 9.94A.705 who violates any condition of community placement after having completed his or her maximum term of total confinement, including time served on community custody in lieu of earned release, the department may impose a sanction of up to sixty days in total confinement for each violation. 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, or any other sanctions available in the community.~~

~~— (4) If an offender has been arrested for a new felony offense while under community supervision, community custody, or community placement, the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not~~

completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community supervision, community custody, or community placement:

~~—(5) The department shall be financially responsible for any portion of the sanctions authorized by this section that are served in a local correctional facility as the result of action by the department.~~

~~—(6)) If an offender is accused of violating any condition or requirement of community custody, he or she is entitled to a hearing before the department prior to the imposition of sanctions. The hearing shall be considered as offender disciplinary proceedings and shall not be subject to chapter 34.05 RCW. The department shall develop hearing procedures and a structure of graduated sanctions.~~

~~((7)) (2) The hearing procedures required under subsection ((6)) (1) of this section shall be developed by rule and include the following:~~

(a) Hearing officers shall report through a chain of command separate from that of community corrections officers;

(b) The department shall provide the offender with written notice of the violation, the evidence relied upon, and the reasons the particular sanction was imposed. The notice shall include a statement of the rights specified in this subsection, and the offender's right to file a personal restraint petition under court rules after the final decision of the department;

(c) The hearing shall be held unless waived by the offender, and shall be electronically recorded. For offenders not in total confinement, the hearing shall be held within fifteen working days, but not less than twenty-four hours, after notice of the violation. For offenders in total confinement, the hearing shall be held within five working days, but not less than twenty-four hours, after notice of the violation;

(d) The offender shall have the right to: (i) Be present at the hearing; (ii) have the assistance of a person qualified to assist the offender in the hearing, appointed by the hearing officer if the offender has a language or communications barrier; (iii) testify or remain silent; (iv) call witnesses and present documentary evidence; and (v) question witnesses who appear and testify; and

(e) The sanction shall take effect if affirmed by the hearing officer. Within seven days after the hearing officer's decision, the offender may appeal the decision to a panel of three reviewing officers designated by the secretary or by the secretary's designee. The sanction shall be reversed or modified if a majority of the panel finds that the sanction was not reasonably related to any of the following: (i) The crime of conviction; (ii) the violation committed; (iii) the offender's risk of reoffending; or (iv) the safety of the community.

~~((8)) (3) For purposes of this section, no finding of a violation of conditions may be based on unconfirmed or unconfirmable allegations.~~

~~((9) The department shall work with the Washington association of sheriffs and police chiefs to establish and operate an electronic monitoring program for low-risk offenders who violate the terms of their community custody. Between January 1, 2006, and December 31, 2006, the department shall endeavor to place at least one hundred low-risk community custody violators on the electronic monitoring program per day if there are at least that many low-risk offenders who qualify for the electronic monitoring program.~~

~~—(10) Local governments, their subdivisions and employees, the department and its employees, and the Washington association of sheriffs and police chiefs and its employees shall be immune from civil liability for damages arising from incidents involving low-risk offenders who are placed on electronic monitoring unless it is shown that an employee acted with gross negligence or bad faith.)~~

NEW SECTION. Sec. 22. (1) The secretary may issue warrants for the arrest of any offender who violates a condition of community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.

(2) A community corrections officer, if he or she has reasonable cause to believe an offender has violated a condition of community custody, may suspend the person's community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community custody status.

(3) If an offender has been arrested for a new felony offense while under community custody the department shall hold the offender in total confinement until a hearing before the department as provided in this section or until the offender has been formally charged for the new felony offense, whichever is earlier. Nothing in this subsection shall be construed as to permit the department to hold an offender past his or her maximum term of total confinement if the offender has not completed the maximum term of total confinement or to permit the department to hold an offender past the offender's term of community custody.

(4) A violation of a condition of community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.

Sec. 23. RCW 9.94A.740 and 1999 c 196 s 9 are each amended to read as follows:

(1) ~~((The secretary may issue warrants for the arrest of any offender who violates a condition of community placement or community custody. The arrest warrants shall authorize any law enforcement or peace officer or community corrections officer of this state or any other state where such offender may be located, to arrest the offender and place him or her in total confinement pending disposition of the alleged violation.))~~ When an offender is arrested pursuant to section 22 of this act, the department shall compensate the local jurisdiction at the office of financial management's adjudicated rate, in accordance with RCW 70.48.440. ((A community corrections officer, if he or she has reasonable cause to believe an offender in community placement or community custody has violated a condition of community placement or community custody, may suspend the person's community placement or community custody status and arrest or cause the arrest and detention in total confinement of the offender, pending the determination of the secretary as to whether the violation has occurred. The community corrections officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending community placement or community custody status. A violation of a condition of community placement or community custody shall be deemed a violation of the sentence for purposes of RCW 9.94A.631. The authority granted to community corrections officers under this section shall be in addition to that set forth in RCW 9.94A.631.))

(2) Inmates, as defined in RCW 72.09.015, who have been transferred to community custody and who are detained in a local correctional facility are the financial responsibility of the department of corrections, except as provided in subsection (3) of this section. ~~((The community custody inmate shall be removed from the local correctional facility, except as provided in subsection (3) of this~~

section, not later than eight days, excluding weekends and holidays, following admittance to the local correctional facility and notification that the inmate is available for movement to a state correctional institution;))

(3) ~~((The department may negotiate with local correctional authorities for an additional period of detention; however, sex offenders sanctioned for community custody violations under RCW 9.94A.737(2) to a term of confinement shall remain in the local correctional facility for the complete term of the sanction.))~~ For confinement sanctions imposed by the department under RCW ~~((9.94A.737(2)(a)))~~ 9.94A.670, the local correctional facility shall be financially responsible. ~~((For confinement sanctions imposed under RCW 9.94A.737(2)(b), the department of corrections shall be financially responsible for that portion of the sanction served during the time in which the sex offender is on community custody in lieu of earned release, and the local correctional facility shall be financially responsible for that portion of the sanction served by the sex offender after the time in which the sex offender is on community custody in lieu of earned release.))~~

(4) The department, in consultation with the Washington association of sheriffs and police chiefs and those counties in which the sheriff does not operate a correctional facility, shall establish a methodology for determining the department's local correctional facilities bed utilization rate, for each county in calendar year 1998, for offenders being held for violations of conditions of community custody ~~(; community placement, or community supervision)~~. ~~((For confinement sanctions imposed under RCW 9.94A.737(2)(c) or (d))~~

(5) Except as provided in subsections (1) and (2) of this section, the local correctional facility shall continue to be financially responsible to the extent of the calendar year 1998 bed utilization rate for confinement sanctions imposed by the department pursuant to RCW 9.94A.737. If the department's use of bed space in local correctional facilities of any county for such confinement sanctions ((imposed on offenders sentenced to a term of community custody under RCW 9.94A.737(2) (c) or (d)) exceeds the 1998 bed utilization rate for the county, the department shall compensate the county for the excess use at the per diem rate equal to the lowest rate charged by the county under its contract with a municipal government during the year in which the use occurs.

Sec. 24. RCW 9.94A.030 and 2006 c 139 s 5, 2006 c 124 s 1, 2006 c 122 s 7, 2006 c 73 s 5, and 2005 c 436 s 1 are each reenacted and amended to read as follows:

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

(1) "Board" means the indeterminate sentence review board created under chapter 9.95 RCW.

(2) "Collect," or any derivative thereof, "collect and remit," or "collect and deliver," when used with reference to the department, means that the department, either directly or through a collection agreement authorized by RCW 9.94A.760, is responsible for monitoring and enforcing the offender's sentence with regard to the legal financial obligation, receiving payment thereof from the offender, and, consistent with current law, delivering daily the entire payment to the superior court clerk without depositing it in a departmental account.

(3) "Commission" means the sentencing guidelines commission.

(4) "Community corrections officer" means an employee of the department who is responsible for carrying out specific duties in supervision of sentenced offenders and monitoring of sentence conditions.

(5) "Community custody" means that portion of an offender's sentence of confinement in lieu of earned release time or imposed ~~((pursuant to RCW 9.94A.505(2)(b), 9.94A.650 through 9.94A.670, 9.94A.690, 9.94A.700 through 9.94A.715, or 9.94A.545;))~~ as part of a sentence and served in the community subject to controls placed on the offender's movement and activities by the department. ~~((For offenders placed on community custody for crimes committed on or after July 1, 2000, the department shall assess the offender's risk of reoffense and may establish and modify conditions of community custody, in addition to those imposed by the court, based upon the risk to community safety.))~~

(6) "Community custody range" means the minimum and maximum period of community custody included as part of a sentence under RCW 9.94A.715, as established by the commission or the legislature under RCW 9.94A.850 ~~((for crimes committed on or after July 1, 2000)).~~

(7) ~~((("Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.~~

~~—((8))~~ "Community protection zone" means the area within eight hundred eighty feet of the facilities and grounds of a public or private school.

~~((9))~~ (8) "Community restitution" means compulsory service, without compensation, performed for the benefit of the community by the offender.

~~((10))~~ "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

~~—((11))~~ (9) "Confinement" means total or partial confinement.

~~((12))~~ (10) "Conviction" means an adjudication of guilt pursuant to Titles 10 or 13 RCW and includes a verdict of guilty, a finding of guilty, and acceptance of a plea of guilty.

~~((13))~~ (11) "Crime-related prohibition" means an order of a court prohibiting conduct that directly relates to the circumstances of the crime for which the offender has been convicted, and shall not be construed to mean orders directing an offender affirmatively to participate in rehabilitative programs or to otherwise perform affirmative conduct. However, affirmative acts necessary to monitor compliance with the order of a court may be required by the department.

~~((14))~~ (12) "Criminal history" means the list of a defendant's prior convictions and juvenile adjudications, whether in this state, in federal court, or elsewhere.

(a) The history shall include, where known, for each conviction (i) whether the defendant has been placed on probation and the length and terms thereof; and (ii) whether the defendant has been incarcerated and the length of incarceration.

(b) A conviction may be removed from a defendant's criminal history only if it is vacated pursuant to RCW 9.96.060, 9.94A.640,

9.95.240, or a similar out-of-state statute, or if the conviction has been vacated pursuant to a governor's pardon.

(c) The determination of a defendant's criminal history is distinct from the determination of an offender score. A prior conviction that was not included in an offender score calculated pursuant to a former version of the sentencing reform act remains part of the defendant's criminal history.

~~((15))~~ (13) "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))~~ (14) "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))~~ (15) "Department" means the department of corrections.

~~((18))~~ (16) "Determinate sentence" means a sentence that states with exactitude the number of actual years, months, or days of total confinement, of partial confinement, of community ~~(supervision)~~ 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))~~ (17) "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))~~ (18) "Drug offender sentencing alternative" is a sentencing option available to persons convicted of a felony offense other than a violent offense or a sex offense and who are eligible for the option under RCW 9.94A.660.

~~((21))~~ (19) "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.

~~((22))~~ (20) "Earned release" means earned release from confinement as provided in RCW 9.94A.728.

~~((23))~~ (21) "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.

~~((24))~~ (22) "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.

~~((25))~~ (23) "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.

~~((26))~~ (24) "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.

~~((27))~~ (25) "Home detention" means a program of partial confinement available to offenders wherein the offender is confined in a private residence subject to electronic surveillance.

~~((28))~~ (26) "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.

~~((29))~~ (27) "Most serious offense" means any of the following felonies or a felony attempt to commit any of the following felonies:

(a) Any felony defined under any law as a class A felony or criminal solicitation of or criminal conspiracy to commit a class A felony;

(b) Assault in the second degree;

(c) Assault of a child in the second degree;

(d) Child molestation in the second degree;

(e) Controlled substance homicide;

(f) Extortion in the first degree;

(g) Incest when committed against a child under age fourteen;

(h) Indecent liberties;

(i) Kidnapping in the second degree;

(j) Leading organized crime;

(k) Manslaughter in the first degree;

(l) Manslaughter in the second degree;

(m) Promoting prostitution in the first degree;

(n) Rape in the third degree;

(o) Robbery in the second degree;

(p) Sexual exploitation;

(q) Vehicular assault, when caused by the operation or driving of a vehicle by a person while under the influence of intoxicating liquor or any drug or by the operation or driving of a vehicle in a reckless manner;

(r) Vehicular homicide, when proximately caused by the driving of any vehicle by any person while under the influence of

intoxicating liquor or any drug as defined by RCW 46.61.502, or by the operation of any vehicle in a reckless manner;

(s) Any other class B felony offense with a finding of sexual motivation;

(t) Any other felony with a deadly weapon verdict under RCW 9.94A.602;

(u) Any felony offense in effect at any time prior to December 2, 1993, that is comparable to a most serious offense under this subsection, or any federal or out-of-state conviction for an offense that under the laws of this state would be a felony classified as a most serious offense under this subsection;

(v)(i) A prior conviction for indecent liberties under RCW 9A.88.100(1) (a), (b), and (c), chapter 260, Laws of 1975 1st ex. sess. as it existed until July 1, 1979, RCW 9A.44.100(1) (a), (b), and (c) as it existed from July 1, 1979, until June 11, 1986, and RCW 9A.44.100(1) (a), (b), and (d) as it existed from June 11, 1986, until July 1, 1988;

(ii) A prior conviction for indecent liberties under RCW 9A.44.100(1)(c) as it existed from June 11, 1986, until July 1, 1988, if: (A) The crime was committed against a child under the age of fourteen; or (B) the relationship between the victim and perpetrator is included in the definition of indecent liberties under RCW 9A.44.100(1)(c) as it existed from July 1, 1988, through July 27, 1997, or RCW 9A.44.100(1) (d) or (e) as it existed from July 25, 1993, through July 27, 1997.

~~((30))~~ (28) "Nonviolent offense" means an offense which is not a violent offense.

~~((31))~~ (29) "Offender" means a person who has committed a felony established by state law and is eighteen years of age or older or is less than eighteen years of age but whose case is under superior court jurisdiction under RCW 13.04.030 or has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110. Throughout this chapter, the terms "offender" and "defendant" are used interchangeably.

~~((32))~~ (30) "Partial confinement" means confinement for no more than one year in a facility or institution operated or utilized under contract by the state or any other unit of government, or, if home detention or work crew has been ordered by the court, in an approved residence, for a substantial portion of each day with the balance of the day spent in the community. Partial confinement includes work release, home detention, work crew, and a combination of work crew and home detention.

~~((33))~~ (31) "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 ~~((33))~~ (31)(b)(i); and

(ii) Has, before the commission of the offense under (b)(i) of this subsection, been convicted as an offender on at least one occasion, whether in this state or elsewhere, of an offense listed in (b)(i) of this subsection or any federal or out-of-state offense or offense under prior Washington law that is comparable to the offenses listed in (b)(i) of this subsection. A conviction for rape of a child in the first degree constitutes a conviction under (b)(i) of this subsection only when the offender was sixteen years of age or older when the offender committed the offense. A conviction for rape of a child in the second degree constitutes a conviction under (b)(i) of this subsection only when the offender was eighteen years of age or older when the offender committed the offense.

~~((34))~~ "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

~~((35))~~ (32) "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; or (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.

~~((36))~~ (33) "Private school" means a school regulated under chapter 28A.195 or 28A.205 RCW.

~~((37))~~ (34) "Public school" has the same meaning as in RCW 28A.150.010.

~~((38))~~ (35) "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.

~~((39))~~ (36) "Risk assessment" means the application of an objective instrument supported by research and adopted by the department for the purpose of assessing an offender's risk of reoffense, taking into consideration the nature of the harm done by the offender, place and circumstances of the offender related to risk, the offender's relationship to any victim, and any information provided to the department by victims. The results of a risk assessment shall not be based on unconfirmed or unconfirmable allegations.

~~((40))~~ (37) "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.

~~((41))~~ (38) "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.

~~((42))~~ (39) "Sex offense" means:

(a)(i) A felony that is a violation of chapter 9A.44 RCW other than RCW 9A.44.130~~((11))~~ (12);
 (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; or

(iv) A felony that is, under chapter 9A.28 RCW, a criminal attempt, criminal solicitation, or criminal conspiracy to commit such crimes;

(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.

~~((43))~~ (40) "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.

~~((44))~~ (41) "Standard sentence range" means the sentencing court's discretionary range in imposing a nonappealable sentence.

~~((45))~~ (42) "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.

~~((46))~~ (43) "Stranger" means that the victim did not know the offender twenty-four hours before the offense.

~~((47))~~ (44) "Total confinement" means confinement inside the physical boundaries of a facility or institution operated or utilized under contract by the state or any other unit of government for twenty-four hours a day, or pursuant to RCW 72.64.050 and 72.64.060.

~~((48))~~ (45) "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.

~~((49))~~ (46) "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.

~~((50))~~ (47) "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.

~~((51))~~ (48) "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.

~~((52))~~ (49) "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.

~~((53))~~ (50) "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. 25. RCW 9.94A.501 and 2005 c 362 s 1 are each amended to read as follows:

(1) When the department performs a risk assessment pursuant to RCW 9.94A.500, or to determine a person's conditions of supervision, the risk assessment shall classify the offender or a probationer sentenced in superior court into one of at least four risk categories.

(2) The department shall supervise every offender sentenced to a term of community custody~~((community placement, or community supervision))~~ and every misdemeanor and gross misdemeanor probationer ordered by a superior court to probation under the supervision of the department pursuant to RCW 9.92.060, 9.95.204, or 9.95.210:

(a) Whose risk assessment places that offender or probationer in one of the two highest risk categories; or

(b) Regardless of the offender's or probationer's risk category if:

(i) The offender's or probationer's current conviction is for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(ii) The offender or probationer has a prior conviction for:

(A) A sex offense;

(B) A violent offense;

(C) A crime against persons as defined in RCW 9.94A.411;

(D) A felony that is domestic violence as defined in RCW 10.99.020;

(E) A violation of RCW 9A.52.025 (residential burglary);

(F) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(G) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(iii) The conditions of the offender's community custody(~~or community placement, or community supervision~~) or the probationer's supervision include chemical dependency treatment;

(iv) The offender was sentenced under RCW 9.94A.650 or 9.94A.670; or

(v) The offender is subject to supervision pursuant to RCW 9.94A.745.

(3) The department is not authorized to, and may not, supervise any offender sentenced to a term of community custody(~~or community placement, or community supervision~~) or any probationer unless the offender or probationer is one for whom supervision is required under subsection (2) of this section.

(4) This section expires July 1, 2010.

Sec. 26. RCW 9.94A.505 and 2006 c 73 s 6 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, (~~the court shall impose~~) a sentence within the standard sentence range established in RCW 9.94A.510 or 9.94A.517;

(ii) (~~RCW 9.94A.700 and 9.94A.705, relating to community placement~~) Sections 8 and 9 of this act, relating to community custody;

(iii) (~~RCW 9.94A.710 and 9.94A.715, relating to community custody;~~

~~(iv) RCW 9.94A.545, relating to community custody for offenders whose term of confinement is one year or less;~~

~~(v)) RCW 9.94A.570, relating to persistent offenders;~~

(~~(vi))~~ (iv) RCW 9.94A.540, relating to mandatory minimum terms;

(~~(vii))~~ (v) RCW 9.94A.650, relating to the first-time offender waiver;

(~~(viii))~~ (vi) RCW 9.94A.660, relating to the drug offender sentencing alternative;

(~~(ix))~~ (vii) RCW 9.94A.670, relating to the special sex offender sentencing alternative;

(~~(x))~~ (viii) RCW 9.94A.712, relating to certain sex offenses;

(~~(xi))~~ (ix) RCW 9.94A.535, relating to exceptional sentences;

(~~(xii))~~ (x) RCW 9.94A.589, relating to consecutive and concurrent sentences;

(~~(xiii))~~ (xi) 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.

(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; (~~until July 1, 2000;~~) a term of community (~~supervision~~) custody not to exceed one year (~~and on and after July 1, 2000, a term of community custody not to exceed one year, subject to conditions and sanctions as authorized in RCW 9.94A.710 (2) and (3));~~) and/or other legal financial obligations. The court may impose a sentence which provides more than one year of confinement 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 days or less, the court may, in its discretion, specify that the sentence be served on consecutive or intermittent days. A sentence requiring more than thirty days of confinement shall be served on consecutive days. Local jail administrators may schedule court-ordered intermittent sentences as space permits.

(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, 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 supervision, community placement, or~~) community custody (~~which~~) 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 court shall order restitution as provided in RCW 9.94A.750 and 9.94A.753.

(8) As a part of any sentence, the court may impose and enforce crime-related prohibitions and affirmative conditions as provided in this chapter.

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

~~(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.

(~~(11) In sentencing an offender convicted of a crime of domestic violence, as defined in RCW 10.99.020, if the offender has a minor child, or if the victim of the offense for which the offender was convicted has a minor child, the court may, as part of any term of community supervision, community placement, or community custody, order the offender to participate in a domestic violence perpetrator program approved under RCW 26.50.150.)~~

Sec. 27. RCW 9.94A.610 and 2003 c 53 s 61 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than ten days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, community ((placement)) custody, work release placement, furlough, or escape about a specific inmate convicted of a serious drug offense to the following if such notice has been requested in writing about a specific inmate convicted of a serious drug offense:

(a) Any witnesses who testified against the inmate in any court proceedings involving the serious drug offense; and

(b) Any person specified in writing by the prosecuting attorney. Information regarding witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate.

(2) If an inmate convicted of a serious drug offense escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses who are entitled to notice under this section. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(4) The department of corrections shall send the notices required by this section to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section, "serious drug offense" means an offense under RCW 69.50.401(2) (a) or (b) or 69.50.4011(2) (a) or (b).

Sec. 28. RCW 9.94A.612 and 1996 c 215 s 4 are each amended to read as follows:

(1) At the earliest possible date, and in no event later than thirty days before release except in the event of escape or emergency furloughs as defined in RCW 72.66.010, the department of corrections shall send written notice of parole, release, community ((placement)) custody, work release placement, furlough, or escape about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, to the following:

(a) The chief of police of the city, if any, in which the inmate will reside or in which placement will be made in a work release program; and

(b) The sheriff of the county in which the inmate will reside or in which placement will be made in a work release program.

The sheriff of the county where the offender was convicted shall be notified if the department does not know where the offender will reside. The department shall notify the state patrol of the release of all sex offenders, and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in

writing about a specific inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110:

(a) The victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide;

(b) Any witnesses who testified against the inmate in any court proceedings involving the violent offense;

(c) Any person specified in writing by the prosecuting attorney; and

(d) Any person who requests such notice about a specific inmate convicted of a sex offense as defined by RCW 9.94A.030 from the department of corrections at least sixty days prior to the expected release date of the offender.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the inmate. Whenever the department of corrections mails notice pursuant to this subsection and the notice is returned as undeliverable, the department shall attempt alternative methods of notification, including a telephone call to the person's last known telephone number.

(3) The existence of the notice requirements contained in subsections (1) and (2) of this section shall not require an extension of the release date in the event that the release plan changes after notification.

(4) If an inmate convicted of a violent offense, a sex offense as defined by RCW 9.94A.030, or a felony harassment offense as defined by RCW 9A.46.060 or 9A.46.110, escapes from a correctional facility, the department of corrections shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the inmate resided immediately before the inmate's arrest and conviction. If previously requested, the department shall also notify the witnesses and the victim of the crime for which the inmate was convicted or the victim's next of kin if the crime was a homicide. If the inmate is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(5) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(6) The department of corrections shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(7) The department of corrections shall keep, for a minimum of two years following the release of an inmate, the following:

(a) A document signed by an individual as proof that that person is registered in the victim or witness notification program; and

(b) A receipt showing that an individual registered in the victim or witness notification program was mailed a notice, at the individual's last known address, upon the release or movement of an inmate.

(8) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Next of kin" means a person's spouse, parents, siblings and children.

(9) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section.

Sec. 29. RCW 9.94A.625 and 2000 c 226 s 5 are each amended to read as follows:

(1) A term of confinement ordered in a sentence pursuant to this chapter shall be tolled by any period of time during which the offender has absented himself or herself from confinement without the prior approval of the entity in whose custody the offender has been placed. A term of partial confinement shall be tolled during any period of time spent in total confinement pursuant to a new conviction or pursuant to sanctions for violation of sentence conditions on a separate felony conviction.

(2) Any term of community custody(~~(; community placement, or community supervision))~~) shall be tolled by any period of time during which the offender has absented himself or herself from supervision without prior approval of the entity under whose supervision the offender has been placed.

(3) Any period of community custody(~~(; community placement, or community supervision))~~) shall be tolled during any period of time the offender is in confinement for any reason. However, if an offender is detained pursuant to RCW 9.94A.740 or 9.94A.631 and is later found not to have violated a condition or requirement of community custody(~~(; community placement, or community supervision))~~), time spent in confinement due to such detention shall not toll the period of community custody(~~(; community placement, or community supervision))~~).

(4) For terms of confinement or community custody(~~(; community placement, or community supervision))~~), the date for the tolling of the sentence shall be established by the entity responsible for the confinement or supervision.

Sec. 30. RCW 9.94A.650 and 2006 c 73 s 9 are each amended to read as follows:

(1) This section applies to offenders who have never been previously convicted of a felony in this state, federal court, or another state, and who have never participated in a program of deferred prosecution for a felony, and who are convicted of a felony that is not:

(a) Classified as a violent offense or a sex offense under this chapter;

(b) Manufacture, delivery, or possession with intent to manufacture or deliver a controlled substance classified in Schedule I or II that is a narcotic drug or flunitrazepam classified in Schedule IV;

(c) Manufacture, delivery, or possession with intent to deliver a methamphetamine, its salts, isomers, and salts of its isomers as defined in RCW 69.50.206(d)(2);

(d) The selling for profit of any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana; or

(e) Felony driving while under the influence of intoxicating liquor or any drug or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug.

(2) In sentencing a first-time offender the court may waive the imposition of a sentence within the standard sentence range and impose a sentence which may include up to ninety days of confinement in a facility operated or utilized under contract by the county and a requirement that the offender refrain from committing new offenses. (~~The sentence may also include a term of community supervision or community custody as specified in subsection (3) of~~

this section, which, in addition to crime-related prohibitions, may include requirements that the offender perform any one or more of the following:

~~— (a) Devote time to a specific employment or occupation;~~

~~— (b) Undergo available outpatient treatment for up to the period specified in subsection (3) of this section, or inpatient treatment not to exceed the standard range of confinement for that offense;~~

~~— (c) Pursue a prescribed, secular course of study or vocational training;~~

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

~~— (e) Report as directed to a community corrections officer; or~~

~~— (f) Pay all court-ordered legal financial obligations as provided in RCW 9.94A.030 and/or perform community restitution work.))~~

(3) (~~The terms and statuses applicable to sentences under subsection (2) of this section are:~~

~~— (a) For sentences imposed on or after July 25, 1999, for crimes committed before July 1, 2000, up to one year of community supervision. If treatment is ordered, the period of community supervision may include up to the period of treatment, but shall not exceed two years; and~~

~~— (b) For crimes committed on or after July 1, 2000;))~~ The court may impose up to one year of community custody unless treatment is ordered, in which case the period of community custody may include up to the period of treatment, but shall not exceed two years. ((Any term of community custody imposed under this section is subject to conditions and sanctions as authorized in this section and in RCW 9.94A.715 (2) and (3).))

(4) (~~The department shall discharge from community supervision any offender sentenced under this section before July 25, 1999, who has served at least one year of community supervision and has completed any treatment ordered by the court.))~~ As a condition of community custody, in addition to any conditions authorized in section 10 of this act, the court may order the offender to pay all court-ordered legal financial obligations and/or perform community restitution work.

Sec. 31. RCW 9.94A.660 and 2006 c 339 s 302 and 2006 c 73 s 10 are each reenacted and amended to read as follows:

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

(a) The offender is convicted of a felony that is not a violent offense or sex offense and the violation does not involve a sentence enhancement under RCW 9.94A.533 (3) or (4);

(b) The offender is convicted of a felony that is not a felony driving while under the influence of intoxicating liquor or any drug under RCW 46.61.502(6) or felony physical control of a vehicle while under the influence of intoxicating liquor or any drug under RCW 46.61.504(6);

(c) The offender has no current or prior convictions for a sex offense at any time or violent offense within ten years before conviction of the current offense, in this state, another state, or the United States;

(d) For a violation of the Uniform Controlled Substances Act under chapter 69.50 RCW or a criminal solicitation to commit such a violation under chapter 9A.28 RCW, the offense involved only a small quantity of the particular controlled substance as determined by the judge upon consideration of such factors as the weight, purity, packaging, sale price, and street value of the controlled substance;

(e) The offender has not been found by the United States attorney general to be subject to a deportation detainer or order and

does not become subject to a deportation order during the period of the sentence;

(f) The standard sentence range for the current offense is greater than one year; and

(g) The offender has not received a drug offender sentencing alternative more than once in the prior ten years before the current offense.

(2) A motion for a sentence under this section may be made by the court, the offender, or the state. If the sentencing court determines that the offender is eligible for this alternative, the court may order an examination of the offender. The examination shall, at a minimum, address the following issues:

(a) Whether the offender suffers from drug addiction;

(b) Whether the addiction is such that there is a probability that criminal behavior will occur in the future;

(c) Whether effective treatment for the offender's addiction is available from a provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services; and

(d) Whether the offender and the community will benefit from the use of the alternative.

(3) The examination report must contain:

(a) Information on the issues required to be addressed in subsection (2) of this section; and

(b) A proposed treatment plan that must, at a minimum, contain:

(i) A proposed treatment provider that has been licensed or certified by the division of alcohol and substance abuse of the department of social and health services;

(ii) The recommended frequency and length of treatment, including both residential chemical dependency treatment and treatment in the community;

(iii) A proposed monitoring plan, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others; and

(iv) Recommended crime-related prohibitions and affirmative conditions.

(4) After receipt of the examination report, if the court determines that a sentence under this section is appropriate, the court shall waive imposition of a sentence within the standard sentence range and impose a sentence consisting of either a prison-based alternative under subsection (5) of this section or a residential chemical dependency treatment-based alternative under subsection (6) of this section. The residential chemical dependency treatment-based alternative is only available if the midpoint of the standard range is twenty-four months or less.

(5) The prison-based alternative shall include:

(a) A period of total confinement in a state facility for one-half of the midpoint of the standard sentence range or twelve months, whichever is greater. During incarceration in the state facility, offenders sentenced under this subsection shall undergo a comprehensive substance abuse assessment and receive, within available resources, treatment services appropriate for the offender. The treatment services shall be designed by the division of alcohol and substance abuse of the department of social and health services, in cooperation with the department of corrections;

(b) The remainder of the midpoint of the standard range as a term of community custody which must include appropriate substance abuse treatment in a program that has been approved by the division of alcohol and substance abuse of the department of social and health services. If the department finds that conditions of community custody have been willfully violated, the offender may be reclassified to serve the remaining balance of the original sentence.

An offender who fails to complete the program or who is administratively terminated from the program shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court;

(c) Crime-related prohibitions including a condition not to use illegal controlled substances;

(d) A requirement to submit to urinalysis or other testing to monitor that status; and

(e) A term of community custody pursuant to ~~((RCW 9.94A.715))~~ section 8 of this act to be imposed upon failure to complete or administrative termination from the special drug offender sentencing alternative program.

(6) The residential chemical dependency treatment-based alternative shall include:

(a) A term of community custody equal to one-half of the midpoint of the standard sentence range or two years, whichever is greater, conditioned on the offender entering and remaining in residential chemical dependency treatment certified under chapter 70.96A RCW for a period set by the court between three and six months. If the court imposes a term of community custody, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the term of community custody. The court shall impose, as conditions of community custody, treatment and other conditions as proposed in the plan under subsection (3)(b) of this section. ~~((The department may impose conditions and sanctions as authorized in RCW 9.94A.715 (2), (3), (6), and (7), 9.94A.737, and 9.94A.740.))~~ The court shall schedule a progress hearing during the period of residential chemical dependency treatment, and schedule a treatment termination hearing for three months before the expiration of the term of community custody;

(b) Before the progress hearing and treatment termination hearing, the treatment provider and the department shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment. At the hearing, the court may:

(i) Authorize the department to terminate the offender's community custody status on the expiration date determined under (a) of this subsection; or

(ii) Continue the hearing to a date before the expiration date of community custody, with or without modifying the conditions of community custody; or

(iii) Impose a term of total confinement equal to one-half the midpoint of the standard sentence range, followed by a term of community custody under ~~((RCW 9.94A.715))~~ section 8 of this act;

(c) If the court imposes a term of total confinement under (b)(iii) of this subsection, the department shall, within available resources, make chemical dependency assessment and treatment services available to the offender during the terms of total confinement and community custody.

~~(7) (If the court imposes a sentence under this section, the court may prohibit the offender from using alcohol or controlled substances and may require that the monitoring for controlled substances be conducted by the department or by a treatment alternatives to street crime program or a comparable court or agency-referred program.)~~ The offender may be required to pay thirty dollars per month while on community custody to offset the cost of monitoring for alcohol or controlled substances. ~~((In addition;))~~

(8) The court may impose any of the following conditions:

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

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

~~—(c) Report as directed to a community corrections officer;~~

~~—(d)) Pay all court-ordered legal financial obligations; or~~

~~((e)) (b) Perform community restitution work(;~~

~~—(f) Stay out of areas designated by the sentencing court;~~

~~—(g) Such other conditions as the court may require such as affirmative conditions)).~~

((8)) (9)(a) The court may bring any offender sentenced under this section back into court at any time on its own initiative to evaluate the offender's progress in treatment or to determine if any violations of the conditions of the sentence have occurred.

(b) If the offender is brought back to court, the court may modify the ~~((terms))~~ conditions of the community custody or impose sanctions under (c) of this subsection.

(c) The court may order the offender to serve a term of total confinement within the standard range of the offender's current offense at any time during the period of community custody if the offender violates the conditions or requirements of the sentence or if the offender is failing to make satisfactory progress in treatment.

(d) An offender ordered to serve a term of total confinement under (c) of this subsection shall receive credit for any time previously served under this section.

~~((9)) (10) In serving a term of community custody imposed upon failure to complete, or administrative termination from, the special drug offender sentencing alternative program, the offender shall receive no credit for time served in community custody prior to termination of the offender's participation in the program.~~

(11) If an offender sentenced to the prison-based alternative under subsection (5) of this section is found by the United States attorney general to be subject to a deportation order, a hearing shall be held by the department unless waived by the offender, and, if the department finds that the offender is subject to a valid deportation order, the department may administratively terminate the offender from the program and reclassify the offender to serve the remaining balance of the original sentence.

~~((10)) (12) An offender sentenced under this section shall be subject to all rules relating to earned release time with respect to any period served in total confinement.~~

~~((11)) (13) Costs of examinations and preparing treatment plans under subsections (2) and (3) of this section may be paid, at the option of the county, from funds provided to the county from the criminal justice treatment account under RCW 70.96A.350.~~

Sec. 32. RCW 9.94A.670 and 2006 c 133 s 1 are each amended to read as follows:

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

(a) "Sex offender treatment provider" or "treatment provider" means a certified sex offender treatment provider or a certified affiliate sex offender treatment provider as defined in RCW 18.155.020.

(b) "Substantial bodily harm" means bodily injury that involves a temporary but substantial disfigurement, or that causes a temporary but substantial loss or impairment of the function of any body part or organ, or that causes a fracture of any body part or organ.

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

(2) An offender is eligible for the special sex offender sentencing alternative if:

(a) The offender has been convicted of a sex offense other than a violation of RCW 9A.44.050 or a sex offense that is also a serious violent offense. If the conviction results from a guilty plea, the offender must, as part of his or her plea of guilty, voluntarily and affirmatively admit he or she committed all of the elements of the crime to which the offender is pleading guilty. This alternative is not available to offenders who plead guilty to the offense charged under *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970) and *State v. Newton*, 87 Wash.2d 363, 552 P.2d 682 (1976);

(b) The offender has no prior convictions for a sex offense as defined in RCW 9.94A.030 or any other felony sex offenses in this or any other state;

(c) The offender has no prior adult convictions for a violent offense that was committed within five years of the date the current offense was committed;

(d) The offense did not result in substantial bodily harm to the victim;

(e) The offender had an established relationship with, or connection to, the victim such that the sole connection with the victim was not the commission of the crime; and

(f) The offender's standard sentence range for the offense includes the possibility of confinement for less than eleven years.

(3) If the court finds the offender is eligible for this alternative, the court, on its own motion or the motion of the state or the offender, may order an examination to determine whether the offender is amenable to treatment.

(a) The report of the examination shall include at a minimum the following:

(i) The offender's version of the facts and the official version of the facts;

(ii) The offender's offense history;

(iii) An assessment of problems in addition to alleged deviant behaviors;

(iv) The offender's social and employment situation; and

(v) Other evaluation measures used.

The report shall set forth the sources of the examiner's information.

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

(i) Frequency and type of contact between offender and therapist;

(ii) Specific issues to be addressed in the treatment and description of planned treatment modalities;

(iii) Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members and others;

(iv) Anticipated length of treatment; and

(v) Recommended crime-related prohibitions and affirmative conditions, which must include, to the extent known, an identification of specific activities or behaviors that are precursors to the offender's offense cycle, including, but not limited to, activities or behaviors such as viewing or listening to pornography or use of alcohol or controlled substances.

(c) The court on its own motion may order, or on a motion by the state shall order, a second examination regarding the offender's amenability to treatment. The examiner shall be selected by the party making the motion. The offender shall pay the cost of any second

examination ordered unless the court finds the defendant to be indigent in which case the state shall pay the cost.

(4) After receipt of the reports, the court shall consider whether the offender and the community will benefit from use of this alternative, consider whether the alternative is too lenient in light of the extent and circumstances of the offense, consider whether the offender has victims in addition to the victim of the offense, consider whether the offender is amenable to treatment, consider the risk the offender would present to the community, to the victim, or to persons of similar age and circumstances as the victim, and consider the victim's opinion whether the offender should receive a treatment disposition under this section. The court shall give great weight to the victim's opinion whether the offender should receive a treatment disposition under this section. If the sentence imposed is contrary to the victim's opinion, the court shall enter written findings stating its reasons for imposing the treatment disposition. The fact that the offender admits to his or her offense does not, by itself, constitute amenability to treatment. If the court determines that this alternative is appropriate, the court shall then impose a sentence or, pursuant to RCW 9.94A.712, a minimum term of sentence, within the standard sentence range. If the sentence imposed is less than eleven years of confinement, the court may suspend the execution of the sentence ~~((and impose the following conditions of suspension:))~~ as provided in this section.

(5) As conditions of the suspended sentence, the court must impose the following:

(a) ~~((The court shall order the offender to serve))~~ A term of confinement of up to twelve months or the maximum term within the standard range, whichever is less. The court may order the offender to serve a term of confinement greater than twelve months or the maximum term within the standard range based on the presence of an aggravating circumstance listed in RCW 9.94A.535(3). In no case shall the term of confinement exceed the statutory maximum sentence for the offense. The court may order the offender to serve all or part of his or her term of confinement in partial confinement. An offender sentenced to a term of confinement under this subsection is not eligible for earned release under RCW 9.92.151 or 9.94A.728.

(b) ~~((The court shall place the offender on))~~ A term of community custody ~~((for))~~ equal to the length of the suspended sentence, the length of the maximum term imposed pursuant to RCW 9.94A.712, or three years, whichever is greater, and require the offender to comply with any conditions imposed by the department under ~~((RCW 9.94A.720))~~ section 10 of this act.

(c) ~~((The court shall order))~~ Treatment for any period up to five years in duration. The court, in its discretion, shall order outpatient sex offender treatment or inpatient sex offender treatment, if available. A community mental health center may not be used for such treatment unless it has an appropriate program designed for sex offender treatment. The offender shall not change sex offender treatment providers or treatment conditions without first notifying the prosecutor, the community corrections officer, and the court. If any party or the court objects to a proposed change, the offender shall not change providers or conditions without court approval after a hearing.

(d) ~~((As conditions of the suspended sentence, the court shall impose))~~ Specific prohibitions and affirmative conditions relating to the known precursor activities or behaviors identified in the proposed treatment plan under subsection (3)(b)(v) of this section or identified in an annual review under subsection ~~((7))~~ (8)(b) of this section.

~~((5))~~ (6) As conditions of the suspended sentence, the court may impose one or more of the following:

(a) Crime-related prohibitions;

(b) Require the offender to devote time to a specific employment or occupation;

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

(d) Require the offender to report as directed to the court and a community corrections officer;

(e) Require the offender to pay all court-ordered legal financial obligations as provided in RCW 9.94A.030;

(f) Require the offender to perform community restitution work; or

(g) Require the offender to reimburse the victim for the cost of any counseling required as a result of the offender's crime.

~~((6))~~ (7) At the time of sentencing, the court shall set a treatment termination hearing for three months prior to the anticipated date for completion of treatment.

~~((7))~~ (8)(a) The sex offender treatment provider shall submit quarterly reports on the offender's progress in treatment to the court and the parties. The report shall reference the treatment plan and include at a minimum the following: Dates of attendance, offender's compliance with requirements, treatment activities, the offender's relative progress in treatment, and any other material specified by the court at sentencing.

(b) The court shall conduct a hearing on the offender's progress in treatment at least once a year. At least fourteen days prior to the hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. At the hearing, the court may modify conditions of community custody including, but not limited to, crime-related prohibitions and affirmative conditions relating to activities and behaviors identified as part of, or relating to precursor activities and behaviors in, the offender's offense cycle or revoke the suspended sentence.

~~((8))~~ (9) At least fourteen days prior to the treatment termination hearing, notice of the hearing shall be given to the victim. The victim shall be given the opportunity to make statements to the court regarding the offender's supervision and treatment. Prior to the treatment termination hearing, the treatment provider and community corrections officer shall submit written reports to the court and parties regarding the offender's compliance with treatment and monitoring requirements, and recommendations regarding termination from treatment, including proposed community custody conditions. The court may order an evaluation regarding the advisability of termination from treatment by a sex offender treatment provider who may not be the same person who treated the offender under subsection ~~((4))~~ (5) of this section or any person who employs, is employed by, or shares profits with the person who treated the offender under subsection ~~((4))~~ (5) of this section unless the court has entered written findings that such evaluation is in the best interest of the victim and that a successful evaluation of the offender would otherwise be impractical. The offender shall pay the cost of the evaluation. At the treatment termination hearing the court may: (a) Modify conditions of community custody, and either (b) terminate treatment, or (c) extend treatment in two-year increments for up to the remaining period of community custody.

~~((9))~~ (10)(a) If a violation of conditions other than a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection ~~((4))~~ (5)(d) or ~~((7))~~ (8)(b) of this section occurs during community custody, the department shall either impose sanctions as provided for in ~~((RCW 9.94A.737(2)(a)))~~ section 16(1) of this act or refer the

violation to the court and recommend revocation of the suspended sentence as provided for in subsections ~~((6))~~ (7) and ~~((8))~~ (9) of this section.

(b) If a second violation of the prohibitions or affirmative conditions relating to precursor behaviors or activities imposed under subsection ~~((4))~~ (5)(d) or ~~((7))~~ (8)(b) of this section occurs during community custody, the department shall refer the violation to the court and recommend revocation of the suspended sentence as provided in subsection ~~((10))~~ (11) of this section.

~~((10))~~ (11) The court may revoke the suspended sentence at any time during the period of community custody and order execution of the sentence if: (a) The offender violates the conditions of the suspended sentence, or (b) the court finds that the offender is failing to make satisfactory progress in treatment. All confinement time served during the period of community custody shall be credited to the offender if the suspended sentence is revoked.

~~((11))~~ (12) If the offender violates a requirement of the sentence that is not a condition of the suspended sentence pursuant to subsection (5) or (6) of this section, the department may impose sanctions pursuant to section 16(1) of this act.

(13) The offender's sex offender treatment provider may not be the same person who examined the offender under subsection (3) of this section or any person who employs, is employed by, or shares profits with the person who examined the offender under subsection (3) of this section, unless the court has entered written findings that such treatment is in the best interests of the victim and that successful treatment of the offender would otherwise be impractical. Examinations and treatment ordered pursuant to this subsection shall only be conducted by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court finds that:

(a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; or

(b)(i) No certified sex offender treatment providers or certified affiliate sex offender treatment providers are available for treatment within a reasonable geographical distance of the offender's home; and

(ii) The evaluation and treatment plan comply with this section and the rules adopted by the department of health.

~~((12))~~ (14) If the offender is less than eighteen years of age when the charge is filed, the state shall pay for the cost of initial evaluation and treatment.

Sec. 33. RCW 9.94A.690 and 2006 c 73 s 11 are each amended to read as follows:

(1)(a) An offender is eligible to be sentenced to a work ethic camp if the offender:

(i) Is sentenced to a term of total confinement of not less than twelve months and one day or more than thirty-six months;

(ii) Has no current or prior convictions for any sex offenses or for violent offenses; and

(iii) Is not currently subject to a sentence for, or being prosecuted for, a violation of felony driving while under the influence of intoxicating liquor or any drug (RCW 46.61.502(6)), a violation of physical control of a vehicle while under the influence of intoxicating liquor or any drug (RCW 46.61.504(6)), a violation of the uniform controlled substances act, or a criminal solicitation to commit such a violation under chapter 9A.28 or 69.50 RCW.

(b) The length of the work ethic camp shall be at least one hundred twenty days and not more than one hundred eighty days.

(2) If the sentencing court determines that the offender is eligible for the work ethic camp and is likely to qualify under

subsection (3) of this section, the judge shall impose a sentence within the standard sentence range and may recommend that the offender serve the sentence at a work ethic camp. In sentencing an offender to the work ethic camp, the court shall specify: (a) That upon completion of the work ethic camp the offender shall be released on community custody for any remaining time of total confinement; (b) the applicable conditions of ~~((supervision on))~~ community custody ~~((status))~~ as ~~((required by RCW 9.94A.700(4) and))~~ authorized by ~~((RCW 9.94A.700(5)))~~ section 10 of this act; and (c) that violation of the conditions may result in a return to total confinement for the balance of the offender's remaining time of confinement.

(3) The department shall place the offender in the work ethic camp program, subject to capacity, unless: (a) The department determines that the offender has physical or mental impairments that would prevent participation and completion of the program; (b) the department determines that the offender's custody level prevents placement in the program; (c) the offender refuses to agree to the terms and conditions of the program; (d) the offender has been found by the United States attorney general to be subject to a deportation detainer or order; or (e) the offender has participated in the work ethic camp program in the past.

(4) An offender who fails to complete the work ethic camp program, who is administratively terminated from the program, or who otherwise violates any conditions of supervision, as defined by the department, shall be reclassified to serve the unexpired term of his or her sentence as ordered by the sentencing court and shall be subject to all rules relating to earned release time.

(5) During the last two weeks prior to release from the work ethic camp program the department shall provide the offender with comprehensive transition training.

Sec. 34. RCW 9.94A.712 and 2006 c 124 s 3, 2006 c 122 s 5, and 2005 c 436 s 2 are each reenacted and amended to read as follows:

(1) An offender who is not a persistent offender shall be sentenced under this section if the offender:

(a) Is convicted of:

(i) Rape in the first degree, rape in the second degree, rape of a child in the first degree, child molestation in the first degree, rape of a child in the second degree, or indecent liberties by forcible compulsion;

(ii) 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

(iii) An attempt to commit any crime listed in this subsection (1)(a);

~~((committed on or after September 1, 2001))~~ or

(b) Has a prior conviction for an offense listed in RCW 9.94A.030~~((33))~~ (31)(b), and is convicted of any sex offense ~~((which was committed after September 1, 2001~~

~~— For purposes of this subsection (1)(b);))~~ other than failure to register ~~((is not a sex offense))~~.

(2) An offender convicted of rape of a child in the first or second degree or child molestation in the first degree who was seventeen years of age or younger at the time of the offense shall not be sentenced under this section.

(3)(a) Upon a finding that the offender is subject to sentencing under this section, the court shall impose a sentence to a maximum term and a minimum term.

(b) The maximum term shall consist of the statutory maximum sentence for the offense.

(c)(i) Except as provided in (c)(ii) of this subsection, the minimum term shall be either within the standard sentence range for the offense, or outside the standard sentence range pursuant to RCW 9.94A.535, if the offender is otherwise eligible for such a sentence.

(ii) If the offense that caused the offender to be sentenced under this section was rape of a child in the first degree, rape of a child in the second degree, or child molestation in the first degree, and there has been a finding that the offense was predatory under RCW 9.94A.836, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section was rape in the first degree, rape in the second degree, indecent liberties by forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding that the victim was under the age of fifteen at the time of the offense under RCW 9.94A.837, the minimum term shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater. If the offense that caused the offender to be sentenced under this section is rape in the first degree, rape in the second degree with forcible compulsion, indecent liberties with forcible compulsion, or kidnapping in the first degree with sexual motivation, and there has been a finding under RCW 9.94A.838 that the victim was, at the time of the offense, developmentally disabled, mentally disordered, or a frail elder or vulnerable adult, the minimum sentence shall be either the maximum of the standard sentence range for the offense or twenty-five years, whichever is greater.

(d) The minimum terms in (c)(ii) of this subsection do not apply to a juvenile tried as an adult pursuant to RCW 13.04.030(1)(e) (i) or (v). The minimum term for such a juvenile shall be imposed under (c)(i) of this subsection.

(4) A person sentenced under subsection (3) of this section shall serve the sentence in a facility or institution operated, or utilized under contract, by the state.

(5) When a court sentences a person to the custody of the department under this section, the court shall, in addition to the other terms of the sentence, sentence the offender to community custody under the supervision of the department and the authority of the board for any period of time the person is released from total confinement before the expiration of the maximum sentence.

~~(6)(a)((i) Unless a condition is waived by the court, the conditions of community custody shall include those provided for in RCW 9.94A.700(4). The conditions may also include those provided for in RCW 9.94A.700(5). The court may also order the offender to participate in rehabilitative programs or otherwise perform affirmative conduct reasonably related to the circumstances of the offense, the offender's risk of reoffending, or the safety of the community, and the department and the board shall enforce such conditions pursuant to RCW 9.94A.713, 9.95.425, and 9.95.430.~~

~~(ii) If the offense that caused the offender to be sentenced under this section was an offense listed in subsection (1)(a) of this section and the victim of the offense was under eighteen years of age at the time of the offense, the court shall, as a condition of community custody, prohibit the offender from residing in a community protection zone.~~

~~(b)) As part of any sentence under this section, the court shall also require the offender to comply with any conditions imposed by the board under RCW ((9.94A.713 and) 9.95.420 through 9.95.435.~~

(b) An offender released by the board under RCW 9.95.420 is subject to the supervision of the department until the expiration of the maximum term of the sentence. The department shall monitor the offender's compliance with conditions of community custody imposed by the court, department, or board, and promptly report any violations to the board. Any violation of conditions of community custody established or modified by the board are subject to the provisions of RCW 9.95.425 through 9.95.440.

Sec. 35. RCW 9.94A.728 and 2007 c 483 s 304 are each amended to read as follows:

No person serving a sentence imposed pursuant to this chapter and committed to the custody of the department shall leave the confines of the correctional facility or be released prior to the expiration of the sentence except as follows:

(1) Except as otherwise provided for in subsection (2) of this section, the term of the sentence of an offender committed to a correctional facility operated by the department may be reduced by earned release time in accordance with procedures that shall be developed and promulgated by the correctional agency having jurisdiction in which the offender is confined. The earned release time shall be for good behavior and good performance, as determined by the correctional agency having jurisdiction. The correctional agency shall not credit the offender with earned release credits in advance of the offender actually earning the credits. Any program established pursuant to this section shall allow an offender to earn early release credits for presentence incarceration. If an offender is transferred from a county jail to the department, the administrator of a county jail facility shall certify to the department the amount of time spent in custody at the facility and the amount of earned release time. An offender who has been convicted of a felony committed after July 23, 1995, that involves any applicable deadly weapon enhancements under RCW 9.94A.533 (3) or (4), or both, shall not receive any good time credits or earned release time for that portion of his or her sentence that results from any deadly weapon enhancements.

(a) In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 1990, and before July 1, 2003, the aggregate earned release time may not exceed fifteen percent of the sentence. In the case of an offender convicted of a serious violent offense, or a sex offense that is a class A felony, committed on or after July 1, 2003, the aggregate earned release time may not exceed ten percent of the sentence.

(b)(i) In the case of an offender who qualifies under (b)(ii) of this subsection, the aggregate earned release time may not exceed fifty percent of the sentence.

(ii) An offender is qualified to earn up to fifty percent of aggregate earned release time under this subsection (1)(b) if he or she:

- (A) Is classified in one of the two lowest risk categories under (b)(iii) of this subsection;
- (B) Is not confined pursuant to a sentence for:
 - (I) A sex offense;
 - (II) A violent offense;
 - (III) A crime against persons as defined in RCW 9.94A.411;
 - (IV) A felony that is domestic violence as defined in RCW 10.99.020;
 - (V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor); (C) Has no prior conviction for:

(I) A sex offense;

(II) A violent offense;

(III) A crime against persons as defined in RCW 9.94A.411;

(IV) A felony that is domestic violence as defined in RCW 10.99.020;

(V) A violation of RCW 9A.52.025 (residential burglary);

(VI) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine; or

(VII) A violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor);

(D) Participates in programming or activities as directed by the offender's individual reentry plan as provided under RCW 72.09.270 to the extent that such programming or activities are made available by the department; and

(E) Has not committed a new felony after July 22, 2007, while under ~~((community supervision, community placement, or))~~ community custody.

(iii) For purposes of determining an offender's eligibility under this subsection (1)(b), the department shall perform a risk assessment of every offender committed to a correctional facility operated by the department who has no current or prior conviction for a sex offense, a violent offense, a crime against persons as defined in RCW 9.94A.411, a felony that is domestic violence as defined in RCW 10.99.020, a violation of RCW 9A.52.025 (residential burglary), a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.401 by manufacture or delivery or possession with intent to deliver methamphetamine, or a violation of, or an attempt, solicitation, or conspiracy to violate, RCW 69.50.406 (delivery of a controlled substance to a minor). The department must classify each assessed offender in one of four risk categories between highest and lowest risk.

(iv) The department shall recalculate the earned release time and reschedule the expected release dates for each qualified offender under this subsection (1)(b).

(v) This subsection (1)(b) applies retroactively to eligible offenders serving terms of total confinement in a state correctional facility as of July 1, 2003.

(vi) This subsection (1)(b) does not apply to offenders convicted after July 1, 2010.

(c) In no other case shall the aggregate earned release time exceed one-third of the total sentence;

(2)(a) ~~((A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to subsection (1) of this section;~~

~~—(b))~~ A person convicted of a sex offense, a violent offense, any crime against persons under RCW 9.94A.411(2), or a felony offense

under chapter 69.50 or 69.52 RCW, ~~((committed on or after July 1, 2000;))~~ may become eligible, in accordance with a program developed by the department, for transfer to community custody ~~((status))~~ in lieu of earned release time pursuant to subsection (1) of this section;

~~((e))~~ (b) The department shall, as a part of its program for release to the community in lieu of earned release, require the offender to propose a release plan that includes an approved residence and living arrangement. All offenders with ~~((community placement or))~~ community custody terms eligible for release to community custody ~~((status))~~ in lieu of earned release shall provide an approved residence and living arrangement prior to release to the community;

~~((d))~~ (c) The department may deny transfer to community custody ~~((status))~~ in lieu of earned release time pursuant to subsection (1) of this section if the department determines an offender's release plan, including proposed residence location and living arrangements, may violate the conditions of the sentence or conditions of supervision, place the offender at risk to violate the conditions of the sentence, place the offender at risk to reoffend, or present a risk to victim safety or community safety. The department's authority under this section is independent of any court-ordered condition of sentence or statutory provision regarding conditions for community custody ~~((or community placement));~~

~~((e))~~ (d) If the department denies transfer to community custody ~~((status))~~ in lieu of earned early release pursuant to ~~((d))~~ (c) of this subsection, the department may transfer an offender to partial confinement in lieu of earned early release up to three months. The three months in partial confinement is in addition to that portion of the offender's term of confinement that may be served in partial confinement as provided in this section;

~~((f))~~ (e) An offender serving a term of confinement imposed under RCW 9.94A.670~~((f))~~ (5)(a) is not eligible for earned release credits under this section;

(3) An offender may leave a correctional facility pursuant to an authorized furlough or leave of absence. In addition, offenders may leave a correctional facility when in the custody of a corrections officer or officers;

(4)(a) The secretary may authorize an extraordinary medical placement for an offender when all of the following conditions exist:

(i) The offender has a medical condition that is serious enough to require costly care or treatment;

(ii) The offender poses a low risk to the community because he or she is physically incapacitated due to age or the medical condition; and

(iii) Granting the extraordinary medical placement will result in a cost savings to the state.

(b) An offender sentenced to death or to life imprisonment without the possibility of release or parole is not eligible for an extraordinary medical placement.

(c) The secretary shall require electronic monitoring for all offenders in extraordinary medical placement unless the electronic monitoring equipment interferes with the function of the offender's medical equipment or results in the loss of funding for the offender's medical care. The secretary shall specify who shall provide the monitoring services and the terms under which the monitoring shall be performed.

(d) The secretary may revoke an extraordinary medical placement under this subsection at any time;

(5) The governor, upon recommendation from the clemency and pardons board, may grant an extraordinary release for reasons of

serious health problems, senility, advanced age, extraordinary meritorious acts, or other extraordinary circumstances;

(6) No more than the final six months of the offender's term of confinement may be served in partial confinement designed to aid the offender in finding work and reestablishing himself or herself in the community. This is in addition to that period of earned early release time that may be exchanged for partial confinement pursuant to subsection (2)(~~(e)~~) (d) of this section;

(7) The governor may pardon any offender;

(8) The department may release an offender from confinement any time within ten days before a release date calculated under this section; (~~and~~)

(9) An offender may leave a correctional facility prior to completion of his or her sentence if the sentence has been reduced as provided in RCW 9.94A.870(~~(c)~~); and

(10) Notwithstanding any other provisions of this section, an offender sentenced for a felony crime listed in RCW 9.94A.540 as subject to a mandatory minimum sentence of total confinement shall not be released from total confinement before the completion of the listed mandatory minimum sentence for that felony crime of conviction unless allowed under RCW 9.94A.540, however persistent offenders are not eligible for extraordinary medical placement.

Sec. 36. RCW 9.94A.760 and 2005 c 263 s 1 are each amended to read as follows:

(1) Whenever a person is convicted in superior court, the court may order the payment of a legal financial obligation as part of the sentence. The court must on either the judgment and sentence or on a subsequent order to pay, designate the total amount of a legal financial obligation and segregate this amount among the separate assessments made for restitution, costs, fines, and other assessments required by law. On the same order, the court is also to set a sum that the offender is required to pay on a monthly basis towards satisfying the legal financial obligation. If the court fails to set the offender monthly payment amount, the department shall set the amount if the department has active supervision of the offender, otherwise the county clerk shall set the amount. Upon receipt of an offender's monthly payment, restitution shall be paid prior to any payments of other monetary obligations. After restitution is satisfied, the county clerk shall distribute the payment proportionally among all other fines, costs, and assessments imposed, unless otherwise ordered by the court.

(2) If the court determines that the offender, at the time of sentencing, has the means to pay for the cost of incarceration, the court may require the offender to pay for the cost of incarceration at a rate of fifty dollars per day of incarceration, if incarcerated in a prison, or the court may require the offender to pay the actual cost of incarceration per day of incarceration, if incarcerated in a county jail. In no case may the court require the offender to pay more than one hundred dollars per day for the cost of incarceration. Payment of other court-ordered financial obligations, including all legal financial obligations and costs of supervision shall take precedence over the payment of the cost of incarceration ordered by the court. All funds recovered from offenders for the cost of incarceration in the county jail shall be remitted to the county and the costs of incarceration in a prison shall be remitted to the department.

(3) The court may add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction is to be issued immediately. If the court chooses not to order the immediate issuance of a notice of payroll deduction at sentencing, the court shall add to the judgment and sentence or subsequent order to pay a statement that a notice of payroll deduction may be issued or

other income-withholding action may be taken, without further notice to the offender if a monthly court-ordered legal financial obligation payment is not paid when due, and an amount equal to or greater than the amount payable for one month is owed.

If a judgment and sentence or subsequent order to pay does not include the statement that a notice of payroll deduction may be issued or other income-withholding action may be taken if a monthly legal financial obligation payment is past due, the department or the county clerk may serve a notice on the offender stating such requirements and authorizations. Service shall be by personal service or any form of mail requiring a return receipt.

(4) Independent of the department or the county clerk, the party or entity to whom the legal financial obligation is owed shall have the authority to use any other remedies available to the party or entity to collect the legal financial obligation. These remedies include enforcement in the same manner as a judgment in a civil action by the party or entity to whom the legal financial obligation is owed. Restitution collected through civil enforcement must be paid through the registry of the court and must be distributed proportionately according to each victim's loss when there is more than one victim. The judgment and sentence shall identify the party or entity to whom restitution is owed so that the state, party, or entity may enforce the judgment. If restitution is ordered pursuant to RCW 9.94A.750(6) or 9.94A.753(6) to a victim of rape of a child or a victim's child born from the rape, the Washington state child support registry shall be identified as the party to whom payments must be made. Restitution obligations arising from the rape of a child in the first, second, or third degree that result in the pregnancy of the victim may be enforced for the time periods provided under RCW 9.94A.750(6) and 9.94A.753(6). All other legal financial obligations for an offense committed prior to July 1, 2000, may be enforced at any time during the ten-year period following the offender's release from total confinement or within ten years of entry of the judgment and sentence, whichever period ends later. Prior to the expiration of the initial ten-year period, the superior court may extend the criminal judgment an additional ten years for payment of legal financial obligations including crime victims' assessments. All other legal financial obligations for an offense committed on or after July 1, 2000, may be enforced at any time the offender remains under the court's jurisdiction. For an offense committed on or after July 1, 2000, the court shall retain jurisdiction over the offender, for purposes of the offender's compliance with payment of the legal financial obligations, until the obligation is completely satisfied, regardless of the statutory maximum for the crime. The department may only supervise the offender's compliance with payment of the legal financial obligations during any period in which the department is authorized to supervise the offender in the community under RCW 9.94A.728, 9.94A.501, or in which the offender is confined in a state correctional institution or a correctional facility pursuant to a transfer agreement with the department, and the department shall supervise the offender's compliance during any such period. The department is not responsible for supervision of the offender during any subsequent period of time the offender remains under the court's jurisdiction. The county clerk is authorized to collect unpaid legal financial obligations at any time the offender remains under the jurisdiction of the court for purposes of his or her legal financial obligations.

(5) In order to assist the court in setting a monthly sum that the offender must pay during the period of supervision, the offender is required to report to the department for purposes of preparing a recommendation to the court. When reporting, the offender is required, under oath, to respond truthfully and honestly to all

questions concerning present, past, and future earning capabilities and the location and nature of all property or financial assets. The offender is further required to bring all documents requested by the department.

(6) After completing the investigation, the department shall make a report to the court on the amount of the monthly payment that the offender should be required to make towards a satisfied legal financial obligation.

(7)(a) During the period of supervision, the department may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the department sets the monthly payment amount, the department may modify the monthly payment amount without the matter being returned to the court. During the period of supervision, the department may require the offender to report to the department for the purposes of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the department in order to prepare the collection schedule.

(b) Subsequent to any period of supervision, or if the department is not authorized to supervise the offender in the community, the county clerk may make a recommendation to the court that the offender's monthly payment schedule be modified so as to reflect a change in financial circumstances. If the county clerk sets the monthly payment amount, or if the department set the monthly payment amount and the department has subsequently turned the collection of the legal financial obligation over to the county clerk, the clerk may modify the monthly payment amount without the matter being returned to the court. During the period of repayment, the county clerk may require the offender to report to the clerk for the purpose of reviewing the appropriateness of the collection schedule for the legal financial obligation. During this reporting, the offender is required under oath to respond truthfully and honestly to all questions concerning earning capabilities and the location and nature of all property or financial assets. The offender shall bring all documents requested by the county clerk in order to prepare the collection schedule.

(8) After the judgment and sentence or payment order is entered, the department is authorized, for any period of supervision, to collect the legal financial obligation from the offender. Subsequent to any period of supervision or, if the department is not authorized to supervise the offender in the community, the county clerk is authorized to collect unpaid legal financial obligations from the offender. Any amount collected by the department shall be remitted daily to the county clerk for the purpose of disbursements. The department and the county clerks are authorized, but not required, to accept credit cards as payment for a legal financial obligation, and any costs incurred related to accepting credit card payments shall be the responsibility of the offender.

(9) The department or any obligee of the legal financial obligation may seek a mandatory wage assignment for the purposes of obtaining satisfaction for the legal financial obligation pursuant to RCW 9.94A.7701. Any party obtaining a wage assignment shall notify the county clerk. The county clerks shall notify the department, or the administrative office of the courts, whichever is providing the monthly billing for the offender.

(10) The requirement that the offender pay a monthly sum towards a legal financial obligation constitutes a condition or requirement of a sentence and the offender is subject to the penalties

for noncompliance as provided in RCW 9.94A.634 (as recodified by this act), 9.94A.737, or 9.94A.740.

(11)(a) Until January 1, 2004, the department shall mail individualized monthly billings to the address known by the department for each offender with an unsatisfied legal financial obligation.

(b) Beginning January 1, 2004, the administrative office of the courts shall mail individualized monthly billings to the address known by the office for each offender with an unsatisfied legal financial obligation.

(c) The billing shall direct payments, other than outstanding cost of supervision assessments under RCW 9.94A.780, parole assessments under RCW 72.04A.120, and cost of probation assessments under RCW 9.95.214, to the county clerk, and cost of supervision, parole, or probation assessments to the department.

(d) The county clerk shall provide the administrative office of the courts with notice of payments by such offenders no less frequently than weekly.

(e) The county clerks, the administrative office of the courts, and the department shall maintain agreements to implement this subsection.

(12) The department shall arrange for the collection of unpaid legal financial obligations during any period of supervision in the community through the county clerk. The department shall either collect unpaid legal financial obligations or arrange for collections through another entity if the clerk does not assume responsibility or is unable to continue to assume responsibility for collection pursuant to subsection (4) of this section. The costs for collection services shall be paid by the offender.

(13) The county clerk may access the records of the employment security department for the purposes of verifying employment or income, seeking any assignment of wages, or performing other duties necessary to the collection of an offender's legal financial obligations.

(14) Nothing in this chapter makes the department, the state, the counties, or any state or county employees, agents, or other persons acting on their behalf liable under any circumstances for the payment of these legal financial obligations or for the acts of any offender who is no longer, or was not, subject to supervision by the department for a term of community custody, ~~((community placement, or community supervision;))~~ and who remains under the jurisdiction of the court for payment of legal financial obligations.

Sec. 37. RCW 9.94A.775 and 2003 c 379 s 17 are each amended to read as follows:

If an offender with an unsatisfied legal financial obligation is not subject to supervision by the department for a term of ~~((community placement;))~~ community custody, ~~((or community supervision;))~~ or has not completed payment of all legal financial obligations included in the sentence at the expiration of his or her term of ~~((community placement;))~~ community custody, ~~((or community supervision;))~~ the department shall notify the administrative office of the courts of the termination of the offender's supervision and provide information to the administrative office of the courts to enable the county clerk to monitor payment of the remaining obligations. The county clerk is authorized to monitor payment after such notification. The secretary of corrections and the administrator for the courts shall enter into an interagency agreement to facilitate the electronic transfer of information about offenders, unpaid obligations, and payees to carry out the purposes of this section.

Sec. 38. RCW 9.94A.780 and 2003 c 379 s 18 are each amended to read as follows:

(1) Whenever a punishment imposed under this chapter requires supervision services to be provided, the offender shall pay to the department of corrections the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the terms of supervision and which shall be considered as payment or part payment of the cost of providing supervision to the offender. The department may exempt or defer a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment that provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him or her from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments that shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment that is less than ten dollars nor more than fifty dollars.

(3) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(4) This section shall not apply to probation services provided under an interstate compact pursuant to chapter 9.95 RCW or to probation services provided for persons placed on probation prior to June 10, 1982.

(5) If a county clerk assumes responsibility for collection of unpaid legal financial obligations under RCW 9.94A.760, or under any agreement with the department under that section, whether before or after the completion of any period of (~~community placement~~) community custody, (~~or community supervision~~) the clerk may impose a monthly or annual assessment for the cost of collections. The amount of the assessment shall not exceed the actual cost of collections. The county clerk may exempt or defer payment of all or part of the assessment based upon any of the factors listed in subsection (1) of this section. The offender shall pay the assessment under this subsection to the county clerk who shall apply it to the cost of collecting legal financial obligations under RCW 9.94A.760.

Sec. 39. RCW 9.94A.820 and 2004 c 38 s 10 are each amended to read as follows:

(1) Sex offender examinations and treatment ordered as a special condition of (~~community placement or~~) community custody under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department finds that: (a) The offender has already moved to another state or plans to move to another state for reasons other than circumventing the certification requirements; (b) the treatment provider is employed by the department; or (c)(i) no certified sex

offender treatment providers or certified affiliate sex offender treatment providers are available to provide treatment within a reasonable geographic distance of the offender's home, as determined in rules adopted by the secretary; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of health. A treatment provider selected by an offender under (c) of this subsection, who is not certified by the department of health shall consult with a certified sex offender treatment provider during the offender's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A sex offender's failure to participate in treatment required as a condition of (~~community placement or~~) community custody is a violation that will not be excused on the basis that no treatment provider was located within a reasonable geographic distance of the offender's home.

Sec. 40. RCW 4.24.556 and 2004 c 38 s 1 are each amended to read as follows:

(1) A certified sex offender treatment provider, or a certified affiliate sex offender treatment provider who has completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, acting in the course of his or her duties, providing treatment to a person who has been released to a less restrictive alternative under chapter 71.09 RCW or to a level III sex offender on community custody as a court (~~or~~)₂ department, or board ordered condition of sentence is not negligent because he or she treats a high risk offender; sex offenders are known to have a risk of reoffense. The treatment provider is not liable for civil damages resulting from the reoffense of a client unless the treatment provider's acts or omissions constituted gross negligence or willful or wanton misconduct. This limited liability provision does not eliminate the treatment provider's duty to warn of and protect from a client's threatened violent behavior if the client communicates a serious threat of physical violence against a reasonably ascertainable victim or victims. In addition to any other requirements to report violations, the sex offender treatment provider is obligated to report an offender's expressions of intent to harm or other predatory behavior, whether or not there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment. This limited liability provision applies only to the conduct of certified sex offender treatment providers, and certified affiliate sex offender treatment providers who have completed at least fifty percent of the required hours under the supervision of a certified sex offender treatment provider, and not the conduct of the state.

(2) Sex offender treatment providers who provide services to the department of corrections by identifying risk factors and notifying the department of risks for the subset of high risk offenders who are not amenable to treatment and who are under court order for treatment or supervision are practicing within the scope of their profession.

Sec. 41. RCW 9.95.017 and 2003 c 218 s 2 are each amended to read as follows:

(1) The board shall cause to be prepared criteria for duration of confinement, release on parole, and length of parole for persons committed to prison for crimes committed before July 1, 1984.

The proposed criteria should take into consideration RCW 9.95.009(2). Before submission to the governor, the board shall solicit comments and review on their proposed criteria for parole release.

(2) Persons committed to the department of corrections and who are under the authority of the board for crimes committed on or after September 1, 2001, are subject to the provisions for duration of confinement, release to community custody, and length of community custody established in RCW 9.94A.712, ~~((9.94A.713))~~ section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 42. RCW 9.95.064 and 2001 2nd sp.s. c 12 s 326 are each amended to read as follows:

(1) In order to minimize the trauma to the victim, the court may attach conditions on release of an offender under RCW 9.95.062, convicted of a crime committed before July 1, 1984, regarding the whereabouts of the defendant, contact with the victim, or other conditions.

(2) Offenders released under RCW 9.95.420 are subject to crime-related prohibitions and affirmative conditions established by the court, the department of corrections, or the board pursuant to RCW ~~((9.94A.715 and))~~ 9.94A.712, ~~((9.94A.713))~~ section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440.

Sec. 43. RCW 9.95.110 and 2003 c 218 s 7 are each amended to read as follows:

(1) The board may permit an offender convicted of a crime committed before July 1, 1984, to leave the buildings and enclosures of a state correctional institution on parole, after such convicted person has served the period of confinement fixed for him or her by the board, less time credits for good behavior and diligence in work: PROVIDED, That in no case shall an inmate be credited with more than one-third of his or her sentence as fixed by the board.

The board may establish rules and regulations under which an offender may be allowed to leave the confines of a state correctional institution on parole, and may return such person to the confines of the institution from which he or she was paroled, at its discretion.

(2) The board may permit an offender convicted of a crime committed on or after September 1, 2001, and sentenced under RCW 9.94A.712, to leave a state correctional institution on community custody according to the provisions of RCW 9.94A.712, ~~((9.94A.713))~~ section 11 of this act, 72.09.335, and 9.95.420 through 9.95.440. The person may be returned to the institution following a violation of his or her conditions of release to community custody pursuant to the hearing provisions of RCW 9.95.435.

Sec. 44. RCW 9.95.123 and 2001 2nd sp.s. c 12 s 336 are each amended to read as follows:

In conducting on-site parole hearings or community custody revocation ~~((hearings or community custody))~~ or violations hearings, the board shall have the authority to administer oaths and affirmations, examine witnesses, receive evidence, and issue subpoenas for the compulsory attendance of witnesses and the production of evidence for presentation at such hearings. Subpoenas issued by the board shall be effective throughout the state. Witnesses in attendance at any on-site parole or community custody revocation hearing shall be paid the same fees and allowances, in the same manner and under the same conditions as provided for witnesses in the courts of the state in accordance with chapter 2.40 RCW. If any person fails or refuses to obey a subpoena issued by the board, or obeys the subpoena but refuses to testify concerning any matter under examination at the hearing, the board may petition the superior court of the county where the hearing is being conducted for enforcement of the subpoena: PROVIDED, That an offer to pay statutory fees and mileage has been made to the witness at the time of the service of the subpoena. The petition shall be accompanied by a copy of the

subpoena and proof of service, and shall set forth in what specific manner the subpoena has not been complied with, and shall ask an order of the court to compel the witness to appear and testify before the board. The court, upon such petition, shall enter an order directing the witness to appear before the court at a time and place to be fixed in such order and then and there to show cause why he or she has not responded to the subpoena or has refused to testify. A copy of the order shall be served upon the witness. If it appears to the court that the subpoena was properly issued and that the particular questions which the witness refuses to answer are reasonable and relevant, the court shall enter an order that the witness appear at the time and place fixed in the order and testify or produce the required papers, and on failing to obey the order, the witness shall be dealt with as for contempt of court.

Sec. 45. RCW 9.95.420 and 2007 c 363 s 2 are each amended to read as follows:

(1)(a) Except as provided in (c) of this subsection, before the expiration of the minimum term, as part of the end of sentence review process under RCW 72.09.340, 72.09.345, and where appropriate, 72.09.370, the department shall conduct, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(b) The board may contract for an additional, independent examination, subject to the standards in this section.

(c) If at the time the sentence is imposed by the superior court the offender's minimum term has expired or will expire within one hundred twenty days of the sentencing hearing, the department shall conduct, within ninety days of the offender's arrival at a department of corrections facility, and the offender shall participate in, an examination of the offender, incorporating methodologies that are recognized by experts in the prediction of sexual dangerousness, and including a prediction of the probability that the offender will engage in sex offenses if released.

(2) The board shall impose the conditions and instructions provided for in ~~((RCW 9.94A.720))~~ section 11 of this act. The board shall consider the department's recommendations and may impose conditions in addition to those recommended by the department. The board may impose or modify conditions of community custody following notice to the offender.

(3)(a) Except as provided in (b) of this subsection, no later than ninety days before expiration of the minimum term, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(b) If at the time the offender's minimum term has expired or will expire within one hundred twenty days of the offender's arrival at a department of correction's facility, then no later than one hundred twenty days after the offender's arrival at a department of corrections

facility, but after the board receives the results from the end of sentence review process and the recommendations for additional or modified conditions of community custody from the department, the board shall conduct a hearing to determine whether it is more likely than not that the offender will engage in sex offenses if released on conditions to be set by the board. The board may consider an offender's failure to participate in an evaluation under subsection (1) of this section in determining whether to release the offender. The board shall order the offender released, under such affirmative and other conditions as the board determines appropriate, unless the board determines by a preponderance of the evidence that, despite such conditions, it is more likely than not that the offender will commit sex offenses if released. If the board does not order the offender released, the board shall establish a new minimum term as provided in RCW 9.95.011.

(4) In a hearing conducted under subsection (3) of this section, the board shall provide opportunities for the victims of any crimes for which the offender has been convicted to present oral, video, written, or in-person testimony to the board. The procedures for victim input shall be developed by rule. To facilitate victim involvement, county prosecutor's offices shall ensure that any victim impact statements and known contact information for victims of record are forwarded as part of the judgment and sentence.

Sec. 46. RCW 9.95.440 and 2003 c 218 s 6 are each amended to read as follows:

In the event the board suspends the release status of an offender released under RCW 9.95.420 by reason of an alleged violation of a condition of release, or pending disposition of a new criminal charge, the board may nullify the suspension order and reinstate release under previous conditions or any new conditions the board determines advisable under ~~(RCW 9.94A.713(5))~~ section 11 of this act. Before the board may nullify a suspension order and reinstate release, it shall determine that the best interests of society and the offender shall be served by such reinstatement rather than return to confinement.

Sec. 47. RCW 46.61.524 and 2006 c 73 s 16 are each amended to read as follows:

~~((1)) A person convicted under RCW 46.61.502(6), 46.61.504(6), 46.61.520(1)(a), or 46.61.522(1)(b) shall, as a condition of community custody imposed under RCW 9.94A.545 or community placement imposed under RCW 9.94A.660, complete a diagnostic evaluation by an alcohol or drug dependency agency approved by the department of social and health services or a qualified probation department, as defined under RCW 46.61.516 that has been approved by the department of social and health services. This report shall be forwarded to the department of licensing. If the person is found to have an alcohol or drug problem that requires treatment, the person shall complete treatment in a program approved by the department of social and health services under chapter 70.96A RCW. If the person is found not to have an alcohol or drug problem that requires treatment, he or she shall complete a course in an information school approved by the department of social and health services under chapter 70.96A RCW. The convicted person shall pay all costs for any evaluation, education, or treatment required by this section, unless the person is eligible for an existing program offered or approved by the department of social and health services. Nothing in chapter 348, Laws of 1991 requires the addition of new treatment or assessment facilities nor affects the department of social and health services use of existing programs and facilities authorized by law.~~

~~(2))~~ As provided for under RCW 46.20.285, the department shall revoke the license, permit to drive, or a nonresident privilege of a person convicted of vehicular homicide under RCW 46.61.520 or vehicular assault under RCW 46.61.522. The department shall determine the eligibility of a person convicted of vehicular homicide under RCW 46.61.520(1)(a) or vehicular assault under RCW 46.61.522(1)(b) to receive a license based upon the report provided by the designated alcoholism treatment facility or probation department designated pursuant to section 10(4)(b) of this act, and shall deny reinstatement until satisfactory progress in an approved program has been established and the person is otherwise qualified.

Sec. 48. RCW 72.09.015 and 2007 c 483 s 202 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 general equivalency diploma.

(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) "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 section 53 of this act.

~~(4)~~ "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.

~~((4))~~ (5) "County" means a county or combination of counties.

~~((5))~~ (6) "Department" means the department of corrections.

~~((6))~~ (7) "Earned early release" means earned release as authorized by RCW 9.94A.728.

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

~~((8))~~ (9) "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.

~~((9))~~ (10) "Good conduct" means compliance with department rules and policies.

~~((10))~~ (11) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

~~((11))~~ (12) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

~~((12))~~ (13) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

~~((13))~~ (14) "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 ~~((offenders' [offender's]))~~

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.

~~((14))~~ (15) "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, or federal jurisdiction.

~~((15))~~ (16) "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.

~~((16))~~ (17) "Promising practice" means a practice that presents, based on preliminary information, potential for becoming a research-based or consensus-based practice.

~~((17))~~ (18) "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.

~~((18))~~ (19) "Secretary" means the secretary of corrections or his or her designee.

~~((19))~~ (20) "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.

~~((20))~~ (21) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

~~((21))~~ (22) "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 correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

~~((22))~~ (23) "Vocational training" or "vocational education" means "vocational education" as defined in RCW 72.62.020.

~~((23))~~ (24) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

~~((24))~~ (25) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100.

Sec. 49. RCW 72.09.270 and 2007 c 483 s 203 are each amended to read as follows:

(1) The department of corrections shall develop an individual reentry plan as defined in RCW 72.09.015 for every offender who is committed to the jurisdiction of the department except:

(a) Offenders who are sentenced to life without the possibility of release or sentenced to death under chapter 10.95 RCW; and

(b) Offenders who are subject to the provisions of 8 U.S.C. Sec. 1227.

(2) The individual reentry plan may be one document, or may be a series of individual plans that combine to meet the requirements of this section.

(3) In developing individual reentry plans, the department shall assess all offenders using standardized and comprehensive tools to identify the criminogenic risks, programmatic needs, and educational and vocational skill levels for each offender. The assessment tool should take into account demographic biases, such as culture, age, and gender, as well as the needs of the offender, including any learning disabilities, substance abuse or mental health issues, and social or behavior deficits.

(4)(a) The initial assessment shall be conducted as early as sentencing, but, whenever possible, no later than forty-five days of being sentenced to the jurisdiction of the department of corrections.

(b) The offender's individual reentry plan shall be developed as soon as possible after the initial assessment is conducted, but, whenever possible, no later than sixty days after completion of the assessment, and shall be periodically reviewed and updated as appropriate.

(5) The individual reentry plan shall, at a minimum, include:

(a) A plan to maintain contact with the inmate's children and family, if appropriate. The plan should determine whether parenting classes, or other services, are appropriate to facilitate successful reunification with the offender's children and family;

(b) An individualized portfolio for each offender that includes offender's education achievements, certifications, employment, work experience, skills, and any training received prior to and during incarceration; and

(c) A plan for the offender during the period of incarceration through reentry into the community that addresses the needs of the offender including education, employment, substance abuse treatment, mental health treatment, family reunification, and other areas which are needed to facilitate a successful reintegration into the community.

(6)(a) Prior to discharge of any offender, the department shall:

(i) Evaluate the offender's needs and, to the extent possible, connect the offender with existing services and resources that meet those needs; and

(ii) Connect the offender with a community justice center and/or community transition coordination network in the area in which the offender will be residing once released from the correctional system if one exists.

(b) If the department recommends partial confinement in an offender's individual reentry plan, the department shall maximize the period of partial confinement for the offender as allowed pursuant to RCW 9.94A.728 to facilitate the offender's transition to the community.

(7) The department shall establish mechanisms for sharing information from individual reentry plans to those persons involved with the offender's treatment, programming, and reentry, when deemed appropriate. When feasible, this information shall be shared electronically.

(8)(a) In determining the county of discharge for an offender released to community custody (~~or community placement~~), the department may not approve a residence location that is not in the offender's county of origin unless it is determined by the department that the offender's return to his or her county of origin would be inappropriate considering any court-ordered condition of the offender's sentence, victim safety concerns, negative influences on the offender in the community, or the location of family or other sponsoring persons or organizations that will support the offender.

(b) If the offender is not returned to his or her county of origin, the department shall provide the law and justice council of the county in which the offender is placed with a written explanation.

(c) For purposes of this section, the offender's county of origin means the county of the offender's first felony conviction in Washington.

(9) Nothing in this section creates a vested right in programming, education, or other services.

Sec. 50. RCW 72.09.345 and 1997 c 364 s 4 are each amended to read as follows:

(1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of (~~community placement or~~) community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification.

Sec. 51. RCW 72.09.580 and 1999 c 196 s 12 are each amended to read as follows:

Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody(~~(, community placement, or community supervision as authorized under RCW 9.94A.505 and 9.94A.545)),~~ the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department.

NEW SECTION. Sec. 52. (1) This chapter codifies sentencing provisions that may be applicable to sentences for crimes committed prior to July 1, 2000.

(2) This chapter supplements chapter 9.94A RCW and should be read in conjunction with that chapter.

NEW SECTION. Sec. 53. In addition to the definitions set out in RCW 9.94A.030, the following definitions apply for purposes of this chapter:

(1) "Community placement" means that period during which the offender is subject to the conditions of community custody and/or postrelease supervision, which begins either upon completion of the term of confinement (postrelease supervision) or at such time as the offender is transferred to community custody in lieu of earned release. Community placement may consist of entirely community custody, entirely postrelease supervision, or a combination of the two.

(2) "Community supervision" means a period of time during which a convicted offender is subject to crime-related prohibitions and other sentence conditions imposed by a court pursuant to this chapter or RCW 16.52.200(6) or 46.61.524. Where the court finds that any offender has a chemical dependency that has contributed to his or her offense, the conditions of supervision may, subject to available resources, include treatment. For purposes of the interstate compact for out-of-state supervision of parolees and probationers, RCW 9.95.270, community supervision is the functional equivalent of probation and should be considered the same as probation by other states.

(3) "Postrelease supervision" is that portion of an offender's community placement that is not community custody.

NEW SECTION. Sec. 54. The court may order an offender whose sentence includes community placement or community supervision to undergo a mental status evaluation and to participate in available outpatient mental health treatment, if the court finds that reasonable grounds exist to believe that the offender is a mentally ill person as defined in RCW 71.24.025, and that this condition is likely to have influenced the offense. An order requiring mental status evaluation or treatment must be based on a presentence report and, if applicable, mental status evaluations that have been filed with the court to determine the offender's competency or eligibility for a defense of insanity. The court may order additional evaluations at a later date if deemed appropriate.

NEW SECTION. Sec. 55. A person convicted of a sex offense or an offense categorized as a serious violent offense, assault in the second degree, vehicular homicide, vehicular assault, assault of a child in the second degree, any crime against persons where it is determined in accordance with RCW 9.94A.602 that the offender or an accomplice was armed with a deadly weapon at the time of commission, or any felony offense under chapter 69.50 or 69.52 RCW, committed before July 1, 2000, may become eligible, in accordance with a program developed by the department, for transfer to community custody status in lieu of earned release time pursuant to RCW 9.94A.728(1).

NEW SECTION. Sec. 56. (1) Sections 7 through 59 of this act apply to all sentences imposed or reimposed on or after August 1, 2009, for any crime committed on or after the effective date of this section.

(2) Sections 7 through 59 of this act also apply to all sentences imposed or reimposed on or after August 1, 2009, for crimes committed prior to the effective date of this section, to the extent that such application is constitutionally permissible.

(3) To the extent that application of sections 7 through 59 of this act is not constitutionally permissible with respect to any offender, the sentence for such offender shall be governed by the law as it existed before the effective date of this section, or on such prior date as may be constitutionally required, notwithstanding any amendment or repeal of provisions of such law.

(4) If application of sections 7 through 59 of this act is not constitutionally permissible with respect to any offender, the judgment and sentence shall specify the particular sentencing provisions that will not apply to such offender. Whenever practical, the judgment and sentence shall use the terminology set out in this act.

(5) The sentencing guidelines commission shall prepare a summary of the circumstances under which application of sections 7 through 59 of this act is not constitutionally permissible. The summary should include recommendations of conditions that could be included in judgments and sentences in order to prevent unconstitutional application of the act. This summary shall be incorporated into the *Adult Sentencing Guidelines Manual*.

(6) Sections 7 through 59 of this act shall not affect the enforcement of any sentence that was imposed prior to August 1, 2009, unless the offender is resentenced after that date.

NEW SECTION. Sec. 57. (1) The following sections are recodified as part of a new chapter in Title 9 RCW: RCW 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, and 9.94A.710.

(2) RCW 9.94A.610 (as amended by this act), 9.94A.612 (as amended by this act), 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620 are each recodified as sections in chapter 72.09 RCW.

(3) Sections 52 through 55 of this act are added to the new chapter created in subsection (1) of this section.

(4) The code reviser is authorized to improve the organization of chapter 9.94A RCW by renumbering existing sections and adding subchapter headings.

(5) The code reviser shall correct any cross-references to sections affected by this section in other sections of the code.

NEW SECTION. Sec. 58. The following acts or parts of acts are each repealed:

(1) RCW 9.94A.545 (Community custody) and 2006 c 128 s 4, 2003 c 379 s 8, 2000 c 28 s 13, 1999 c 196 s 10, 1988 c 143 s 23, & 1984 c 209 s 22;

(2) RCW 9.94A.713 (Nonpersistent offenders--Conditions) and 2006 c 130 s 1 & 2001 2nd sp.s. c 12 s 304;

(3) RCW 9.94A.715 (Community custody for specified offenders--Conditions) and 2006 c 130 s 2, 2006 c 128 s 5, 2003 c 379 s 6, 2001 2nd sp.s. c 12 s 302, 2001 c 10 s 5, & 2000 c 28 s 25;

(4) RCW 9.94A.720 (Supervision of offenders) and 2003 c 379 s 7, 2002 c 175 s 14, & 2000 c 28 s 26;

(5) RCW 9.94A.800 (Sex offender treatment in correctional facility) and 2000 c 28 s 34;

(6) RCW 9.94A.830 (Legislative finding and intent--Commitment of felony sexual offenders after July 1, 1987) and 1987 c 402 s 2 & 1986 c 301 s 1; and

(7) RCW 79A.60.070 (Conviction under RCW 79A.60.050 or 79A.60.060--Community supervision or community placement--Conditions) and 2000 c 11 s 96 & 1998 c 219 s 3.

NEW SECTION. Sec. 59. The repealers in section 58 of this act shall not affect the validity of any sentence that was imposed prior to the effective date of this section or the authority of the department of corrections to supervise any offender pursuant to such sentence.

NEW SECTION. Sec. 60. The code reviser shall report to the 2009 legislature on any amendments necessary to accomplish the purposes of this act.

NEW SECTION. Sec. 61. Section 25 of this act expires July 1, 2010.

NEW SECTION. Sec. 62. Sections 7 through 61 of this act take effect August 1, 2009."

On page 1, line 2 of the title, after "sentences;" strike the remainder of the title and insert "amending RCW 9.94A.441, 9.94A.500, 9.94A.530, 9.94A.737, 9.94A.740, 9.94A.501, 9.94A.505, 9.94A.610, 9.94A.612, 9.94A.625, 9.94A.650, 9.94A.670, 9.94A.690, 9.94A.728, 9.94A.760, 9.94A.775, 9.94A.780, 9.94A.820, 4.24.556, 9.95.017, 9.95.064, 9.95.110, 9.95.123, 9.95.420, 9.95.440, 46.61.524, 72.09.015, 72.09.270, 72.09.345, and 72.09.580; reenacting and amending RCW 9.94A.525, 9.94A.030, 9.94A.660, and 9.94A.712; adding new sections to chapter 9.94A RCW; adding new sections to chapter 72.09 RCW; adding a new chapter to Title 9 RCW; creating new sections; recodifying RCW 9.94A.628, 9.94A.634, 9.94A.700, 9.94A.705, 9.94A.710, 9.94A.610, 9.94A.612, 9.94A.614, 9.94A.616, 9.94A.618, and 9.94A.620; repealing RCW 9.94A.545, 9.94A.713, 9.94A.715, 9.94A.720, 9.94A.800, 9.94A.830, and 79A.60.070; providing an effective date; and providing an expiration date."

On page 2, beginning on line 7, strike all of section 2

Renumber the remaining sections consecutively and correct any internal references accordingly.

On page 1, line 2 of the title, after "sentences;" strike the remainder of the title and insert "amending RCW 9.94A.500 and 9.94A.530; reenacting and amending RCW 9.94A.525; and creating new sections."

as the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendments to HOUSE BILL NO. 2719 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 3212 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 28A.300.130 and 2006 c 116 s 2 are each amended to read as follows:

(1) To facilitate access to information and materials on educational improvement and research, the superintendent of public instruction, to the extent funds are appropriated, shall establish the center for the improvement of student learning. The center shall work in conjunction with parents, educational service districts, institutions of higher education, and education, parent, community, and business organizations.

(2) The center, in conjunction with other staff in the office of the superintendent of public instruction, shall:

(a) Serve as a clearinghouse for information regarding successful educational improvement and parental involvement programs in schools and districts, and information about efforts within institutions of higher education in the state to support educational improvement initiatives in Washington schools and districts;

(b) Provide best practices research that can be used to help schools develop and implement: Programs and practices to improve instruction; systems to analyze student assessment data, with an emphasis on systems that will combine the use of state and local data to monitor the academic progress of each and every student in the school district; comprehensive, school-wide improvement plans; school-based shared decision-making models; programs to promote lifelong learning and community involvement in education; school-to-work transition programs; programs to meet the needs of highly capable students; programs and practices to meet the needs of students with disabilities; programs and practices to meet the diverse needs of students based on gender, racial, ethnic, economic, and special needs status; research, information, and technology systems; and other programs and practices that will assist educators in helping students learn the essential academic learning requirements;

(c) Develop and maintain an internet web site to increase the availability of information, research, and other materials;

(d) Work with appropriate organizations to inform teachers, district and school administrators, and school directors about the waivers available and the broadened school board powers under RCW 28A.320.015;

(e) Provide training and consultation services, including conducting regional summer institutes;

(f) Identify strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(g) Work with parents, teachers, and school districts in establishing a model absentee notification procedure that will properly notify parents when their student has not attended a class or

has missed a school day. The office of the superintendent of public instruction shall consider various types of communication with parents including, but not limited to, electronic mail, phone, and postal mail; and

(h) Perform other functions consistent with the purpose of the center as prescribed in subsection (1) of this section.

(3) The superintendent of public instruction shall select and employ a director for the center.

(4) The superintendent may enter into contracts with individuals or organizations including but not limited to: School districts; educational service districts; educational organizations; teachers; higher education faculty; institutions of higher education; state agencies; business or community-based organizations; and other individuals and organizations to accomplish the duties and responsibilities of the center. In carrying out the duties and responsibilities of the center, the superintendent, whenever possible, shall use practitioners to assist agency staff as well as assist educators and others in schools and districts.

(5) The office of the superintendent of public instruction shall report to the legislature by September 1, 2007, and thereafter biennially, regarding the effectiveness of the center for ~~((the))~~ the improvement of student learning, how the services provided by the center for ~~((the))~~ the improvement of student learning have been used and by whom, and recommendations to improve the accessibility and application of knowledge and information that leads to improved student learning and greater family and community involvement in the public education system.

Sec. 2. RCW 43.06B.020 and 2006 c 116 s 4 are each amended to read as follows:

The education ombudsman shall have the following powers and duties:

(1) To develop parental involvement materials, including instructional guides developed to inform parents of the essential academic learning requirements required by the superintendent of public instruction. The instructional guides also shall contain actions parents may take to assist their children in meeting the requirements, and should focus on reaching parents who have not previously been involved with their children's education;

(2) To provide information to students, parents, and interested members of the public regarding this state's public elementary and secondary education system;

(3) To identify obstacles to greater parent and community involvement in school shared decision-making processes and recommend strategies for helping parents and community members to participate effectively in school shared decision-making processes, including understanding and respecting the roles of school building administrators and staff;

(4) To identify and recommend strategies for improving the success rates of ethnic and racial student groups and students with disabilities, with disproportionate academic achievement;

(5) To refer complainants and others to appropriate resources, agencies, or departments;

(6) To facilitate the resolution of complaints made by parents and students with regard to the state's public elementary and secondary education system;

(7) To perform such other functions consistent with the purpose of the education ombudsman; and

(8) To consult with representatives of the following organizations and groups regarding the work of the office of the education ombudsman, including but not limited to:

(a) The state parent teacher association;

- (b) Certificated and classified school employees;
- (c) School and school district administrators;
- (d) Parents of special education students;
- (e) Parents of English language learners;
- (f) The Washington state commission on Hispanic affairs;
- (g) The Washington state commission on African-American affairs;
- (h) The Washington state commission on Asian Pacific American affairs; and
- (i) The governor's office of Indian affairs.

Sec. 3. RCW 28A.655.090 and 1999 c 388 s 301 are each amended to read as follows:

(1) By September 10, 1998, and by September 10th each year thereafter, the superintendent of public instruction shall report to schools, school districts, and the legislature on the results of the Washington assessment of student learning and state-mandated norm-referenced standardized tests.

(2) The reports shall include the assessment results by school and school district, and include changes over time. For the Washington assessment of student learning, results shall be reported as follows:

(a) The percentage of students meeting the standards;

(b) The percentage of students performing at each level of the assessment; ~~((and))~~

(c) Disaggregation of results by at least the following subgroups of students: White, Black, Hispanic, American Indian/Alaskan Native, Asian, Pacific Islander/Hawaiian Native, low income, transitional bilingual, migrant, special education, students in the foster care system, and, beginning with the 2009-10 school year, students covered by section 504 of the federal rehabilitation act of 1973, as amended (29 U.S.C. Sec. 794); and

(d) A learning improvement index that shows changes in student performance within the different levels of student learning reported on the Washington assessment of student learning.

(3) The reports shall contain data regarding the different characteristics of schools, such as poverty levels, percent of English as a second language students, dropout rates, attendance, percent of students in special education, and student mobility so that districts and schools can learn from the improvement efforts of other schools and districts with similar characteristics.

(4) The reports shall contain student scores on mandated tests by comparable Washington schools of similar characteristics.

(5) The reports shall contain information on public school choice options available to students, including vocational education.

(6) The reports shall be posted on the superintendent of public instruction's internet web site.

(7) To protect the privacy of students, the results of schools and districts that test fewer than ten students in a grade level shall not be reported. In addition, in order to ensure that results are reported accurately, the superintendent of public instruction shall maintain the confidentiality of statewide data files until the superintendent determines that the data are complete and accurate.

(8) The superintendent of public instruction shall monitor the percentage and number of special education and limited English-proficient students exempted from taking the assessments by schools and school districts to ensure the exemptions are in compliance with exemption guidelines."

On page 1, line 2 of the title, after "students;" strike the remainder of the title and insert "and amending RCW 28A.300.130, 43.06B.020, and 28A.655.090."

as the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House refused to concur in the Senate amendments to SUBSTITUTE HOUSE BILL NO. 3212 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed ENGROSSED THIRD SUBSTITUTE HOUSE BILL NO. 1873 with the following amendments:

On page 4, beginning on line 25, after "her" strike all material through "~~are)~~" on line 26, and insert "~~((minor)) child ((, and the mother or father, or both, of a child on whom either, or both, are))~~ under the age of twenty-six"

On page 4, beginning on line 27, strike "or who has had significant involvement in a child's life, "

On page 2, after line 7, insert the following: "In any action under subsections (1)(a) or (b) of this section against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint."

On page 4, after line 21, insert the following: "(5) In any action under subsections (2)(a) or (b) of this section against the state or a political subdivision thereof, the liability of the state or political subdivision shall be several and not joint."

On page 5, after line 26, insert the following:

"In any action under this section against the state or a political subdivision thereof, where the claim is based on subsection (5)(b) of this section, the liability of the state or political subdivision shall be several and not joint."

On page 5, after line 26, insert the following:

"Sec. 5.. RCW 4.22.030 and 1986 c 305 s 402 are each amended to read as follows:

Except as otherwise provided in RCW 4.22.070, 4.20.020, 4.20.060, and 4.24.010, if more than one person is liable to a claimant on an indivisible claim for the same injury, death or harm, the liability of such persons shall be joint and several."

Renumber the sections consecutively and correct internal references accordingly.

as the same is herewith transmitted.

Brad Hendrickson, Deputy Secretary

SENATE AMENDMENT TO HOUSE BILL

Representative Lantz moved that the House not concur in the Senate amendments to Engrossed Third Substitute House Bill No. 1873, and ask the Senate to recede therefrom.

Representative Rodne moved that the House do concur in the Senate amendments to Engrossed Third Substitute House Bill No. 1873.

Representative Rodne spoke in favor of the motion to concur in the Senate amendments.

Representative Lantz spoke against the motion to concur in the Senate amendments.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of the motion to concur in the Senate amendments to Engrossed Third Substitute House Bill No. 1873.

ROLL CALL

The Clerk called the roll on the adoption of the motion to concur in the Senate amendments to Engrossed Third Substitute House Bill No. 1873, and the motion was not adopted by the following vote: Yeas - 33, Nays - 60, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Dunn, Eddy, Ericksen, Haler, Hankins, Herrera, Hinkle, Kelley, Kretz, Kristiansen, McCune, Newhouse, Orcutt, Pearson, Priest, Roach, Rodne, Ross, Schindler, Schmick, Schual-Berke, Smith, Walsh and Warnick - 33.

Voting nay: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kenney, Kessler, Kirby, Lantz, Liias, Linville, Loomis, McCoy, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 60.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SENATE AMENDMENT TO HOUSE BILL

The House refused to concur in the Senate amendment to ENGROSSED THIRD SUBSTITUTE HOUSE BILL NO. 1873 and asked the Senate to recede therefrom.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 1030 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. This act may be known and cited as the Guillermo "Bobby" Aguilar and Edgar F. Trevino-Mendoza public safety act of 2008.

NEW SECTION. Sec. 2. A new section is added to chapter 9.94A RCW to read as follows:

(1) The prosecuting attorney may file a special allegation of endangerment by eluding in every criminal case involving a charge of attempting to elude a police vehicle under RCW 46.61.024, when sufficient admissible evidence exists, to show that one or more persons other than the defendant or the pursuing law enforcement officer were threatened with physical injury or harm by the actions of the person committing the crime of attempting to elude a police vehicle.

(2) In a criminal case in which there has been a special allegation, the state shall prove beyond a reasonable doubt that the accused committed the crime while endangering one or more persons other than the defendant or the pursuing law enforcement officer. The court shall make a finding of fact of whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered at the time of the commission of the crime, or if a jury trial is had, the jury shall, if it finds the defendant guilty, also find a special verdict as to whether or not one or more persons other than the defendant or the pursuing law enforcement officer were endangered during the commission of the crime.

Sec. 3. RCW 9.94A.533 and 2007 c 368 s 9 are each amended to read as follows:

(1) The provisions of this section apply to the standard sentence ranges determined by RCW 9.94A.510 or 9.94A.517.

(2) For persons convicted of the anticipatory offenses of criminal attempt, solicitation, or conspiracy under chapter 9A.28 RCW, the standard sentence range is determined by locating the sentencing grid sentence range defined by the appropriate offender score and the seriousness level of the completed crime, and multiplying the range by seventy-five percent.

(3) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any firearm enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the firearm enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a firearm enhancement. If the offender or an accomplice was armed with a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any firearm enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Five years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) Three years for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Eighteen months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced for any firearm enhancements under (a), (b), and/or (c) of this subsection and the offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (4)(a), (b), and/or (c) of this section, or both, all firearm enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all firearm enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The firearm enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a firearm enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(4) The following additional times shall be added to the standard sentence range for felony crimes committed after July 23, 1995, if the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for one of the crimes listed in this subsection as eligible for any deadly weapon enhancements based on the classification of the completed felony crime. If the offender is being sentenced for more than one offense, the deadly weapon enhancement or enhancements must be added to the total period of confinement for all offenses, regardless of which underlying offense is subject to a deadly weapon enhancement. If the offender or an accomplice was armed with a deadly weapon other than a firearm as defined in RCW 9.41.010 and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection as eligible for any deadly weapon enhancements, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(a) Two years for any felony defined under any law as a class A felony or with a statutory maximum sentence of at least twenty years, or both, and not covered under (f) of this subsection;

(b) One year for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both, and not covered under (f) of this subsection;

(c) Six months for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both, and not covered under (f) of this subsection;

(d) If the offender is being sentenced under (a), (b), and/or (c) of this subsection for any deadly weapon enhancements and the

offender has previously been sentenced for any deadly weapon enhancements after July 23, 1995, under (a), (b), and/or (c) of this subsection or subsection (3)(a), (b), and/or (c) of this section, or both, all deadly weapon enhancements under this subsection shall be twice the amount of the enhancement listed;

(e) Notwithstanding any other provision of law, all deadly weapon enhancements under this section are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other firearm or deadly weapon enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(f) The deadly weapon enhancements in this section shall apply to all felony crimes except the following: Possession of a machine gun, possessing a stolen firearm, drive-by shooting, theft of a firearm, unlawful possession of a firearm in the first and second degree, and use of a machine gun in a felony;

(g) If the standard sentence range under this section exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a deadly weapon enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced.

(5) The following additional times shall be added to the standard sentence range if the offender or an accomplice committed the offense while in a county jail or state correctional facility and the offender is being sentenced for one of the crimes listed in this subsection. If the offender or an accomplice committed one of the crimes listed in this subsection while in a county jail or state correctional facility, and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW to commit one of the crimes listed in this subsection, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section:

(a) Eighteen months for offenses committed under RCW 69.50.401(2) (a) or (b) or 69.50.410;

(b) Fifteen months for offenses committed under RCW 69.50.401(2) (c), (d), or (e);

(c) Twelve months for offenses committed under RCW 69.50.4013.

For the purposes of this subsection, all of the real property of a state correctional facility or county jail shall be deemed to be part of that facility or county jail.

(6) An additional twenty-four months shall be added to the standard sentence range for any ranked offense involving a violation of chapter 69.50 RCW if the offense was also a violation of RCW 69.50.435 or 9.94A.605. All enhancements under this subsection shall run consecutively to all other sentencing provisions, for all offenses sentenced under this chapter.

(7) An additional two years shall be added to the standard sentence range for vehicular homicide committed while under the influence of intoxicating liquor or any drug as defined by RCW 46.61.502 for each prior offense as defined in RCW 46.61.5055.

(8)(a) The following additional times shall be added to the standard sentence range for felony crimes committed on or after July 1, 2006, if the offense was committed with sexual motivation, as that term is defined in RCW 9.94A.030. If the offender is being sentenced for more than one offense, the sexual motivation enhancement must be added to the total period of total confinement

for all offenses, regardless of which underlying offense is subject to a sexual motivation enhancement. If the offender committed the offense with sexual motivation and the offender is being sentenced for an anticipatory offense under chapter 9A.28 RCW, the following additional times shall be added to the standard sentence range determined under subsection (2) of this section based on the felony crime of conviction as classified under RCW 9A.28.020:

(i) Two years for any felony defined under the law as a class A felony or with a statutory maximum sentence of at least twenty years, or both;

(ii) Eighteen months for any felony defined under any law as a class B felony or with a statutory maximum sentence of ten years, or both;

(iii) One year for any felony defined under any law as a class C felony or with a statutory maximum sentence of five years, or both;

(iv) If the offender is being sentenced for any sexual motivation enhancements under (i), (ii), and/or (iii) of this subsection and the offender has previously been sentenced for any sexual motivation enhancements on or after July 1, 2006, under (i), (ii), and/or (iii) of this subsection, all sexual motivation enhancements under this subsection shall be twice the amount of the enhancement listed;

(b) Notwithstanding any other provision of law, all sexual motivation enhancements under this subsection are mandatory, shall be served in total confinement, and shall run consecutively to all other sentencing provisions, including other sexual motivation enhancements, for all offenses sentenced under this chapter. However, whether or not a mandatory minimum term has expired, an offender serving a sentence under this subsection may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4);

(c) The sexual motivation enhancements in this subsection apply to all felony crimes;

(d) If the standard sentence range under this subsection exceeds the statutory maximum sentence for the offense, the statutory maximum sentence shall be the presumptive sentence unless the offender is a persistent offender. If the addition of a sexual motivation enhancement increases the sentence so that it would exceed the statutory maximum for the offense, the portion of the sentence representing the enhancement may not be reduced;

(e) The portion of the total confinement sentence which the offender must serve under this subsection shall be calculated before any earned early release time is credited to the offender;

(f) Nothing in this subsection prevents a sentencing court from imposing a sentence outside the standard sentence range pursuant to RCW 9.94A.535.

(9) An additional one-year enhancement shall be added to the standard sentence range for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089 committed on or after July 22, 2007, if the offender engaged, agreed, or offered to engage the victim in the sexual conduct in return for a fee. If the offender is being sentenced for more than one offense, the one-year enhancement must be added to the total period of total confinement for all offenses, regardless of which underlying offense is subject to the enhancement. If the offender is being sentenced for an anticipatory offense for the felony crimes of RCW 9A.44.073, 9A.44.076, 9A.44.079, 9A.44.083, 9A.44.086, or 9A.44.089, and the offender attempted, solicited another, or conspired to engage, agree, or offer to engage the victim in ~~((the))~~ the sexual conduct in return for a fee, an additional one-year enhancement shall be added to the standard sentence range determined under subsection (2) of this section. For purposes of this subsection, "sexual conduct" means

sexual intercourse or sexual contact, both as defined in chapter 9A.44 RCW.

(10) An additional twelve months and one day shall be added to the standard sentence range for a conviction of attempting to elude a police vehicle as defined by RCW 46.61.024, if the conviction included a finding by special allegation of endangering one or more persons under section 2 of this act."

On page 1, line 2 of the title, after "vehicle;" strike the remainder of the title and insert "amending RCW 9.94A.533; adding a new section to chapter 9.94A RCW; creating a new section; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 1030 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Takko and Ross spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 1030, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 1030, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 1030, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed FOURTH SUBSTITUTE HOUSE BILL NO. 1103 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. From statehood, Washington has constitutionally provided for the regulation of the practice of medicine and the sale of drugs and medicines. This constitutional recognition of the importance of regulating health care practitioners derives not from providers' financial interest in their license, but from the greater need to protect the public health and safety by assuring that the health care providers and medicines that society relies upon meet certain standards of quality.

The legislature finds that the issuance of a license to practice as a health care provider should be a means to promote quality and not be a means to provide financial benefit for providers. Statutory and administrative requirements provide sufficient due process protections to prevent the unwarranted revocation of a health care provider's license. While those due process protections must be maintained, there is an urgent need to return to the original constitutional mandate that patients be ensured quality from their health care providers. The legislature has recognized and medical malpractice reforms have recognized the importance of quality and patient safety through such measures as a new adverse events reporting system. Reforms to the health care provider licensing system is another step toward improving quality in health care. Therefore, the legislature intends to increase the authority of those engaged in the regulation of health care providers to swiftly identify and remove health care providers who pose a risk to the public.

Sec. 2. RCW 18.130.020 and 1995 c 336 s 1 are each amended to read as follows:

~~((Unless the context clearly requires otherwise.))~~ The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "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 this chapter or a chapter specified under RCW 18.130.040.

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

(3) "Secretary" means the secretary of health or the secretary's designee.

(4) "Board" means any of those boards specified in RCW 18.130.040.

(5) "Clinical expertise" means the proficiency or judgment that a license holder in a particular profession acquires through clinical experience or clinical practice and that is not possessed by a lay person.

(6) "Commission" means any of the commissions specified in RCW 18.130.040.

~~((6))~~ (7) "Unlicensed practice" means:

(a) Practicing a profession or operating a business identified in RCW 18.130.040 without holding a valid, unexpired, unrevoked, and unsuspended license to do so; or

(b) Representing to a consumer, through offerings, advertisements, or use of a professional title or designation, that the individual is qualified to practice a profession or operate a business identified in RCW 18.130.040, without holding a valid, unexpired, unrevoked, and unsuspended license to do so.

~~((7))~~ (8) "Disciplinary action" means sanctions identified in RCW 18.130.160.

~~((8))~~ (9) "Practice review" means an investigative audit of records related to the complaint, without prior identification of specific patient or consumer names, or an assessment of the conditions, circumstances, and methods of the professional's practice related to the complaint, to determine whether unprofessional conduct may have been committed.

~~((9))~~ (10) "Health agency" means city and county health departments and the department of health.

~~((10))~~ (11) "License," "licensing," and "licensure" shall be deemed equivalent to the terms "license," "licensing," "licensure," "certificate," "certification," and "registration" as those terms are defined in RCW 18.120.020.

(12) "Standards of practice" means the care, skill, and learning associated with the practice of a profession.

Sec. 3. RCW 18.130.050 and 2006 c 99 s 4 are each amended to read as follows:

Except as provided in section 5 of this act, the disciplining authority has the following authority:

(1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this chapter;

(2) To investigate all complaints or reports of unprofessional conduct as defined in this chapter ~~((and));~~

~~((3))~~ (3) To hold hearings as provided in this chapter;

~~((3))~~ (4) To issue subpoenas and administer oaths in connection with any investigation, consideration of an application for license, hearing, or proceeding held under this chapter;

~~((4))~~ (5) To take or cause depositions to be taken and use other discovery procedures as needed in any investigation, hearing, or proceeding held under this chapter;

~~((5))~~ (6) To compel attendance of witnesses at hearings;

~~((6))~~ (7) In the course of investigating a complaint or report of unprofessional conduct, to conduct practice reviews and to issue citations and assess fines for failure to produce documents, records, or other items in accordance with section 20 of this act;

~~((7))~~ (8) To take emergency action ordering summary suspension of a license, or restriction or limitation of the license holder's practice pending proceedings by the disciplining authority. Within fourteen days of a request by the affected license holder, the disciplining authority must provide a show cause hearing in accordance with the requirements of section 6 of this act. Consistent with RCW 18.130.370, a disciplining authority shall issue a summary suspension of the license or temporary practice permit of a license holder prohibited from practicing a health care profession in another state, federal, or foreign jurisdiction because of an act of unprofessional conduct that is substantially equivalent to an act of unprofessional conduct prohibited by this chapter or any of the chapters specified in RCW 18.130.040. The summary suspension remains in effect until proceedings by the Washington disciplining authority have been completed;

~~((8))~~ (9) To conduct show cause hearings in accordance with section 5 or 6 of this act to review an action taken by the disciplining

authority to suspend a license or restrict or limit a license holder's practice pending proceedings by the disciplining authority;

(10) To use a presiding officer as authorized in RCW 18.130.095(3) or the office of administrative hearings as authorized in chapter 34.12 RCW to conduct hearings. The disciplining authority shall make the final decision regarding disposition of the license unless the disciplining authority elects to delegate in writing the final decision to the presiding officer. Disciplining authorities identified in RCW 18.130.040(2)(b) may not delegate the final decision regarding disposition of the license or imposition of sanctions to a presiding officer in any case pertaining to standards of practice or where clinical expertise is necessary;

~~((9))~~ (11) To use individual members of the boards to direct investigations and to authorize the issuance of a citation under subsection (7) of this section. However, the member of the board shall not subsequently participate in the hearing of the case;

~~((10))~~ (12) To enter into contracts for professional services determined to be necessary for adequate enforcement of this chapter;

~~((11))~~ (13) To contract with (~~(licensees)~~) license holders or other persons or organizations to provide services necessary for the monitoring and supervision of (~~(licensees)~~) license holders who are placed on probation, whose professional activities are restricted, or who are for any authorized purpose subject to monitoring by the disciplining authority;

~~((12))~~ (14) To adopt standards of professional conduct or practice;

~~((13))~~ (15) To grant or deny license applications, and in the event of a finding of unprofessional conduct by an applicant or license holder, to impose any sanction against a license applicant or license holder provided by this chapter. After January 1, 2009, all sanctions must be issued in accordance with section 12 of this act;

~~((14))~~ (16) To restrict or place conditions on the practice of new licensees in order to protect the public and promote the safety of and confidence in the health care system;

(17) To designate individuals authorized to sign subpoenas and statements of charges;

~~((15))~~ (18) To establish panels consisting of three or more members of the board to perform any duty or authority within the board's jurisdiction under this chapter;

~~((16))~~ (19) To review and audit the records of licensed health facilities' or services' quality assurance committee decisions in which a (~~(licensee's)~~) license holder's practice privilege or employment is terminated or restricted. Each health facility or service shall produce and make accessible to the disciplining authority the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to discovery or introduction into evidence in any civil action pursuant to RCW 70.41.200(3).

Sec. 4. RCW 18.130.060 and 2006 c 99 s 1 are each amended to read as follows:

In addition to the authority specified in RCW 18.130.050 and section 5 of this act, the secretary has the following additional authority:

(1) To employ such investigative, administrative, and clerical staff as necessary for the enforcement of this chapter. The secretary must, whenever practical, make primary assignments on a long-term basis to foster the development and maintenance of staff expertise. To ensure continuity and best practices, the secretary will regularly evaluate staff assignments and workload distribution;

(2) Upon the request of a board or commission, to appoint pro tem members to participate as members of a panel of the board or commission in connection with proceedings specifically identified in

the request. Individuals so appointed must meet the same minimum qualifications as regular members of the board or commission. Pro tem members appointed for matters under this chapter are appointed for a term of no more than one year. No pro tem member may serve more than four one-year terms. While serving as board or commission members pro tem, persons so appointed have all the powers, duties, and immunities, and are entitled to the emoluments, including travel expenses in accordance with RCW 43.03.050 and 43.03.060, of regular members of the board or commission. The chairperson of a panel shall be a regular member of the board or commission appointed by the board or commission chairperson. Panels have authority to act as directed by the board or commission with respect to all matters (~~(concerning the review, investigation, and adjudication of all complaints, allegations, charges, and matters)~~) subject to the jurisdiction of the board or commission and within the authority of the board or commission. The authority to act through panels does not restrict the authority of the board or commission to act as a single body at any phase of proceedings within the board's or commission's jurisdiction. Board or commission panels may (~~(make interim orders and)~~) issue final orders and decisions with respect to matters and cases delegated to the panel by the board or commission. Final decisions may be appealed as provided in chapter 34.05 RCW, the administrative procedure act;

(3) To establish fees to be paid for witnesses, expert witnesses, and consultants used in any investigation and to establish fees to witnesses in any agency adjudicative proceeding as authorized by RCW 34.05.446;

(4) To conduct investigations and practice reviews at the direction of the disciplining authority and to issue subpoenas, administer oaths, and take depositions in the course of conducting those investigations and practice reviews at the direction of the disciplining authority;

(5) To have the health professions regulatory program establish a system to recruit potential public members, to review the qualifications of such potential members, and to provide orientation to those public members appointed pursuant to law by the governor or the secretary to the boards and commissions specified in RCW 18.130.040(2)(b), and to the advisory committees and councils for professions specified in RCW 18.130.040(2)(a); and

(6) To adopt rules, in consultation with the disciplining authorities, requiring every license holder to report information identified in RCW 18.130.070.

NEW SECTION. Sec. 5. A new section is added to chapter 18.130 RCW to read as follows:

With regard to complaints that only allege that a license holder has committed an act or acts of unprofessional conduct involving sexual misconduct, the secretary shall serve as the sole disciplining authority in every aspect of the disciplinary process, including initiating investigations, investigating, determining the disposition of the complaint, holding hearings, preparing findings of fact, issuing orders or dismissals of charges as provided in RCW 18.130.110, entering into stipulations permitted by RCW 18.130.172, or issuing summary suspensions under section 6 of this act. The board or commission shall review all cases and only refer to the secretary sexual misconduct cases that do not involve clinical expertise or standard of care issues.

NEW SECTION. Sec. 6. A new section is added to chapter 18.130 RCW to read as follows:

(1) Upon an order of a disciplining authority to summarily suspend a license, or restrict or limit a license holder's practice

pursuant to RCW 18.130.050 or section 5 of this act, the license holder is entitled to a show cause hearing before a panel or the secretary as identified in subsection (2) of this section within fourteen days of requesting a show cause hearing. The license holder must request the show cause hearing within twenty days of the issuance of the order. At the show cause hearing, the disciplining authority has the burden of demonstrating that more probable than not, the license holder poses an immediate threat to the public health and safety. The license holder must request a hearing regarding the statement of charges in accordance with RCW 18.130.090.

(2)(a) In the case of a license holder who is regulated by a board or commission identified in RCW 18.130.040(2)(b), the show cause hearing must be held by a panel of the appropriate board or commission.

(b) In the case of a license holder who is regulated by the secretary under RCW 18.130.040(2)(a), the show cause hearing must be held by the secretary.

(3) At the show cause hearing, the show cause hearing panel or the secretary may consider the statement of charges, the motion, and documents supporting the request for summary action, the respondent's answer to the statement of charges, and shall provide the license holder with an opportunity to provide documentary evidence and written testimony, and be represented by counsel. Prior to the show cause hearing, the disciplining authority shall provide the license holder with all documentation in support of the charges against the license holder.

(4)(a) If the show cause hearing panel or secretary determines that the license holder does not pose an immediate threat to the public health and safety, the panel or secretary may overturn the summary suspension or restriction order.

(b) If the show cause hearing panel or secretary determines that the license holder poses an immediate threat to the public health and safety, the summary suspension or restriction order shall remain in effect. The show cause hearing panel or secretary may amend the order as long as the amended order ensures that the license holder will no longer pose an immediate threat to the public health and safety.

(5) Within forty-five days of the show cause hearing panel's or secretary's determination to sustain the summary suspension or place restrictions on the license, the license holder may request a full hearing on the merits of the disciplining authority's decision to suspend or restrict the license. A full hearing must be provided within forty-five days of receipt of the request for a hearing, unless stipulated otherwise.

NEW SECTION. Sec. 7. A new section is added to chapter 18.130 RCW to read as follows:

(1)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with investigation or licensing and investigate the complete criminal history and pending charges of all applicants and license holders.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. Disciplining authorities shall restrict the use of background check results in determining the individual's suitability for a license and in conducting disciplinary functions.

(2)(a) The secretary shall establish requirements for each applicant for an initial license to obtain a state background check through the state patrol prior to the issuance of any license. The background check may be fingerprint-based at the discretion of the department.

(b) The secretary shall specify those situations where a background check under (a) of this subsection is inadequate and an applicant for an initial license must obtain an electronic fingerprint-based national background check through the state patrol and federal bureau of investigation. Situations where a background check is inadequate may include instances where an applicant has recently lived out of state or where the applicant has a criminal record in Washington. The secretary shall issue a temporary practice permit to an applicant who must have a national background check conducted if the background check conducted under (a) of this subsection does not reveal a criminal record in Washington, and if the applicant meets the provisions of RCW 18.130.075.

(3) In addition to the background check required in subsection (2) of this section, an investigation may include an examination of state and national criminal identification data. The disciplining authority shall use the information for determining eligibility for licensure or renewal. The disciplining authority may also use the information when determining whether to proceed with an investigation of a report under RCW 18.130.080. For a national criminal history records check, the department shall require fingerprints be submitted to and searched through the Washington state patrol identification and criminal history section. The Washington state patrol shall forward the fingerprints to the federal bureau of investigation.

(4) The secretary shall adopt rules to require license holders to report to the disciplining authority any arrests, convictions, or other determinations or findings by a law enforcement agency occurring after the effective date of this section for a criminal offense. The report must be made within fourteen days of the conviction.

(5) The secretary shall conduct an annual review of a representative sample of all license holders who have previously obtained a background check through the department. The selection of the license holders to be reviewed must be representative of all categories of license holders and geographic locations.

(6)(a) When deciding whether or not to issue an initial license, the disciplining authority shall consider the results of any background check conducted under subsection (2) of this section that reveals a conviction for any criminal offense that constitutes unprofessional conduct under this chapter or the chapters specified in RCW 18.130.040(2) or a series of arrests that when considered together demonstrate a pattern of behavior that, without investigation, may pose a risk to the safety of the license holder's patients.

(b) If the background check conducted under subsection (2) of this section reveals any information related to unprofessional conduct that has not been previously disclosed to the disciplining authority, the disciplining authority shall take appropriate disciplinary action against the license holder.

(7) The department shall:

(a) Require the applicant or license holder to submit full sets of fingerprints if necessary to complete the background check;

(b) Require the applicant to submit any information required by the state patrol; and

(c) Notify the applicant if their background check reveals a criminal record. Only when the background check reveals a criminal record will an applicant receive a notice. Upon receiving such a notice, the applicant may request and the department shall provide a copy of the record to the extent permitted under RCW 10.97.050, including making accessible to the applicant for their personal use and information any records of arrest, charges, or allegations of criminal conduct or other nonconviction data pursuant to RCW 10.97.050(4).

(8) Criminal justice agencies shall provide the secretary with both conviction and nonconviction information that the secretary requests for investigations under this chapter.

(9) There is established a unit within the department for the purpose of detection, investigation, and prosecution of any act prohibited or declared unlawful under this chapter. The secretary will employ supervisory, legal, and investigative personnel for the unit who must be qualified by training and experience.

Sec. 8. RCW 18.130.080 and 2006 c 99 s 5 are each amended to read as follows:

(1) ~~((A person, including but not limited to consumers, licensees, corporations, organizations, health care facilities, impaired practitioner programs, or voluntary substance abuse monitoring programs approved by disciplining authorities, and state and local governmental agencies,))~~ (a) An individual, an impaired practitioner program, or a voluntary substance abuse monitoring program approved by a disciplining authority, may submit a written complaint to the disciplining authority charging a license holder or applicant with unprofessional conduct and specifying the grounds therefor or to report information to the disciplining authority, or voluntary substance abuse monitoring program, or an impaired practitioner program approved by the disciplining authority, which indicates that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(b)(i) Every license holder, corporation, organization, health care facility, and state and local governmental agency that employs a license holder shall report to the disciplining authority when the employed license holder's services have been terminated or restricted based upon a final determination that the license holder has either committed an act or acts that may constitute unprofessional conduct or that the license holder may not be able to practice his or her profession with reasonable skill and safety to consumers as a result of a mental or physical condition.

(ii) All reports required by (b)(i) of this subsection must be submitted to the disciplining authority as soon as possible, but no later than twenty days after a determination has been made. A report should contain the following information, if known:

(A) The name, address, and telephone number of the person making the report;

(B) The name, address, and telephone number of the license holder being reported;

(C) The case number of any patient whose treatment is the subject of the report;

(D) A brief description or summary of the facts that gave rise to the issuance of the report, including dates of occurrences;

(E) If court action is involved, the name of the court in which the action is filed, the date of filing, and the docket number; and

(F) Any further information that would aid in the evaluation of the report.

(iii) Mandatory reports required by (b)(i) of this subsection are exempt from public inspection and copying to the extent permitted under chapter 42.56 RCW or to the extent that public inspection or copying of the report would invade or violate a person's right to privacy as set forth in RCW 42.56.050.

(2) If the disciplining authority determines that ~~((the))~~ a complaint submitted under subsection (1) of this section merits investigation, or if the disciplining authority has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the disciplining authority shall investigate to determine whether there has been unprofessional

conduct. In determining whether or not to investigate, the disciplining authority shall consider any prior complaints received by the disciplining authority, any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any comparable action taken by other state disciplining authorities.

~~((2))~~ (3) Notwithstanding subsection ~~((1))~~ (2) of this section, the disciplining authority shall initiate an investigation in every instance where:

(a) The disciplining authority receives information that a health care provider has been disqualified from participating in the federal medicare program, under Title XVIII of the federal social security act, or the federal medicaid program, under Title XIX of the federal social security act; or

(b) There is a pattern of complaints, arrests, or other actions that may not have resulted in a formal adjudication of wrongdoing, but when considered together demonstrate a pattern of similar conduct that, without investigation, likely poses a risk to the safety of the license holder's patients.

(4) Failure of a license holder to submit a mandatory report to the disciplining authority under subsection (1)(b) of this section is punishable by a civil penalty not to exceed five hundred dollars and constitutes unprofessional conduct.

(5) If a report has been made by a hospital to the department under RCW 70.41.210 or an ambulatory surgical facility under RCW 70.230.120, a report to the disciplining authority under subsection (1)(b) of this section is not required.

~~((3))~~ A person who files a complaint or reports information under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint.

(6) A person is immune from civil liability, whether direct or derivative, for providing information in good faith to the disciplining authority under this section.

(7)(a) The secretary is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation or licensing of persons under this chapter.

(b) Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited.

Sec. 9. RCW 18.130.095 and 2005 c 274 s 231 are each amended to read as follows:

(1)(a) The secretary, in consultation with the disciplining authorities, shall develop uniform procedural rules to respond to public inquiries concerning complaints and their disposition, active investigations, statement of charges, findings of fact, and final orders involving a ~~((licensee))~~ license holder, applicant, or unlicensed person. The uniform procedural rules adopted under this subsection apply to all adjudicative proceedings conducted under this chapter and shall include provisions for establishing time periods for initial assessment, investigation, charging, discovery, settlement, and adjudication of complaints, and shall include enforcement provisions for violations of the specific time periods by the department, the disciplining authority, and the respondent. A ~~((licensee))~~ license holder must be notified upon receipt of a complaint, except when the notification would impede an effective investigation. At the earliest point of time the ~~((licensee))~~ license holder must be allowed to submit a written statement about that complaint, which statement must be included in the file. Complaints filed after July 27, 1997, are exempt from public disclosure under chapter 42.56 RCW until the complaint has been initially assessed and determined to warrant an investigation by the disciplining authority. Complaints determined

not to warrant an investigation by the disciplining authority are no longer considered complaints, but must remain in the records and tracking system of the department. Information about complaints that did not warrant an investigation, including the existence of the complaint, may be released only upon receipt of a written public disclosure request or pursuant to an interagency agreement as provided in (b) of this subsection. Complaints determined to warrant no cause for action after investigation are subject to public disclosure, must include an explanation of the determination to close the complaint, and must remain in the records and tracking system of the department.

(b) The secretary, on behalf of the disciplining authorities, shall enter into interagency agreements for the exchange of records, which may include complaints filed but not yet assessed, with other state agencies if access to the records will assist those agencies in meeting their federal or state statutory responsibilities. Records obtained by state agencies under the interagency agreements are subject to the limitations on disclosure contained in (a) of this subsection.

(2) The uniform procedures for conducting investigations shall provide that prior to taking a written statement:

(a) For violation of this chapter, the investigator shall inform such person, in writing of: (i) The nature of the complaint; (ii) that the person may consult with legal counsel at his or her expense prior to making a statement; and (iii) that any statement that the person makes may be used in an adjudicative proceeding conducted under this chapter; and

(b) From a witness or potential witness in an investigation under this chapter, the investigator shall inform the person, in writing, that the statement may be released to the ~~((licensee))~~ license holder, applicant, or unlicensed person under investigation if a statement of charges is issued.

(3) Only upon the authorization of a disciplining authority identified in RCW 18.130.040(2)(b), the secretary, or his or her designee, may serve as the presiding officer for any disciplinary proceedings of the disciplining authority authorized under this chapter. ~~((Except as provided in RCW 18.130.050(8);))~~ 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. The secretary, in consultation with the disciplining authorities, shall adopt procedures for implementing this subsection.

(4) The uniform procedural rules shall be adopted by all disciplining authorities listed in RCW 18.130.040(2), and shall be used for all adjudicative proceedings conducted under this chapter, as defined by chapter 34.05 RCW. The uniform procedural rules shall address the use of a presiding officer authorized in subsection (3) of this section to determine and issue decisions on all legal issues and motions arising during adjudicative proceedings.

Sec. 10. RCW 18.130.160 and 2006 c 99 s 6 and 2006 c 8 s 104 are each reenacted and amended to read as follows:

Upon a finding, after hearing, that a license holder ~~((or applicant))~~ has committed unprofessional conduct or is unable to practice with reasonable skill and safety due to a physical or mental condition, the disciplining authority ~~((may consider the imposition of sanctions, taking into account))~~ shall issue an order including sanctions adopted in accordance with the schedule adopted under section 12 of this act giving proper consideration to any prior findings of fact under RCW 18.130.110, any stipulations to informal disposition under RCW 18.130.172, and any action taken by other in-state or out-of-state disciplining authorities~~((, and issue an))~~. The

order ~~((providing))~~ must provide for one or any combination of the following, as directed by the schedule:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Restriction or limitation of the practice;
- (4) Requiring the satisfactory completion of a specific program of remedial education or treatment;
- (5) The monitoring of the practice by a supervisor approved by the disciplining authority;
- (6) Censure or reprimand;
- (7) Compliance with conditions of probation for a designated period of time;
- (8) Payment of a fine for each violation of this chapter, not to exceed five thousand dollars per violation. Funds received shall be placed in the health professions account;
- (9) Denial of the license request;
- (10) Corrective action;
- (11) Refund of fees billed to and collected from the consumer;
- (12) A surrender of the practitioner's license in lieu of other sanctions, which must be reported to the federal data bank.

Any of the actions under this section may be totally or partly stayed by the disciplining authority. Safeguarding the public's health and safety is the paramount responsibility of every disciplining authority ~~((and))~~. In determining what action is appropriate, the disciplining authority must consider the schedule adopted under section 12 of this act. Where the schedule allows flexibility in determining the appropriate sanction, the disciplining authority must first consider what sanctions are necessary to protect or compensate the public. Only after such provisions have been made may the disciplining authority consider and include in the order requirements designed to rehabilitate the license holder ~~((or applicant))~~. All costs associated with compliance with orders issued under this section are the obligation of the license holder ~~((or applicant))~~. The disciplining authority may order permanent revocation of a license if it finds that the license holder can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety.

Surrender or permanent revocation of a license under this section is not subject to a petition for reinstatement under RCW 18.130.150.

The disciplining authority may determine that a case presents unique circumstances that the schedule adopted under section 12 of this act does not adequately address. The disciplining authority may deviate from the schedule adopted under section 12 of this act when selecting appropriate sanctions, but the disciplining authority must issue a written explanation of the basis for not following the schedule.

The ~~((licensee or applicant))~~ license holder may enter into a stipulated disposition of charges that includes one or more of the sanctions of this section, but only after a statement of charges has been issued and the ~~((licensee))~~ license holder has been afforded the opportunity for a hearing and has elected on the record to forego such a hearing. The stipulation shall either contain one or more specific findings of unprofessional conduct or inability to practice, or a statement by the ~~((licensee))~~ license holder acknowledging that evidence is sufficient to justify one or more specified findings of unprofessional conduct or inability to practice. The stipulation entered into pursuant to this subsection shall be considered formal disciplinary action for all purposes.

Sec. 11. RCW 18.130.170 and 1995 c 336 s 8 are each amended to read as follows:

(1) If the disciplining authority believes a license holder (~~(or applicant)~~) may be unable to practice with reasonable skill and safety to consumers by reason of any mental or physical condition, a statement of charges in the name of the disciplining authority shall be served on the license holder (~~(or applicant)~~) and notice shall also be issued providing an opportunity for a hearing. The hearing shall be limited to the sole issue of the capacity of the license holder (~~(or applicant)~~) to practice with reasonable skill and safety. If the disciplining authority determines that the license holder (~~(or applicant)~~) is unable to practice with reasonable skill and safety for one of the reasons stated in this subsection, the disciplining authority shall impose such sanctions under RCW 18.130.160 as is deemed necessary to protect the public.

(2)(a) In investigating or adjudicating a complaint or report that a license holder (~~(or applicant)~~) may be unable to practice with reasonable skill or safety by reason of any mental or physical condition, the disciplining authority may require a license holder (~~(or applicant)~~) to submit to a mental or physical examination by one or more licensed or certified health professionals designated by the disciplining authority. The license holder (~~(or applicant)~~) shall be provided written notice of the disciplining authority's intent to order a mental or physical examination, which notice shall include: (i) A statement of the specific conduct, event, or circumstances justifying an examination; (ii) a summary of the evidence supporting the disciplining authority's concern that the license holder (~~(or applicant)~~) may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, and the grounds for believing such evidence to be credible and reliable; (iii) a statement of the nature, purpose, scope, and content of the intended examination; (iv) a statement that the license holder (~~(or applicant)~~) has the right to respond in writing within twenty days to challenge the disciplining authority's grounds for ordering an examination or to challenge the manner or form of the examination; and (v) a statement that if the license holder (~~(or applicant)~~) timely responds to the notice of intent, then the license holder (~~(or applicant)~~) will not be required to submit to the examination while the response is under consideration.

(b) Upon submission of a timely response to the notice of intent to order a mental or physical examination, the license holder (~~(or applicant)~~) shall have an opportunity to respond to or refute such an order by submission of evidence or written argument or both. The evidence and written argument supporting and opposing the mental or physical examination shall be reviewed by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder (~~(or applicant)~~) or a neutral decision maker approved by the disciplining authority. The reviewing panel of the disciplining authority or the approved neutral decision maker may, in its discretion, ask for oral argument from the parties. The reviewing panel of the disciplining authority or the approved neutral decision maker shall prepare a written decision as to whether: There is reasonable cause to believe that the license holder (~~(or applicant)~~) may be unable to practice with reasonable skill and safety by reason of a mental or physical condition, or the manner or form of the mental or physical examination is appropriate, or both.

(c) Upon receipt by the disciplining authority of the written decision, or upon the failure of the license holder (~~(or applicant)~~) to timely respond to the notice of intent, the disciplining authority may issue an order requiring the license holder (~~(or applicant)~~) to undergo a mental or physical examination. All such mental or physical examinations shall be narrowly tailored to address only the alleged mental or physical condition and the ability of the license holder (~~(or applicant)~~) to practice with reasonable skill and safety. An order of the disciplining authority requiring the license holder (~~(or applicant)~~)

to undergo a mental or physical examination is not a final order for purposes of appeal. The cost of the examinations ordered by the disciplining authority shall be paid out of the health professions account. In addition to any examinations ordered by the disciplining authority, the (~~(licensee)~~) license holder may submit physical or mental examination reports from licensed or certified health professionals of the license holder's (~~(or applicant's)~~) choosing and expense.

(d) If the disciplining authority finds that a license holder (~~(or applicant)~~) has failed to submit to a properly ordered mental or physical examination, then the disciplining authority may order appropriate action or discipline under RCW 18.130.180(9), unless the failure was due to circumstances beyond the person's control. However, no such action or discipline may be imposed unless the license holder (~~(or applicant)~~) has had the notice and opportunity to challenge the disciplining authority's grounds for ordering the examination, to challenge the manner and form, to assert any other defenses, and to have such challenges or defenses considered by either a panel of the disciplining authority members who have not been involved with the allegations against the license holder (~~(or applicant)~~) or a neutral decision maker approved by the disciplining authority, as previously set forth in this section. Further, the action or discipline ordered by the disciplining authority shall not be more severe than a suspension of the license, certification, registration, or application until such time as the license holder (~~(or applicant)~~) complies with the properly ordered mental or physical examination.

(e) Nothing in this section shall restrict the power of a disciplining authority to act in an emergency under RCW 34.05.422(4), 34.05.479, and 18.130.050(~~(7)~~) (8).

(f) A determination by a court of competent jurisdiction that a license holder (~~(or applicant)~~) is mentally incompetent or (~~(mentally ill)~~) an individual with mental illness is presumptive evidence of the license holder's (~~(or applicant's)~~) inability to practice with reasonable skill and safety. An individual affected under this section shall at reasonable intervals be afforded an opportunity, at his or her expense, to demonstrate that the individual can resume competent practice with reasonable skill and safety to the consumer.

(3) For the purpose of subsection (2) of this section, (~~(an applicant or)~~) a license holder governed by this chapter, by making application, practicing, or filing a license renewal, is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the ground that the testimony or reports constitute privileged communications.

NEW SECTION. Sec. 12. A new section is added to chapter 18.130 RCW to read as follows:

(1) Each of the disciplining authorities identified in RCW 18.130.040(2)(b) shall appoint a representative to review the secretary's sanctioning guidelines, as well as guidelines adopted by any of the boards and commissions, and collaborate to develop a schedule that defines appropriate ranges of sanctions that are applicable upon a determination that a license holder has committed unprofessional conduct as defined in this chapter or the chapters specified in RCW 18.130.040(2). The schedule must identify aggravating and mitigating circumstances that may enhance or reduce the sanction imposed by the disciplining authority for unprofessional conduct. The schedule must apply to all disciplining authorities. In addition, the disciplining authorities shall make provisions for instances in which there are multiple findings of unprofessional

conduct. When establishing the proposed schedule, the disciplining authorities shall consider maintaining consistent sanction determinations that maximize the protection of the public's health and while maintaining the rights of health care providers of the different health professions. The disciplining authorities shall submit the proposed schedule and recommendations to modify or adopt the secretary's guidelines to the secretary no later than November 15, 2008.

(2) The secretary shall adopt rules establishing a uniform sanctioning schedule that is consistent with the proposed schedule developed under subsection (1) of this section. The schedule shall be applied to all disciplinary actions commenced under this chapter after January 1, 2009. The secretary shall use his or her emergency rule-making authority pursuant to the procedures under chapter 34.05 RCW, to adopt rules that take effect no later than January 1, 2009, to implement the schedule.

(3) The disciplining authority may determine that a case presents unique circumstances that the schedule adopted under this section does not adequately address. The disciplining authority may deviate from the schedule adopted under this section when selecting appropriate sanctions, but the disciplining authority must issue a written explanation in the order of the basis for not following the schedule.

(4) The secretary shall report to the legislature by January 15, 2009, on the adoption of the sanctioning schedule.

Sec. 13. RCW 18.130.310 and 1989 1st ex.s. c 9 s 313 are each amended to read as follows:

(1) Subject to RCW 40.07.040, the disciplinary authority shall submit ~~((a biennial))~~ an annual report to the legislature on its proceedings during the ~~((biennium))~~ year, detailing the number of complaints made, investigated, and adjudicated and manner of disposition. In addition, the report must provide data on the department's background check activities conducted under section 7 of this act and the effectiveness of those activities in identifying potential license holders who may not be qualified to practice safely. The report must summarize the distribution of the number of cases assigned to each attorney and investigator for each profession. The identity of the attorney and investigator must remain anonymous. The report may include recommendations for improving the disciplinary process, including proposed legislation. The department shall develop a uniform report format.

(2) Each disciplining authority identified in RCW 18.130.040(2)(b) may submit an annual report to complement the report required under subsection (1) of this section. Each report may provide additional information about the disciplinary activities, rule-making and policy activities, and receipts and expenditures for the individual disciplining authority.

Sec. 14. RCW 70.41.210 and 2005 c 470 s 1 are each amended to read as follows:

(1) The chief administrator or executive officer of a hospital shall report to the department when the practice of a health care practitioner as defined in subsection (2) of this section is restricted, suspended, limited, or terminated based upon a conviction, determination, or finding by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180. The chief administrator or executive officer shall also report any voluntary restriction or termination of the practice of a health care practitioner as defined in subsection (2) of this section while the practitioner is under investigation or the subject of a proceeding by the hospital regarding

unprofessional conduct, or in return for the hospital not conducting such an investigation or proceeding or not taking action. The department will forward the report to the appropriate disciplining authority.

(2) The reporting requirements apply to the following health care practitioners: Pharmacists as defined in chapter 18.64 RCW; advanced registered nurse practitioners as defined in chapter 18.79 RCW; dentists as defined in chapter 18.32 RCW; naturopaths as defined in chapter 18.36A RCW; optometrists as defined in chapter 18.53 RCW; osteopathic physicians and surgeons as defined in chapter 18.57 RCW; osteopathic ~~((physician—[physicians]))~~ physicians' assistants as defined in chapter 18.57A RCW; physicians as defined in chapter 18.71 RCW; physician assistants as defined in chapter 18.71A RCW; podiatric physicians and surgeons as defined in chapter 18.22 RCW; and psychologists as defined in chapter 18.83 RCW.

(3) Reports made under subsection (1) of this section shall be made within fifteen days of the date: (a) A conviction, determination, or finding is made by the hospital that the health care practitioner has committed an action defined as unprofessional conduct under RCW 18.130.180; or (b) the voluntary restriction or termination of the practice of a health care practitioner, including his or her voluntary resignation, while under investigation or the subject of proceedings regarding unprofessional conduct under RCW 18.130.180 is accepted by the hospital.

(4) Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed ~~((two))~~ five hundred ~~((fifty))~~ dollars.

(5) A hospital, its chief administrator, or its executive officer who files a report under this section is immune from suit, whether direct or derivative, in any civil action related to the filing or contents of the report, unless the conviction, determination, or finding on which the report and its content are based is proven to not have been made in good faith. The prevailing party in any action brought alleging the conviction, determination, finding, or report was not made in good faith, shall be entitled to recover the costs of litigation, including reasonable attorneys' fees.

(6) The department shall forward reports made under subsection (1) of this section to the appropriate disciplining authority designated under Title 18 RCW within fifteen days of the date the report is received by the department. The department shall notify a hospital that has made a report under subsection (1) of this section of the results of the disciplining authority's case disposition decision within fifteen days after the case disposition. Case disposition is the decision whether to issue a statement of charges, take informal action, or close the complaint without action against a practitioner. In its biennial report to the legislature under RCW 18.130.310, the department shall specifically identify the case dispositions of reports made by hospitals under subsection (1) of this section.

(7) The department shall not increase hospital license fees to carry out this section before July 1, ~~((2007))~~ 2008.

NEW SECTION. Sec. 15. A new section is added to chapter 42.52 RCW to read as follows:

Members of a health profession board or commission as identified in RCW 18.130.040(2)(b) may express their professional opinions to an elected official about the work of the board or commission on which the member serves, even if those opinions differ from the department of health's official position. Such communication shall be to inform the elected official and not to lobby in support or opposition to any initiative to the legislature.

Sec. 16. RCW 43.70.320 and 1993 c 492 s 411 are each amended to read as follows:

(1) There is created in the state treasury an account to be known as the health professions account. All fees received by the department for health professions licenses, registration, certifications, renewals, or examinations and the civil penalties assessed and collected by the department under RCW 18.130.190 shall be forwarded to the state treasurer who shall credit such moneys to the health professions account.

(2) All expenses incurred in carrying out the health professions licensing activities of the department shall be paid from the account as authorized by legislative appropriation, except as provided in subsection (4) of this section. Any residue in the account shall be accumulated and shall not revert to the general fund at the end of the biennium.

(3) The secretary shall biennially prepare a budget request based on the anticipated costs of administering the health professions licensing activities of the department which shall include the estimated income from health professions fees.

(4) The secretary shall, at the request of a board or commission as applicable, spend unappropriated funds in the health professions account that are allocated to the requesting board or commission to meet unanticipated costs of that board or commission when revenues exceed more than fifteen percent over the department's estimated six-year spending projections for the requesting board or commission. Unanticipated costs shall be limited to spending as authorized in subsection (3) of this section for anticipated costs.

Sec. 17. RCW 18.130.040 and 2007 c 269 s 17 and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

- (i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;
- (ii) Naturopaths licensed under chapter 18.36A RCW;
- (iii) Midwives licensed under chapter 18.50 RCW;
- (iv) Ocularists licensed under chapter 18.55 RCW;
- (v) Massage operators and businesses licensed under chapter 18.108 RCW;
- (vi) Dental hygienists licensed under chapter 18.29 RCW;
- (vii) Acupuncturists licensed under chapter 18.06 RCW;
- (viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;
- (ix) Respiratory care practitioners licensed under chapter 18.89 RCW;
- (x) Persons registered under chapter 18.19 RCW;
- (xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;
- (xii) Persons registered as nursing pool operators under chapter 18.52C RCW;
- (xiii) Nursing assistants registered or certified under chapter 18.88A RCW;
- (xiv) Health care assistants certified under chapter 18.135 RCW;
- (xv) Dietitians and nutritionists certified under chapter 18.138 RCW;
- (xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists; and

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses ~~((based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by)).~~ The disciplining authority may also grant a license subject to conditions.

(4) All disciplining authorities shall adopt procedures to ensure substantially consistent application of this chapter, the Uniform Disciplinary Act, among the disciplining authorities listed in subsection (2) of this section.

Sec. 18. RCW 18.130.040 and 2007 c 269 s 17, 2007 c 253 s 13, and 2007 c 70 s 11 are each reenacted and amended to read as follows:

(1) This chapter applies only to the secretary and the boards and commissions having jurisdiction in relation to the professions licensed under the chapters specified in this section. This chapter does not apply to any business or profession not licensed under the chapters specified in this section.

(2)(a) The secretary has authority under this chapter in relation to the following professions:

(i) Dispensing opticians licensed and designated apprentices under chapter 18.34 RCW;

(ii) Naturopaths licensed under chapter 18.36A RCW;

(iii) Midwives licensed under chapter 18.50 RCW;

(iv) Ocularists licensed under chapter 18.55 RCW;

(v) Massage operators and businesses licensed under chapter 18.108 RCW;

(vi) Dental hygienists licensed under chapter 18.29 RCW;

(vii) Acupuncturists licensed under chapter 18.06 RCW;

(viii) Radiologic technologists certified and X-ray technicians registered under chapter 18.84 RCW;

(ix) Respiratory care practitioners licensed under chapter 18.89 RCW;

(x) Persons registered under chapter 18.19 RCW;

(xi) Persons licensed as mental health counselors, marriage and family therapists, and social workers under chapter 18.225 RCW;

(xii) Persons registered as nursing pool operators under chapter 18.52C RCW;

(xiii) Nursing assistants registered or certified under chapter 18.88A RCW;

(xiv) Health care assistants certified under chapter 18.135 RCW;

(xv) Dietitians and nutritionists certified under chapter 18.138 RCW;

(xvi) Chemical dependency professionals certified under chapter 18.205 RCW;

(xvii) Sex offender treatment providers and certified affiliate sex offender treatment providers certified under chapter 18.155 RCW;

(xviii) Persons licensed and certified under chapter 18.73 RCW or RCW 18.71.205;

(xix) Denturists licensed under chapter 18.30 RCW;

(xx) Orthotists and prosthetists licensed under chapter 18.200 RCW;

(xxi) Surgical technologists registered under chapter 18.215 RCW;

(xxii) Recreational therapists;

(xxiii) Animal massage practitioners certified under chapter 18.240 RCW; and

(xxiv) Athletic trainers licensed under chapter 18.250 RCW.

(b) The boards and commissions having authority under this chapter are as follows:

(i) The podiatric medical board as established in chapter 18.22 RCW;

(ii) The chiropractic quality assurance commission as established in chapter 18.25 RCW;

(iii) The dental quality assurance commission as established in chapter 18.32 RCW governing licenses issued under chapter 18.32 RCW and licenses and registrations issued under chapter 18.260 RCW;

(iv) The board of hearing and speech as established in chapter 18.35 RCW;

(v) The board of examiners for nursing home administrators as established in chapter 18.52 RCW;

(vi) The optometry board as established in chapter 18.54 RCW governing licenses issued under chapter 18.53 RCW;

(vii) The board of osteopathic medicine and surgery as established in chapter 18.57 RCW governing licenses issued under chapters 18.57 and 18.57A RCW;

(viii) The board of pharmacy as established in chapter 18.64 RCW governing licenses issued under chapters 18.64 and 18.64A RCW;

(ix) The medical quality assurance commission as established in chapter 18.71 RCW governing licenses and registrations issued under chapters 18.71 and 18.71A RCW;

(x) The board of physical therapy as established in chapter 18.74 RCW;

(xi) The board of occupational therapy practice as established in chapter 18.59 RCW;

(xii) The nursing care quality assurance commission as established in chapter 18.79 RCW governing licenses and registrations issued under that chapter;

(xiii) The examining board of psychology and its disciplinary committee as established in chapter 18.83 RCW; and

(xiv) The veterinary board of governors as established in chapter 18.92 RCW.

(3) In addition to the authority to discipline license holders, the disciplining authority has the authority to grant or deny licenses ~~((based on the conditions and criteria established in this chapter and the chapters specified in subsection (2) of this section. This chapter also governs any investigation, hearing, or proceeding relating to denial of licensure or issuance of a license conditioned on the applicant's compliance with an order entered pursuant to RCW 18.130.160 by)).~~ 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. 19. A new section is added to chapter 18.130 RCW to read as follows:

(1) The disciplining authority may deny an application for licensure or grant a license with conditions if the applicant:

(a) Has had his or her license to practice any health care profession suspended, revoked, or restricted, by competent authority in any state, federal, or foreign jurisdiction;

(b) Has committed any act defined as unprofessional conduct for a license holder under RCW 18.130.180;

(c) Has been convicted or is subject to current prosecution or pending charges of a crime involving moral turpitude or a crime identified in RCW 43.43.830. For purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the prosecution or sentence has been deferred or suspended. At the request of an applicant for an original license whose conviction is under appeal, the disciplining authority may defer decision upon the application during the pendency of such a prosecution or appeal;

(d) Fails to prove that he or she is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), or the rules adopted by the disciplining authority; or

(e) Is not able to practice with reasonable skill and safety to consumers by reason of any mental or physical condition.

(i) The disciplining authority may require the applicant, at his or her own expense, to submit to a mental, physical, or psychological

examination by one or more licensed health professionals designated by the disciplining authority. The disciplining authority shall provide written notice of its requirement for a mental or physical examination that includes a statement of the specific conduct, event, or circumstances justifying an examination and a statement of the nature, purpose, scope, and content of the intended examination. If the applicant fails to submit to the examination or provide the results of the examination or any required waivers, the disciplining authority may deny the application.

(ii) An applicant governed by this chapter is deemed to have given consent to submit to a mental, physical, or psychological examination when directed in writing by the disciplining authority and further to have waived all objections to the admissibility or use of the examining health professional's testimony or examination reports by the disciplining authority on the grounds that the testimony or reports constitute privileged communications.

(2) The provisions of RCW 9.95.240 and chapter 9.96A RCW do not apply to a decision to deny a license under this section.

(3) The disciplining authority shall give written notice to the applicant of the decision to deny a license or grant a license with conditions in response to an application for a license. The notice must state the grounds and factual basis for the action and be served upon the applicant.

(4) A license applicant who is aggrieved by the decision to deny the license or grant the license with conditions has the right to an adjudicative proceeding. The application for adjudicative proceeding must be in writing, state the basis for contesting the adverse action, include a copy of the adverse notice, and be served on and received by the department within twenty-eight days of the decision. The license applicant has the burden to establish, by a preponderance of evidence, that the license applicant is qualified in accordance with the provisions of this chapter, the chapters identified in RCW 18.130.040(2), and the rules adopted by the disciplining authority.

NEW SECTION. Sec. 20. A new section is added to chapter 18.130 RCW to read as follows:

(1)(a) A licensee must produce documents, records, or other items that are within his or her possession or control within twenty-one calendar days of service of a request by a disciplining authority. If the twenty-one calendar day limit results in a hardship upon the licensee, he or she may request, for good cause, an extension not to exceed thirty additional calendar days.

(b) In the event the licensee fails to produce the documents, records, or other items as requested by the disciplining authority or fails to obtain an extension of the time for response, the disciplining authority may issue a written citation and assess a fine of up to one hundred dollars per day for each day after the issuance of the citation until the documents, records, or other items are produced.

(c) In no event may the administrative fine assessed by the disciplining authority exceed five thousand dollars for each investigation made with respect to the violation.

(2) Citations issued under this section must include the following:

(a) A statement that the citation represents a determination that the person named has failed to produce documents, records, or other items as required by this section and that the determination is final unless contested as provided in this section;

(b) A statement of the specific circumstances;

(c) A statement of the monetary fine, which is up to one hundred dollars per day for each day after the issuance of the citation;

(d) A statement informing the licensee that if the licensee desires a hearing to contest the finding of a violation, the hearing must be

requested by written notice to the disciplining authority within twenty days of the date of issuance of the citation. The hearing is limited to the issue of whether the licensee timely produced the requested documents, records, or other items or had good cause for failure to do so; and

(e) A statement that in the event a licensee fails to pay a fine within thirty days of the date of assessment, the full amount of the assessed fine must be added to the fee for renewal of the license unless the citation is being appealed.

(3) RCW 18.130.165 governs proof and enforcement of the fine.

(4) Administrative fines collected under this section must be deposited in the health professions account created in RCW 43.70.320.

(5) Issuance of a citation under this section does not preclude the disciplining authority from pursuing other action under this chapter.

(6) The disciplining authority shall establish and make available to licensees the maximum daily monetary fine that may be issued under subsection (2)(c) of this section. The disciplining authority shall review the maximum fine on a regular basis, but at a minimum, each biennium.

Sec. 21. RCW 18.130.140 and 1984 c 279 s 14 are each amended to read as follows:

An individual who has been disciplined (~~(or)~~), whose license has been denied, or whose license has been granted with conditions by a disciplining authority may appeal the decision as provided in chapter 34.05 RCW.

Sec. 22. RCW 18.130.150 and 1997 c 58 s 831 are each amended to read as follows:

A person whose license has been suspended (~~(or revoked)~~) under this chapter may petition the disciplining authority for reinstatement after an interval as determined by the disciplining authority in the order unless the disciplining authority has found, pursuant to RCW 18.130.160, that the licensee can never be rehabilitated or can never regain the ability to practice with reasonable skill and safety. The disciplining authority shall hold hearings on the petition and may deny the petition or may order reinstatement and impose terms and conditions as provided in RCW 18.130.160 and issue an order of reinstatement. The disciplining authority may require successful completion of an examination as a condition of reinstatement.

A person whose license has been suspended for noncompliance with a support order or (~~(a residential or)~~) visitation order under RCW 74.20A.320 may petition for reinstatement at any time by providing the secretary a release issued by the department of social and health services stating that the person is in compliance with the order. If the person has continued to meet all other requirements for reinstatement during the suspension, the secretary shall automatically reissue the person's license upon receipt of the release, and payment of a reinstatement fee, if any.

Sec. 23. RCW 18.130.165 and 1993 c 367 s 20 are each amended to read as follows:

Where an order for payment of a fine is made as a result of a citation under section 20 of this act or a hearing under RCW 18.130.100 or 18.130.190 and timely payment is not made as directed in the final order, the disciplining authority may enforce the order for payment in the superior court in the county in which the hearing was held. This right of enforcement shall be in addition to any other rights the disciplining authority may have as to any licensee ordered

to pay a fine but shall not be construed to limit a licensee's ability to seek judicial review under RCW 18.130.140.

In any action for enforcement of an order of payment of a fine, the disciplining authority's order is conclusive proof of the validity of the order of payment of a fine and the terms of payment.

Sec. 24. RCW 18.130.172 and 2000 c 171 s 29 are each amended to read as follows:

(1) Prior to serving a statement of charges under RCW 18.130.090 or 18.130.170, the disciplinary authority may furnish a statement of allegations to the licensee (~~(or applicant)~~) along with a detailed summary of the evidence relied upon to establish the allegations and a proposed stipulation for informal resolution of the allegations. These documents shall be exempt from public disclosure until such time as the allegations are resolved either by stipulation or otherwise.

(2) The disciplinary authority and the (~~(applicant or)~~) licensee may stipulate that the allegations may be disposed of informally in accordance with this subsection. The stipulation shall contain a statement of the facts leading to the filing of the complaint; the act or acts of unprofessional conduct alleged to have been committed or the alleged basis for determining that the (~~(applicant or)~~) licensee is unable to practice with reasonable skill and safety; a statement that the stipulation is not to be construed as a finding of either unprofessional conduct or inability to practice; an acknowledgment that a finding of unprofessional conduct or inability to practice, if proven, constitutes grounds for discipline under this chapter; and an agreement on the part of the licensee (~~(or applicant)~~) that the sanctions set forth in RCW 18.130.160, except RCW 18.130.160 (1), (2), (6), and (8), may be imposed as part of the stipulation, except that no fine may be imposed but the licensee (~~(or applicant)~~) may agree to reimburse the disciplinary authority the costs of investigation and processing the complaint up to an amount not exceeding one thousand dollars per allegation; and an agreement on the part of the disciplinary authority to forego further disciplinary proceedings concerning the allegations. A stipulation entered into pursuant to this subsection shall not be considered formal disciplinary action.

(3) If the licensee (~~(or applicant)~~) declines to agree to disposition of the charges by means of a stipulation pursuant to subsection (2) of this section, the disciplinary authority may proceed to formal disciplinary action pursuant to RCW 18.130.090 or 18.130.170.

(4) Upon execution of a stipulation under subsection (2) of this section by both the licensee (~~(or applicant)~~) and the disciplinary authority, the complaint is deemed disposed of and shall become subject to public disclosure on the same basis and to the same extent as other records of the disciplinary authority. Should the licensee (~~(or applicant)~~) fail to pay any agreed reimbursement within thirty days of the date specified in the stipulation for payment, the disciplinary authority may seek collection of the amount agreed to be paid in the same manner as enforcement of a fine under RCW 18.130.165.

Sec. 25. RCW 18.130.180 and 1995 c 336 s 9 are each amended to read as follows:

The following conduct, acts, or conditions constitute unprofessional conduct for any license holder (~~(or applicant)~~) under the jurisdiction of this chapter:

(1) The commission of any act involving moral turpitude, dishonesty, or corruption relating to the practice of the person's profession, whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a

condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder (~~(or applicant)~~) of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement thereof;

(3) All advertising which is false, fraudulent, or misleading;

(4) Incompetence, negligence, or malpractice which results in injury to a patient or which creates an unreasonable risk that a patient may be harmed. The use of a nontraditional treatment by itself shall not constitute unprofessional conduct, provided that it does not result in injury to a patient or create an unreasonable risk that a patient may be harmed;

(5) Suspension, revocation, or restriction of the individual's license to practice any health care profession by competent authority in any state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;

(6) The possession, use, prescription for use, or distribution of controlled substances or legend drugs in any way other than for legitimate or therapeutic purposes, diversion of controlled substances or legend drugs, the violation of any drug law, or prescribing controlled substances for oneself;

(7) Violation of any state or federal statute or administrative rule regulating the profession in question, including any statute or rule defining or establishing standards of patient care or professional conduct or practice;

(8) Failure to cooperate with the disciplining authority by:

(a) Not furnishing any papers (~~(or)~~)₂ documents, records, or other items;

(b) Not furnishing in writing a full and complete explanation covering the matter contained in the complaint filed with the disciplining authority;

(c) Not responding to subpoenas issued by the disciplining authority, whether or not the recipient of the subpoena is the accused in the proceeding; or

(d) Not providing reasonable and timely access for authorized representatives of the disciplining authority seeking to perform practice reviews at facilities utilized by the license holder;

(9) Failure to comply with an order issued by the disciplining authority or a stipulation for informal disposition entered into with the disciplining authority;

(10) Aiding or abetting an unlicensed person to practice when a license is required;

(11) Violations of rules established by any health agency;

(12) Practice beyond the scope of practice as defined by law or rule;

(13) Misrepresentation or fraud in any aspect of the conduct of the business or profession;

(14) Failure to adequately supervise auxiliary staff to the extent that the consumer's health or safety is at risk;

(15) Engaging in a profession involving contact with the public while suffering from a contagious or infectious disease involving serious risk to public health;

(16) Promotion for personal gain of any unnecessary or inefficacious drug, device, treatment, procedure, or service;

(17) Conviction of any gross misdemeanor or felony relating to the practice of the person's profession. For the purposes of this subsection, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for conviction and all proceedings in which the sentence has been deferred or suspended. Nothing in this section abrogates rights guaranteed under chapter 9.96A RCW;

(18) The procuring, or aiding or abetting in procuring, a criminal abortion;

(19) The offering, undertaking, or agreeing to cure or treat disease by a secret method, procedure, treatment, or medicine, or the treating, operating, or prescribing for any health condition by a method, means, or procedure which the licensee refuses to divulge upon demand of the disciplining authority;

(20) The willful betrayal of a practitioner-patient privilege as recognized by law;

(21) Violation of chapter 19.68 RCW;

(22) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the disciplining authority or its authorized representative, or by the use of threats or harassment against any patient or witness to prevent them from providing evidence in a disciplinary proceeding or any other legal action, or by the use of financial inducements to any patient or witness to prevent or attempt to prevent him or her from providing evidence in a disciplinary proceeding;

(23) Current misuse of:

(a) Alcohol;

(b) Controlled substances; or

(c) Legend drugs;

(24) Abuse of a client or patient or sexual contact with a client or patient;

(25) Acceptance of more than a nominal gratuity, hospitality, or subsidy offered by a representative or vendor of medical or health-related products or services intended for patients, in contemplation of a sale or for use in research publishable in professional journals, where a conflict of interest is presented, as defined by rules of the disciplining authority, in consultation with the department, based on recognized professional ethical standards.

Sec. 26. RCW 9.96A.020 and 1999 c 16 s 1 are each amended to read as follows:

(1) Subject to the exceptions in subsections (3) ~~((and (4)))~~ through (5) of this section, and unless there is another provision of law to the contrary, a person is not disqualified from employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, nor is a person disqualified to practice, pursue or engage in any occupation, trade, vocation, or business for which a license, permit, certificate or registration is required to be issued by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations solely because of a prior conviction of a felony. However, this section does not preclude the fact of any prior conviction of a crime from being considered.

(2) A person may be denied employment by the state of Washington or any of its counties, cities, towns, municipal corporations, or quasi-municipal corporations, or a person may be denied a license, permit, certificate or registration to pursue, practice or engage in an occupation, trade, vocation, or business by reason of the prior conviction of a felony if the felony for which he or she was convicted directly relates to the position of employment sought or to the specific occupation, trade, vocation, or business for which the license, permit, certificate or registration is sought, and the time elapsed since the conviction is less than ten years. However, for

positions in the county treasurer's office, a person may be disqualified from employment because of a prior guilty plea or conviction of a felony involving embezzlement or theft, even if the time elapsed since the guilty plea or conviction is ten years or more.

(3) A person is disqualified for any certificate required or authorized under chapters 28A.405 or 28A.410 RCW, because of a prior guilty plea or the conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(4) A person is disqualified from employment by school districts, educational service districts, and their contractors hiring employees who will have regularly scheduled unsupervised access to children, because of a prior guilty plea or conviction of a felony involving sexual exploitation of a child under chapter 9.68A RCW, sexual offenses under chapter 9A.44 RCW where a minor is the victim, promoting prostitution of a minor under chapter 9A.88 RCW, or a violation of similar laws of another jurisdiction, even if the time elapsed since the guilty plea or conviction is ten years or more.

(5) The provisions of this chapter do not apply to issuance of licenses or credentials for professions regulated under chapter 18.130 RCW.

(6) Subsections (3) and (4) of this section only apply to a person applying for a certificate or for employment on or after July 25, 1993. Subsection (5) of this section only applies to a person applying for a license or credential on or after the effective date of this section.

Sec. 27. RCW 9.95.240 and 2003 c 66 s 1 are each amended to read as follows:

(1) Every defendant who has fulfilled the conditions of his or her probation for the entire period thereof, or who shall have been discharged from probation prior to the termination of the period thereof, may at any time prior to the expiration of the maximum period of punishment for the offense for which he or she has been convicted be permitted in the discretion of the court to withdraw his or her plea of guilty and enter a plea of not guilty, or if he or she has been convicted after a plea of not guilty, the court may in its discretion set aside the verdict of guilty; and in either case, the court may thereupon dismiss the information or indictment against such defendant, who shall thereafter be released from all penalties and disabilities resulting from the offense or crime of which he or she has been convicted. The probationer shall be informed of this right in his or her probation papers: PROVIDED, That in any subsequent prosecution, for any other offense, such prior conviction may be pleaded and proved, and shall have the same effect as if probation had not been granted, or the information or indictment dismissed.

(2)(a) After the period of probation has expired, the defendant may apply to the sentencing court for a vacation of the defendant's record of conviction under RCW 9.94A.640. The court may, in its discretion, clear the record of conviction if it finds the defendant has met the equivalent of the tests in RCW 9.94A.640(2) as those tests would be applied to a person convicted of a crime committed before July 1, 1984.

(b) The clerk of the court in which the vacation order is entered shall immediately transmit the order vacating the conviction to the Washington state patrol identification section and to the local police agency, if any, which holds criminal history information for the person who is the subject of the conviction. The Washington state patrol and any such local police agency shall immediately update their records to reflect the vacation of the conviction, and shall

transmit the order vacating the conviction to the federal bureau of investigation. A conviction that has been vacated under this section may not be disseminated or disclosed by the state patrol or local law enforcement agency to any person, except other criminal justice enforcement agencies.

(3) This section does not apply to chapter 18.130 RCW.

Sec. 28. RCW 43.43.825 and 2006 c 99 s 8 are each amended to read as follows:

(1) Upon a guilty plea or conviction of a person for any felony crime involving homicide under chapter 9A.32 RCW, assault under chapter 9A.36 RCW, kidnapping under chapter 9A.40 RCW, ~~((or))~~ sex offenses under chapter 9A.44 RCW, financial crimes under chapter 9A.60 RCW, violations of the uniform controlled substances act under chapter 69.50 RCW, any drug offense defined under RCW 9.94A.030, or a crime of any type classified as a felony under Washington state law, the prosecuting attorney shall notify the state patrol of such guilty pleas or convictions.

(2) When the state patrol receives information that a person has pled guilty to or been convicted of one of the felony crimes under subsection (1) of this section, the state patrol shall transmit that information to the department of health. It is the duty of the department of health to identify whether the person holds a credential issued by a disciplining authority listed under RCW 18.130.040, and provide this information to the disciplining authority that issued the credential to the person who pled guilty or was convicted of a crime listed in subsection (1) of this section.

NEW SECTION. **Sec. 29.** A new section is added to chapter 18.71 RCW to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, physicians regulated under this chapter and physician assistants regulated under chapter 18.71A RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry

out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 30 through 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. **Sec. 30.** A new section is added to chapter 18.79 RCW to read as follows:

(1) The commission shall conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. The pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to advanced registered nurses, registered nurses, and licensed practical nurses regulated under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 29, 31, and 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. Sec. 31. A new section is added to chapter 18.25 RCW to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to chiropractors licensed under this chapter; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 29, 30, and 32 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

NEW SECTION. Sec. 32. A new section is added to chapter 18.32 RCW to read as follows:

(1) The commission may conduct a pilot project to evaluate the effect of granting the commission additional authority over budget development, spending, and staffing. If the commission intends to conduct a pilot project, it must provide a notice in writing to the secretary by June 1, 2008. If the commission chooses to conduct a pilot project, the pilot project shall begin on July 1, 2008, and conclude on June 30, 2013.

(2) The pilot project shall include the following provisions:

(a) That the secretary shall employ an executive director that is:

(i) Hired by and serves at the pleasure of the commission;

(ii) Exempt from the provisions of the civil service law, chapter 41.06 RCW and whose salary is established by the commission in accordance with RCW 43.03.028 and 42.17.370; and

(iii) Responsible for performing all administrative duties of the commission, including preparing an annual budget, and any other duties as delegated to the executive director by the commission;

(b) Consistent with the budgeting and accounting act:

(i) With regard to budget for the remainder of the 2007-2009 biennium, the commission has authority to spend the remaining funds allocated with respect to its professions, dentists licensed under this chapter and expanded function dental auxiliaries and dental assistants regulated under chapter 18.260 RCW; and

(ii) Beginning with the 2009-2011 biennium, the commission is responsible for proposing its own biennial budget which the secretary must submit to the office of financial management;

(c) That, prior to adopting credentialing fees under RCW 43.70.250, the secretary shall collaborate with the commission to determine the appropriate fees necessary to support the activities of the commission;

(d) That, prior to the secretary exercising the secretary's authority to adopt uniform rules and guidelines, or any other actions that might impact the licensing or disciplinary authority of the commission, the secretary shall first meet with the commission to determine how those rules or guidelines, or changes to rules or guidelines, might impact the commission's ability to effectively carry out its statutory duties. If the commission, in consultation with the secretary, determines that the proposed rules or guidelines, or changes to existing rules or guidelines, will negatively impact the commission's ability to effectively carry out its statutory duties, then the individual commission shall collaborate with the secretary to

develop alternative solutions to mitigate the impacts. If an alternative solution cannot be reached, the parties may resolve the dispute through a mediator as set forth in (f) of this subsection;

(e) That the commission shall negotiate with the secretary to develop performance-based expectations, including identification of key performance measures. The performance expectations should focus on consistent, timely regulation of health care professionals; and

(f) That in the event there is a disagreement between the commission and the secretary, that is unable to be resolved through negotiation, a representative of both parties shall agree on the designation of a third party to mediate the dispute.

(3) By December 15, 2013, the secretary, the commission, and the other commissions conducting similar pilot projects under sections 29 through 31 of this act, shall report to the governor and the legislature on the results of the pilot project. The report shall:

(a) Compare the effectiveness of licensing and disciplinary activities of each commission during the pilot project with the licensing and disciplinary activities of the commission prior to the pilot project and the disciplinary activities of other disciplining authorities during the same time period as the pilot project;

(b) Compare the efficiency of each commission with respect to the timeliness and personnel resources during the pilot project to the efficiency of the commission prior to the pilot project and the efficiency of other disciplining authorities during the same period as the pilot project;

(c) Compare the budgetary activity of each commission during the pilot project to the budgetary activity of the commission prior to the pilot project and to the budgetary activity of other disciplining authorities during the same period as the pilot project;

(d) Evaluate each commission's regulatory activities, including timelines, consistency of decision making, and performance levels in comparison to other disciplining authorities; and

(e) Review summaries of national research and data regarding regulatory effectiveness and patient safety.

(4) The secretary shall employ staff that are hired and managed by the executive director provided that nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement.

Sec. 33. RCW 18.71.0191 and 1994 sp.s. c 9 s 326 are each amended to read as follows:

Except as provided in section 29 of this act for the duration of the pilot project, the secretary of the department of health shall appoint, from a list of three names supplied by the commission, an executive director who shall act to carry out the provisions of this chapter. The secretary shall also employ such additional staff including administrative assistants, investigators, and clerical staff as are required to enable the commission to accomplish its duties and responsibilities. The executive director is exempt from the provisions of the civil service law, chapter 41.06 RCW, as now or hereafter amended.

Sec. 34. RCW 18.79.130 and 1994 sp.s. c 9 s 413 are each amended to read as follows:

Except as provided in section 30 of this act for the duration of the pilot project, the secretary shall appoint, after consultation with the commission, an executive director who shall act to carry out this chapter. The secretary shall also employ such professional, secretarial, clerical, and other assistants as may be necessary to effectively administer this chapter. The secretary shall fix the

compensation and provide for travel expenses for the executive director and all such employees, in accordance with RCW 43.03.050 and 43.03.060.

NEW SECTION. Sec. 35. Sections 33 and 34 of this act expire June 30, 2013.

NEW SECTION. Sec. 36. Section 17 of this act expires July 1, 2008.

NEW SECTION. Sec. 37. Section 18 of this act takes effect July 1, 2008.

NEW SECTION. Sec. 38. 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. 39. The code reviser is directed to put the defined terms in RCW 18.130.020 in alphabetical order.

NEW SECTION. Sec. 40. Except for sections 2 and 18 of this act, which take effect July 1, 2008, and for section 12 of this act, which takes effect January 1, 2009, 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."

On page 1, line 1 of the title, after "professions;" strike the remainder of the title and insert "amending RCW 18.130.020, 18.130.050, 18.130.060, 18.130.080, 18.130.095, 18.130.170, 18.130.310, 70.41.210, 43.70.320, 18.130.140, 18.130.150, 18.130.165, 18.130.172, 18.130.180, 9.96A.020, 9.95.240, 43.43.825, 18.71.0191, and 18.79.130; reenacting and amending RCW 18.130.160, 18.130.040, and 18.130.040; adding new sections to chapter 18.130 RCW; adding a new section to chapter 42.52 RCW; adding a new section to chapter 18.71 RCW; adding a new section to chapter 18.79 RCW; adding a new section to chapter 18.25 RCW; adding a new section to chapter 18.32 RCW; creating new sections; prescribing penalties; providing effective dates; providing expiration dates; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to FOURTH SUBSTITUTE HOUSE BILL NO. 1103 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Campbell spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Fourth Substitute House Bill No. 1103, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Fourth Substitute House Bill No. 1103, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

FOURTH SUBSTITUTE HOUSE BILL NO. 1103, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed THIRD SUBSTITUTE HOUSE BILL NO. 1741 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. Washington has developed an impressive oral history program of recording and documenting the recollections of public officials and citizens who have contributed to the rich political history surrounding the legislature. Schools, museums, historians, state agencies, and interested citizens have benefited from the availability of these educational materials. The purpose of this act is to enhance this resource by reinforcing the decision-making role of the legislature.

NEW SECTION. Sec. 2. A new section is added to chapter 42.52 RCW to read as follows:

This chapter does not prohibit the secretary of the senate, the chief clerk of the house of representatives, or their designee from soliciting and accepting contributions to the legislative oral history account created in section 8 of this act.

Sec. 3. RCW 43.07.220 and 1991 c 237 s 1 are each amended to read as follows:

(1) The secretary of ~~((state))~~ the senate and the chief clerk of the house of representatives, at the direction of the legislative oral history ((advisory)) committee, shall administer and conduct a program to record and document oral histories of current and former members and staff of the Washington state legislature, ~~((current and former state government officials and personnel,))~~ and other citizens who have participated in the political history of the Washington state legislature. The secretary of ~~((state shall))~~ the senate and the chief clerk of the house of representatives may contract with independent oral historians ~~((and through))~~ or the history departments of the state universities to interview and record oral histories. The ~~((tapes and tape transcripts))~~ manuscripts and publications shall be ~~((indexed and))~~ made available for research and reference through the state archives. The ~~((transcripts))~~ manuscripts, together with current and historical photographs, may be published for distribution to libraries and ~~((for sale to))~~ the general public, and posted on the legislative oral history web site.

(2) The oral history of a person who occupied positions, or was staff to a person who occupied positions, in more than one branch of government, shall be conducted by the entity authorized to conduct oral histories of persons in the position last held by the person who is the subject of the oral history. However, the person being interviewed may select the entity he or she wishes to prepare his or her oral history.

Sec. 4. RCW 43.07.230 and 1991 c 237 s 2 are each amended to read as follows:

~~((Am))~~ (1) A legislative oral history ((advisory)) committee is created, which shall consist of the following individuals:

~~((H))~~ (a) Four members of the house of representatives, two from each of the two largest caucuses of the house, appointed by the speaker of the house of representatives;

~~((S))~~ (b) Four members of the senate, two from each of the two largest caucuses of the senate, appointed by the president of the senate;

~~((C))~~ (c) The chief clerk of the house of representatives; and

~~((S))~~ (d) The secretary of the senate ~~((and~~

~~((the secretary of state))~~.

(2) Ex officio members may be appointed by a majority vote of the committee's members appointed under subsection (1) of this section.

(3) The chair of the committee shall be elected by a majority vote of the committee members appointed under subsection (1) of this section.

Sec. 5. RCW 43.07.240 and 1991 c 237 s 3 are each amended to read as follows:

The legislative oral history ((advisory)) committee shall have the following responsibilities:

(1) To select appropriate oral history interview candidates and subjects;

(2) To select transcripts or portions of transcripts, and related historical material, for publication;

(3) To advise the secretary of ~~((state))~~ the senate and the chief clerk of the house of representatives on the format and length of individual interview series and on appropriate issues and subjects for related series of interviews;

(4) To advise the secretary of ~~((state))~~ the senate and the chief clerk of the house of representatives on the appropriate subjects, format, and length of interviews and on the process for conducting

oral history interviews ~~((with subjects currently serving in the Washington state legislature));~~

(5) To advise the secretary of ~~((state))~~ the senate and the chief clerk of the house of representatives on joint programs and activities with state universities, colleges, museums, and other groups conducting oral histories; and

(6) To advise the secretary of ~~((state))~~ the senate and the chief clerk of the house of representatives on other aspects of the administration of the oral history program and on the conduct of individual interview projects.

NEW SECTION. Sec. 6. A new section is added to chapter 44.04 RCW to read as follows:

The secretary of the senate and the chief clerk of the house of representatives may fund oral history activities through donations as provided in section 7 of this act and through funds in the legislative gift center account created in RCW 44.73.020. The activities may include, but not be limited to, conducting interviews, preparing and indexing transcripts, publishing manuscripts and photographs, and presenting displays and programs. Donations that do not meet the criteria of the legislative oral history program may not be accepted. The secretary of the senate and the chief clerk of the house of representatives shall adopt joint rules necessary to implement this section.

NEW SECTION. Sec. 7. A new section is added to chapter 44.04 RCW to read as follows:

(1) The secretary of the senate and the chief clerk of the house of representatives may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for conducting oral histories.

(3) Moneys received under this section must be deposited in the legislative oral history account established in section 8 of this act.

(4) The secretary of the senate and the chief clerk of the house of representatives shall adopt joint rules to govern and protect the receipt and expenditure of the proceeds.

NEW SECTION. Sec. 8. A new section is added to chapter 44.04 RCW to read as follows:

The legislative oral history account is created in the custody of the state treasurer. All moneys received under section 7 of this act and from the legislative gift center account created in RCW 44.73.020 must be deposited in the account. Expenditures from the account may be made only for the purposes of the legislative oral history program under RCW 43.07.220 (as recodified by this act). Only the secretary of the senate or the chief clerk of the house of representatives or their designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW.

NEW SECTION. Sec. 9. (1) All powers, duties, and functions of the secretary of state pertaining to the legislative oral history program are transferred to the secretary of the senate and the chief clerk of the house of representatives. All references to the secretary of state or the office of the secretary of state in the Revised Code of Washington shall be construed to mean the secretary of the senate and the chief clerk of the house of representatives when referring to the functions transferred in this section.

(2)(a) All reports, documents, surveys, books, records, files, papers, or written material in the possession of the secretary of state pertaining to the powers, functions, and duties transferred shall be delivered to the custody of the secretary of the senate and the chief clerk of the house of representatives. All funds, credits, or other assets held in connection with the powers, functions, and duties transferred shall be assigned to the secretary of the senate and the chief clerk of the house of representatives.

(b) Any appropriations made to the secretary of state for carrying out the powers, functions, and duties transferred shall, on the effective date of this section, be transferred and credited to the secretary of the senate and the chief clerk of the house of representatives.

(c) Whenever any question arises as to the transfer of any personnel, funds, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

(3) All rules and all pending business before the secretary of state pertaining to the powers, functions, and duties transferred shall be continued and acted upon by the secretary of the senate and the chief clerk of the house of representatives. All existing contracts and obligations shall remain in full force and shall be performed by the secretary of the senate and the chief clerk of the house of representatives.

(4) The transfer of the powers, duties, functions, and personnel of the secretary of state shall not affect the validity of any act performed before the effective date of this section.

(5) If apportionments of budgeted funds are required because of the transfers directed by this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification.

(6) Nothing contained in this section may be construed to alter any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the public employment relations commission as provided by law.

(7) The secretary of the senate and the chief clerk of the house of representatives will determine location and staff reporting for the program.

NEW SECTION. Sec. 10. A new section is added to chapter 43.07 RCW to read as follows:

(1) The secretary of state shall administer and conduct a program to record and document oral histories of current and former members and staff of the Washington state executive and judicial branches, the state's congressional delegation, and other citizens who have participated in the political history of Washington state. The program shall be called the Washington state legacy project. The secretary of state may contract with independent oral historians or history departments of the state universities to interview and record oral histories. The manuscripts and publications shall be made available for research and reference through the state archives. The transcripts, together with current and historical photographs, may be published for distribution to libraries and the general public, and be posted on the secretary of state's web site.

(2) The Washington state legacy project may act as a principal repository for oral histories related to community, family, and other various projects.

(3) The oral history of a person who occupied positions, or was staff to a person who occupied positions, in more than one branch of government shall be conducted by the entity authorized to conduct oral histories of persons in the position last held by the person who is the subject of the oral history. However, the person being interviewed may select the entity he or she wishes to prepare his or her oral history.

(4) The secretary of state may create a Washington state legacy project advisory council to provide advice and guidance on matters pertaining to operating the legacy project. The secretary of state may not compensate members of the legacy project advisory council but may provide reimbursement to members for expenses that are incurred in the conduct of their official duties.

Sec. 11. RCW 43.07.365 and 2002 c 358 s 3 are each amended to read as follows:

The secretary of state may fund ~~((oral history))~~ Washington state legacy project activities through donations as provided in RCW 43.07.037. The activities may include, but not be limited to, conducting interviews, preparing and indexing transcripts, publishing transcripts and photographs, and presenting displays and programs. Donations that do not meet the criteria of the ~~((oral history program))~~ Washington state legacy project may not be accepted. The secretary of state shall adopt rules necessary to implement this section.

Sec. 12. RCW 43.07.370 and 2007 c 523 s 3 are each amended to read as follows:

(1) The secretary of state may solicit and accept gifts, grants, conveyances, bequests, and devises of real or personal property, or both, in trust or otherwise, and sell, lease, exchange, invest, or expend these donations or the proceeds, rents, profits, and income from the donations except as limited by the donor's terms.

(2) Moneys received under this section may be used only for the following purposes:

(a) Conducting ~~((oral histories))~~ the Washington state legacy project;

(b) Archival activities;

(c) Washington state library activities; and

(d) Development, construction, and operation of the Washington state heritage center.

(3)(a) Moneys received under subsection (2)(a) through (c) of this section must be deposited in the ~~((oral history))~~ Washington state legacy project, state library, and archives account established in RCW 43.07.380.

(b) Moneys received under subsection (2)(d) of this section must be deposited in the Washington state heritage center account created in RCW 43.07.129.

(4) The secretary of state shall adopt rules to govern and protect the receipt and expenditure of the proceeds.

Sec. 13. RCW 43.07.380 and 2003 c 164 s 2 are each amended to read as follows:

The ~~((oral history))~~ Washington state legacy project, state library, and archives account is created in the custody of the state treasurer. All moneys received under RCW 43.07.370 must be deposited in the account. Expenditures from the account may be made only for the purposes of the ~~((oral history program under RCW 43.07.220))~~ Washington state legacy project under section 10 of this act, archives program under RCW 40.14.020, and the state library

program under chapter 27.04 RCW. Only the secretary of state or the secretary of state's designee may authorize expenditures from the account. An appropriation is not required for expenditures, but the account is subject to allotment procedures under chapter 43.88 RCW.

Sec. 14. RCW 42.52.802 and 2003 c 164 s 4 are each amended to read as follows:

This chapter does not prohibit the secretary of state or a designee from soliciting and accepting contributions to the ~~((oral history))~~ Washington state legacy project, state library, and archives account created in RCW 43.07.380.

NEW SECTION. Sec. 15. The following are each recodified as sections in chapter 44.04 RCW:

RCW 43.07.220

RCW 43.07.230

RCW 43.07.240

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, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 1 of the title, after "program;" strike the remainder of the title and insert "amending RCW 43.07.220, 43.07.230, 43.07.240, 43.07.365, 43.07.370, 43.07.380, and 42.52.802; adding a new section to chapter 42.52 RCW; adding new sections to chapter 44.04 RCW; adding a new section to chapter 43.07 RCW; creating new sections; and recodifying RCW 43.07.220, 43.07.230, and 43.07.240."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to THIRD SUBSTITUTE HOUSE BILL NO. 1741 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Hurst and Ahern spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Third Substitute House Bill No. 1741, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Third Substitute House Bill No. 1741, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 92, Nays - 1, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell,

Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 92.

Voting nay: Representative Dunn - 1.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

THIRD SUBSTITUTE HOUSE BILL NO. 1741, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1773 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds and declares that it is the policy of the state of Washington to use tolling to provide a source of transportation funding and to encourage effective use of the transportation system.

The legislature intends that the policy framework created by this act will guide subsequent legislation and decisions regarding the tolling of specific facilities and corridors. For each state-owned facility or corridor, the legislature intends that it will authorize the budget and finance plan. Specific issues that may be addressed in the finance plan and budget authorization legislation include the amount of financing required for a facility or corridor, the budget for any construction and operations financed by tolling, whether and how variable pricing will be applied, and the timing of tolling.

The legislature also intends that while the transportation commission, as the toll-setting authority, may set toll rates for facilities, corridors, or systems thereof, the legislature reserves the authority to impose tolls on any state transportation route or facility. Similarly, local or quasi-local entities that retain the power to impose tolls may do so as long as the effect of those tolls on the state highway system is consistent with the policy guidelines detailed in this act. If the imposition of tolls could have an impact on state facilities, the state tolling authority must review and approve such tolls.

NEW SECTION. Sec. 2. This subchapter applies only to all state toll bridges and other state toll facilities, excluding the

Washington state ferries, first authorized within this state after July 1, 2008.

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

(1) "Tolling authority" means the governing body that is legally empowered to review and adjust toll rates. Unless otherwise delegated, the transportation commission is the tolling authority for all state highways.

(2) "Eligible toll facility" or "eligible toll facilities" means portions of the state highway system specifically identified by the legislature including, but not limited to, transportation corridors, bridges, crossings, interchanges, on-ramps, off-ramps, approaches, bistate facilities, and interconnections between highways.

(3) "Toll revenue" or "revenue from an eligible toll facility" means toll receipts, all interest income derived from the investment of toll receipts, and any gifts, grants, or other funds received for the benefit of the eligible toll facility.

NEW SECTION. Sec. 4. (1) Unless otherwise delegated, only the legislature may authorize the imposition of tolls on eligible toll facilities.

(2) All revenue from an eligible toll facility must be used only to construct, improve, preserve, maintain, manage, or operate the eligible toll facility on or in which the revenue is collected. Expenditures of toll revenues are subject to appropriation and must be made only:

(a) To cover the operating costs of the eligible toll facility, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement within the boundaries of the facility;

(b) To meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves and insurance;

(c) To meet any other obligations to provide funding contributions for any projects or operations on the eligible toll facilities;

(d) To provide for the operations of conveyances of people or goods; or

(e) For any other improvements to the eligible toll facilities.

NEW SECTION. Sec. 5. Any proposal for the establishment of eligible toll facilities shall consider the following policy guidelines:

(1) Overall direction. Washington should use tolling to encourage effective use of the transportation system and provide a source of transportation funding.

(2) When to use tolling. Tolling should be used when it can be demonstrated to contribute a significant portion of the cost of a project that cannot be funded solely with existing sources or optimize the performance of the transportation system. Such tolling should, in all cases, be fairly and equitably applied in the context of the statewide transportation system and not have significant adverse impacts through the diversion of traffic to other routes that cannot otherwise be reasonably mitigated. Such tolling should also consider relevant social equity, environmental, and economic issues, and should be directed at making progress toward the state's greenhouse gas reduction goals.

(3) Use of toll revenue. All revenue from an eligible toll facility must be used only to improve, preserve, manage, or operate the eligible toll facility on or in which the revenue is collected.

Additionally, toll revenue should provide for and encourage the inclusion of recycled and reclaimed construction materials.

(4) Setting toll rates. Toll rates, which may include variable pricing, must be set to meet anticipated funding obligations. To the extent possible, the toll rates should be set to optimize system performance, recognizing necessary trade-offs to generate revenue.

(5) Duration of toll collection. Because transportation infrastructure projects have costs and benefits that extend well beyond those paid for by initial construction funding, tolls on future toll facilities may remain in place to fund additional capacity, capital rehabilitation, maintenance, management, and operations, and to optimize performance of the system.

NEW SECTION. Sec. 6. (1) A tolling advisory committee may be created at the direction of the tolling authority for any eligible toll facilities. The tolling authority shall appoint nine members to the committee, all of whom must be permanent residents of the affected project area as defined for each project. Members of the committee shall serve without receiving compensation.

(2) The tolling advisory committee shall serve in an advisory capacity to the tolling authority on all matters related to the imposition of tolls including, but not limited to: (a) The feasibility of providing discounts; (b) the trade-off of lower tolls versus the early retirement of debt; and (c) consideration of variable or time of day pricing.

(3) In setting toll rates, the tolling authority shall consider recommendations of the tolling advisory committee.

NEW SECTION. Sec. 7. (1) Unless these powers are otherwise delegated by the legislature, the transportation commission is the tolling authority for the state. The tolling authority shall:

(a) Set toll rates, establish appropriate exemptions, if any, and make adjustments as conditions warrant on eligible toll facilities;

(b) Review toll collection policies, toll operations policies, and toll revenue expenditures on the eligible toll facilities and report annually on this review to the legislature.

(2) The tolling authority, in determining toll rates, shall consider the policy guidelines established in section 5 of this act.

(3) Unless otherwise directed by the legislature, in setting and periodically adjusting toll rates, the tolling authority must ensure that toll rates will generate revenue sufficient to:

(a) Meet the operating costs of the eligible toll facilities, including necessary maintenance, preservation, administration, and toll enforcement by public law enforcement;

(b) Meet obligations for the repayment of debt and interest on the eligible toll facilities, and any other associated financing costs including, but not limited to, required reserves, minimum debt coverage or other appropriate contingency funding, and insurance; and

(c) Meet any other obligations of the tolling authority to provide its proportionate share of funding contributions for any projects or operations of the eligible toll facilities.

(4) The established toll rates may include variable pricing, and should be set to optimize system performance, recognizing necessary trade-offs to generate revenue for the purposes specified in subsection (3) of this section. Tolls may vary for type of vehicle, time of day, traffic conditions, or other factors designed to improve performance of the system.

Sec. 8. RCW 47.56.030 and 2002 c 114 s 19 are each amended to read as follows:

(1) Except as permitted under chapter 47.29 or 47.46 RCW:

(a) Unless otherwise delegated, and subject to section 4 of this act, the department of transportation shall have full charge of the planning, analysis, and construction of all toll bridges and other toll facilities including the Washington state ferries, and the operation and maintenance thereof.

(b) ~~The transportation commission shall determine and establish the tolls and charges thereon ~~(, and shall perform all duties and exercise all powers relating to the financing, refinancing, and fiscal management of all toll bridges and other toll facilities including the Washington state ferries, and bonded indebtedness in the manner provided by law).~~~~

(c) Unless otherwise delegated, and subject to section 4 of this act, the department shall have full charge of planning, analysis, and design of all toll facilities. The department may conduct the planning, analysis, and design of toll facilities as necessary to support the legislature's consideration of toll authorization.

(d) The department shall utilize and administer toll collection systems that are simple, unified, and interoperable. To the extent practicable, the department shall avoid the use of toll booths. The department shall set the statewide standards and protocols for all toll facilities within the state, including those authorized by local authorities.

(e) Except as provided in this section, the department shall proceed with the construction of such toll bridges and other facilities and the approaches thereto by contract in the manner of state highway construction immediately upon there being made available funds for such work and shall prosecute such work to completion as rapidly as practicable. The department is authorized to negotiate contracts for any amount without bid under ~~((d)(+))~~ (c)(i) and (ii) of this subsection:

(i) Emergency contracts, in order to make repairs to ferries or ferry terminal facilities or removal of such facilities whenever continued use of ferries or ferry terminal facilities constitutes a real or immediate danger to the traveling public or precludes prudent use of such ferries or facilities; and

(ii) Single source contracts for vessel dry dockings, when there is clearly and legitimately only one available bidder to conduct dry dock-related work for a specific class or classes of vessels. The contracts may be entered into for a single vessel dry docking or for multiple vessel dry dockings for a period not to exceed two years.

(2) The department shall proceed with the procurement of materials, supplies, services, and equipment needed for the support, maintenance, and use of a ferry, ferry terminal, or other facility operated by Washington state ferries, in accordance with chapter 43.19 RCW except as follows:

(a) ~~((Except as provided in (d) of this subsection,))~~ When the secretary of the department of transportation determines in writing that the use of invitation for bid is either not practicable or not advantageous to the state and it may be necessary to make competitive evaluations, including technical or performance evaluations among acceptable proposals to complete the contract award, a contract may be entered into by use of a competitive sealed proposals method, and a formal request for proposals solicitation. Such formal request for proposals solicitation shall include a functional description of the needs and requirements of the state and the significant factors.

(b) When purchases are made through a formal request for proposals solicitation the contract shall be awarded to the responsible proposer whose competitive sealed proposal is determined in writing to be the most advantageous to the state taking into consideration price and other evaluation factors set forth in the request for proposals. No significant factors may be used in evaluating a

proposal that are not specified in the request for proposals. Factors that may be considered in evaluating proposals include but are not limited to: Price; maintainability; reliability; commonality; performance levels; life cycle cost if applicable under this section; cost of transportation or delivery; delivery schedule offered; installation cost; cost of spare parts; availability of parts and service offered; and the following:

(i) The ability, capacity, and skill of the proposer to perform the contract or provide the service required;

(ii) The character, integrity, reputation, judgment, experience, and efficiency of the proposer;

(iii) Whether the proposer can perform the contract within the time specified;

(iv) The quality of performance of previous contracts or services;

(v) The previous and existing compliance by the proposer with laws relating to the contract or services;

(vi) Objective, measurable criteria defined in the request for proposal. These criteria may include but are not limited to items such as discounts, delivery costs, maintenance services costs, installation costs, and transportation costs; and

(vii) Such other information as may be secured having a bearing on the decision to award the contract.

(c) When purchases are made through a request for proposal process, proposals received shall be evaluated based on the evaluation factors set forth in the request for proposal. When issuing a request for proposal for the procurement of propulsion equipment or systems that include an engine, the request for proposal must specify the use of a life cycle cost analysis that includes an evaluation of fuel efficiency. When a life cycle cost analysis is used, the life cycle cost of a proposal shall be given at least the same relative importance as the initial price element specified in the request of proposal documents. The department may reject any and all proposals received. If the proposals are not rejected, the award shall be made to the proposer whose proposal is most advantageous to the department, considering price and the other evaluation factors set forth in the request for proposal.

~~((d) If the department is procuring large equipment or systems (e.g., electrical, propulsion) needed for the support, maintenance, and use of a ferry operated by Washington state ferries, the department shall proceed with a formal request for proposal solicitation under this subsection (2) without a determination of necessity by the secretary.))~~

Sec. 9. RCW 47.56.040 and 1984 c 7 s 248 are each amended to read as follows:

The department is empowered, in accordance with the provisions of this chapter, to provide for the establishment and construction of toll bridges upon any public highways of this state together with approaches thereto wherever it is considered necessary or advantageous and practicable for crossing any stream, body of water, gulch, navigable water, swamp, or other topographical formation whether that formation is within this state or constitutes a boundary between this state and an adjoining state or country. ~~((The necessity or advantage and practicability of any such toll bridge shall be determined by the department, and the feasibility of financing any toll bridge in the manner provided by this chapter shall be a primary consideration and determined according to the best judgment of the department.))~~ For the purpose of obtaining information for the consideration of the department upon the construction of any toll bridge or any other matters pertaining thereto, any cognizant officer or employee of the state shall, upon the request of the department,

make reasonable examination, investigation, survey, or reconnaissance for the determination of material facts pertaining thereto and report this to the department. The cost of any such examination, investigation, survey, or reconnaissance shall be borne by the department or office conducting these activities from the funds provided for that department or office for its usual functions.

Sec. 10. RCW 47.56.070 and 1977 ex.s. c 151 s 67 are each amended to read as follows:

The department of transportation may, ~~((with the approval of the transportation commission))~~ in accordance with this chapter, provide for the ~~((establishment,))~~ construction~~(;)~~ and operation of toll tunnels, toll roads, and other facilities necessary for their construction and connection with public highways of the state. It may cause surveys to be made to determine the propriety of their ~~((establishment,))~~ construction~~(;)~~ and operation, and may acquire rights-of-way and other facilities necessary to carry out the provisions hereof; and may issue, sell, and redeem bonds, and deposit and expend them; secure and remit financial and other assistance in the construction thereof; carry insurance thereon; and handle any other matters pertaining thereto, all of which shall be conducted in the same manner and under the same procedure as provided for the ~~((establishing,))~~ constructing, operating, and maintaining of toll bridges by the department, insofar as reasonably consistent and applicable. ~~((No toll facility, toll bridge, toll road, or toll tunnel, shall be combined with any other toll facility for the purpose of financing unless such facilities form a continuous project, to the end that each such facility or project be self-liquidating and self-sustaining.))~~

Sec. 11. RCW 47.56.076 and 2006 c 311 s 19 are each amended to read as follows:

(1) Upon approval of a majority of the voters within its boundaries voting on the ballot proposition, ~~((and with the approval of the state transportation commission or its successor statewide tolling authority,))~~ a regional transportation investment district may authorize vehicle tolls on a local or regional arterial or a state or federal highway within the boundaries of the district. The department shall administer the collection of vehicle tolls authorized on designated facilities unless otherwise specified in law or by contract, and the commission or its successor statewide tolling authority shall set and impose the tolls in amounts sufficient to implement the regional transportation investment plan under RCW 36.120.020.

(2) Consistent with section 4 of this act, vehicle tolls must first be authorized by the legislature if the tolls are imposed on a state route.

(3) Consistent with section 7 of this act, vehicle tolls, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in section 7 of this act if the tolls, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility.

Sec. 12. RCW 47.56.078 and 2005 c 336 s 25 are each amended to read as follows:

(1) Subject to the provisions under chapter 36.73 RCW, a transportation benefit district may authorize vehicle tolls on state routes or federal highways, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. The department of transportation shall administer the collection of vehicle tolls authorized on state routes or federal highways, unless otherwise specified in law or by contract, and the state transportation

commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose the tolls, only with approval of the transportation commission, in amounts sufficient to implement the district's transportation improvement plan. Tolls may vary for type of vehicle, for time of day, for traffic conditions, and/or other factors designed to improve performance of the facility or the transportation network.

(2) Consistent with section 4 of this act, vehicle tolls must first be authorized by the legislature if the tolls are imposed on a state route.

(3) Consistent with section 7 of this act, vehicle tolls, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in section 7 of this act if the tolls, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility.

Sec. 13. RCW 47.56.120 and 1977 ex.s. c 151 s 70 are each amended to read as follows:

In the event that ~~((the transportation commission should determine that))~~ any toll bridge should be constructed, all cost thereof including right-of-way, survey, and engineering shall be paid out of any funds available for payment of the cost of such toll bridge under this chapter.

Sec. 14. RCW 47.56.240 and 1984 c 7 s 265 are each amended to read as follows:

Except as otherwise provided in section 7 of this act, the commission is hereby empowered to fix the rates of toll and other charges for all toll bridges built under the terms of this chapter. Toll charges so fixed may be changed from time to time as conditions warrant. The commission, in establishing toll charges, shall give due consideration to the cost of operating and maintaining such toll bridge or toll bridges including the cost of insurance, and to the amount required annually to meet the redemption of bonds and interest payments on them. The tolls and charges shall be at all times fixed at rates to yield annual revenue equal to annual operating and maintenance expenses including insurance costs and all redemption payments and interest charges of the bonds issued for any particular toll bridge or toll bridges as the bonds become due. The bond redemption and interest payments constitute a first direct ~~((and exclusive))~~ charge and lien on all such tolls and other revenues and interest thereon. Sinking funds created therefrom received from the use and operation of the toll bridge or toll bridges, and such tolls and revenues together with the interest earned thereon shall constitute a trust fund for the security and payment of such bonds and shall not be used or pledged for any other purpose as long as any of these bonds are outstanding and unpaid.

Sec. 15. RCW 35.74.050 and 1965 c 7 s 35.74.050 are each amended to read as follows:

A city or town may build and maintain toll bridges and charge and collect tolls thereon, and to that end may provide a system and elect or appoint persons to operate the same, or the said bridges may be made free, as it may elect.

Consistent with section 7 of this act, any toll proposed under this section, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in section 7 of this act if the toll, or change in toll rate, would have a significant

impact, as determined by the tolling authority, on the operation of any state facility.

Sec. 16. RCW 36.120.050 and 2006 c 311 s 13 are each amended to read as follows:

(1) A regional transportation investment district planning committee may, as part of a regional transportation investment plan, recommend the imposition or authorization of some or all of the following revenue sources, which a regional transportation investment district may impose or authorize upon approval of the voters as provided in this chapter:

(a) A regional sales and use tax, as specified in RCW 82.14.430, of up to 0.1 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, upon the occurrence of any taxable event in the regional transportation investment district;

(b) A local option vehicle license fee, as specified under RCW 82.80.100, of up to one hundred dollars per vehicle registered in the district. As used in this subsection, "vehicle" means motor vehicle as defined in RCW 46.04.320. Certain classes of vehicles, as defined under chapter 46.04 RCW, may be exempted from this fee;

(c) A parking tax under RCW 82.80.030;

(d) A local motor vehicle excise tax under RCW 81.100.060;

(e) A local option fuel tax under RCW 82.80.120;

(f) An employer excise tax under RCW 81.100.030; and

(g) Vehicle tolls on new or reconstructed local or regional arterials or state ~~((or federal highways))~~ routes within the boundaries of the district, if the following conditions are met:

(i) ~~((Any such toll must be approved by the state transportation commission or its successor statewide tolling authority;~~

~~((ii)))~~ Consistent with section 4 of this act, the vehicle toll must first be authorized by the legislature if the toll is imposed on a state route;

~~((ii))~~ Consistent with section 7 of this act, the vehicle toll, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in section 7 of this act if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility;

~~((iii))~~ (iii) The regional transportation investment plan must identify the facilities that may be tolled; and

~~((iiii))~~ (iv) Unless otherwise specified by law, the department shall administer the collection of vehicle tolls on designated facilities, and the state transportation commission, or its successor, shall be the tolling authority, and shall act in accordance with section 7 of this act.

(2) Taxes, fees, and tolls may not be imposed or authorized without an affirmative vote of the majority of the voters within the boundaries of the district voting on a ballot proposition as set forth in RCW 36.120.070. Revenues from these taxes and fees may be used only to implement the plan as set forth in this chapter. A district may contract with the state department of revenue or other appropriate entities for administration and collection of any of the taxes or fees authorized in this section.

(3) Existing statewide motor vehicle fuel and special fuel taxes, at the distribution rates in effect on January 1, 2001, are not intended to be altered by this chapter.

Sec. 17. RCW 36.73.040 and 2005 c 336 s 4 are each amended to read as follows:

(1) A transportation benefit district is a quasi-municipal corporation, an independent taxing "authority" within the meaning of

Article VII, section 1 of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2 of the state Constitution.

(2) A transportation benefit district constitutes a body corporate and possesses all the usual powers of a corporation for public purposes as well as all other powers that may now or hereafter be specifically conferred by statute, including, but not limited to, the authority to hire employees, staff, and services, to enter into contracts, to acquire, hold, and dispose of real and personal property, and to sue and be sued. Public works contract limits applicable to the jurisdiction that established the district apply to the district.

(3) To carry out the purposes of this chapter, and subject to the provisions of RCW 36.73.065, a district is authorized to impose the following taxes, fees, charges, and tolls:

(a) A sales and use tax in accordance with RCW 82.14.0455;

(b) A vehicle fee in accordance with RCW 82.80.140;

(c) A fee or charge in accordance with RCW 36.73.120.

However, if a county or city within the district area is levying a fee or charge for a transportation improvement, the fee or charge shall be credited against the amount of the fee or charge imposed by the district. Developments consisting of less than twenty residences are exempt from the fee or charge under RCW 36.73.120; and

(d) Vehicle tolls on state routes ~~((or federal highways))~~, city streets, or county roads, within the boundaries of the district, unless otherwise prohibited by law. However, consistent with section 4 of this act, the vehicle toll must first be authorized by the legislature if the toll is imposed on a state route. The department of transportation shall administer the collection of vehicle tolls authorized on state routes ~~((or federal highways))~~, unless otherwise specified in law or by contract, and the state transportation commission, or its successor, may approve, set, and impose the tolls in amounts sufficient to implement the district's transportation improvement finance plan. The district shall administer the collection of vehicle tolls authorized on city streets or county roads, and shall set and impose ~~((only with approval of the transportation commission, or its successor;))~~ the tolls in amounts sufficient to implement the district's transportation improvement plan. However, consistent with section 7 of this act, the vehicle toll, including any change in an existing toll rate, must first be reviewed and approved by the tolling authority designated in section 7 of this act if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility.

Sec. 18. RCW 47.29.060 and 2005 c 317 s 6 are each amended to read as follows:

(1) Subject to the limitations in this section, the department may, in connection with the evaluation of eligible projects, consider any financing mechanisms identified under subsections (3) through (5) of this section or any other lawful source, either integrated as part of a project proposal or as a separate, stand-alone proposal to finance a project. Financing may be considered for all or part of a proposed project. A project may be financed in whole or in part with:

(a) The proceeds of grant anticipation revenue bonds authorized by 23 U.S.C. Sec. 122 and applicable state law. Legislative authorization and appropriation is required in order to use this source of financing;

(b) Grants, loans, loan guarantees, lines of credit, revolving lines of credit, or other financing arrangements available under the Transportation Infrastructure Finance and Innovation Act under 23 U.S.C. Sec. 181 et seq., or any other applicable federal law;

(c) Infrastructure loans or assistance from the state infrastructure bank established by RCW 82.44.195;

(d) Federal, state, or local revenues, subject to appropriation by the applicable legislative authority;

(e) User fees, tolls, fares, lease proceeds, rents, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, or any other lawful form of consideration. However, projects financed by tolls or equivalent funding sources must first be authorized by the legislature under section 4 of this act.

(2) As security for the payment of financing described in this section, the revenues from the project may be pledged, but no such pledge of revenues constitutes in any manner or to any extent a general obligation of the state. Any financing described in this section may be structured on a senior, parity, or subordinate basis to any other financing.

(3) For any transportation project developed under this chapter that is owned, leased, used, or operated by the state, as a public facility, if indebtedness is issued, it must be issued by the state treasurer for the transportation project.

(4) For other public projects defined in RCW 47.29.050(2) that are developed in conjunction with a transportation project, financing necessary to develop, construct, or operate the public project must be approved by the state finance committee or by the governing board of a public benefit corporation as provided in the federal Internal Revenue Code section 63-20;

(5) For projects that are developed in conjunction with a transportation project but are not themselves a public facility or public project, any lawful means of financing may be used.

Sec. 19. RCW 47.58.030 and 1984 c 7 s 290 are each amended to read as follows:

Except as otherwise provided in section 7 of this act, the secretary shall have full charge of the construction of all such improvements and reconstruction work and the construction of any additional bridge, including approaches and connecting highways, that may be authorized under this chapter and the operation of such bridge or bridges, as well as the collection of tolls and other charges for services and facilities thereby afforded. The schedule of charges for the services and facilities shall be fixed and revised from time to time by the commission so that the tolls and revenues collected will yield annual revenue and income sufficient, after payment or allowance for all operating, maintenance, and repair expenses, to pay the interest on all revenue bonds outstanding under the provisions of this chapter for account of the project and to create a sinking fund for the retirement of the revenue bonds at or prior to maturity. The charges shall be continued until all such bonds and interest thereon and unpaid advancements, if any, have been paid.

Sec. 20. RCW 47.60.010 and 1984 c 18 s 1 are each amended to read as follows:

The department is authorized to acquire by lease, charter, contract, purchase, condemnation, or construction, and partly by any or all of such means, and to thereafter operate, improve, and extend, a system of ferries on and crossing Puget Sound and any of its tributary waters and connections thereof, and connecting with the public streets and highways in the state. The system of ferries shall include such boats, vessels, wharves, docks, approaches, landings, franchises, licenses, and appurtenances as shall be determined by the department to be necessary or desirable for efficient operation of the ferry system and best serve the public. Subject to section 4 of this act, the department may in like manner acquire by purchase, condemnation, or construction and include in the ferry system such toll bridges, approaches, and connecting roadways as may be deemed by the department advantageous in channeling traffic to points served

by the ferry system. In addition to the powers of acquisition granted by this section, the department is empowered to enter into any contracts, agreements, or leases with any person, firm, or corporation and to thereby provide, on such terms and conditions as it shall determine, for the operation of any ferry or ferries or system thereof, whether acquired by the department or not.

The authority of the department to sell and lease back any state ferry, for federal tax purposes only, as authorized by 26 U.S.C., Sec. 168(f)(8) is confirmed. Legal title and all incidents of legal title to any ferry sold and leased back (except for the federal tax benefits attributable to the ownership thereof) shall remain in the state of Washington.

Sec. 21. RCW 53.34.010 and 1984 c 7 s 365 are each amended to read as follows:

In addition to all other powers granted to port districts, any such district may with the consent of the department of transportation, acquire by condemnation, purchase, lease, or gift, and may construct, reconstruct, maintain, operate, furnish, equip, improve, better, add to, extend, and lease to others in whole or in part and sell in whole or in part any one or more of the following port projects, within or without or partially within and partially without the corporate limits of the district whenever the commission of the district determines that any one or more of such projects are necessary for or convenient to the movement of commercial freight and passenger traffic a part of which traffic moves to, from, or through the territory of the district:

(1) Toll bridges;

(2) Tunnels under or upon the beds of any river, stream, or other body of water, or through mountain ranges.

In connection with the acquisition or construction of any one or more of such projects the port districts may with the consent of the state department of transportation, further acquire or construct, maintain, operate, or improve limited or unlimited access highway approaches of such length as the commission of such district deems advisable to provide means of interconnection of the facilities with public highways and of ingress and egress to any such project, including plazas and toll booths, and to construct and maintain under, along, over, or across any such project telephone, telegraph, or electric transmission wires and cables, fuel lines, gas transmission lines or mains, water transmission lines or mains, and other mechanical equipment not inconsistent with the appropriate use of the project, all for the purpose of obtaining revenues for the payment of the cost of the project.

Consistent with section 7 of this act, any toll, including any change in an existing toll rate, proposed under this section must first be reviewed and approved by the tolling authority designated in section 7 of this act if the toll, or change in toll rate, would have a significant impact, as determined by the tolling authority, on the operation of any state facility.

NEW SECTION. Sec. 22. The following acts or parts of acts are each repealed:

(8) RCW 47.56.0761 (Regional transportation investment district--Tolls on Lake Washington bridges) and 2006 c 311 s 20; and

(9) RCW 47.56.080 (Construction of toll bridges and issuance of bonds authorized) and 1977 ex.s. c 151 s 68 & 1961 c 13 s 47.56.080.

NEW SECTION. Sec. 23. A new section is added to chapter 47.56 RCW to read as follows:

The toll collection account is created in the custody of the state treasurer. All receipts from prepaid customer tolls must be deposited

into the account. Distributions from the account may be used only to refund customers' prepaid tolls or for distributions into the appropriate toll facility account. Distributions into the appropriate toll facility account shall be based on charges incurred at each toll facility and shall include a proportionate share of interest earned from amounts deposited into the account. For purposes of accounting, distributions from the account constitute earned toll revenues in the receiving toll facility account at the time of distribution. Only the secretary of transportation or the secretary's designee may authorize distributions from the account. Distributions of revenue and refunds from this account are not subject to the allotment procedures under chapter 43.88 RCW and an appropriation is not required.

Sec. 24. RCW 43.79A.040 and 2007 c 523 s 5, 2007 c 357 s 21, and 2007 c 214 s 14 are each reenacted and amended to read as follows:

(1) Money in the treasurer's trust fund may be deposited, invested, and reinvested by the state treasurer in accordance with RCW 43.84.080 in the same manner and to the same extent as if the money were in the state treasury.

(2) All income received from investment of the treasurer's trust fund shall be set aside in an account in the treasury trust fund to be known as the investment income account.

(3) The investment income account may be utilized for the payment of purchased banking services on behalf of treasurer's trust funds including, but not limited to, depository, safekeeping, and disbursement functions for the state treasurer or affected state agencies. The investment income account is subject in all respects to chapter 43.88 RCW, but no appropriation is required for payments to financial institutions. Payments shall occur prior to distribution of earnings set forth in subsection (4) of this section.

(4)(a) Monthly, the state treasurer shall distribute the earnings credited to the investment income account to the state general fund except under (b) and (c) of this subsection.

(b) The following accounts and funds shall receive their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The Washington promise scholarship account, the college savings program account, the Washington advanced college tuition payment program 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 students with dependents grant account, the basic health plan self-insurance reserve account, the contract harvesting revolving account, the Washington state combined fund drive account, the commemorative works account, the Washington international exchange scholarship endowment fund, the toll collection account, the developmental disabilities endowment trust fund, the energy account, the fair fund, the family leave insurance account, the fruit and vegetable inspection account, the future teachers conditional scholarship account, the game farm alternative account, the GET ready for math and science scholarship account, the grain inspection revolving fund, the juvenile accountability incentive account, the law enforcement officers' and firefighters' plan 2 expense fund, the local tourism promotion account, the produce railcar pool account, the regional transportation investment district account, the rural rehabilitation account, the stadium and exhibition center account, the youth athletic facility account, the self-insurance revolving fund, the sulfur dioxide abatement account, the children's trust fund, the Washington horse racing commission Washington bred owners' bonus fund account, the Washington horse racing commission class C purse fund account, the individual development account program account, the Washington

horse racing commission operating account (earnings from the Washington horse racing commission operating account must be credited to the Washington horse racing commission class C purse fund account), the life sciences discovery fund, the Washington state heritage center account, and the reading achievement account. However, the earnings to be distributed shall first be reduced by the allocation to the state treasurer's service fund pursuant to RCW 43.08.190.

(c) The following accounts and funds shall receive eighty percent of their proportionate share of earnings based upon each account's or fund's average daily balance for the period: The advanced right-of-way revolving fund, the advanced environmental mitigation revolving account, the city and county advance right-of-way revolving fund, the federal narcotics asset forfeitures account, the high occupancy vehicle account, the local rail service assistance account, and the miscellaneous transportation programs account.

(5) In conformance with Article II, section 37 of the state Constitution, no trust accounts or funds shall be allocated earnings without the specific affirmative directive of this section.

NEW SECTION. Sec. 25. Sections 1 through 7 of this act are each added to chapter 47.56 RCW under the subchapter heading "toll facilities created after July 1, 2008."

NEW SECTION. Sec. 26. Sections 23 and 24 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."

On page 1, line 1 of the title, after "tolls;" strike the remainder of the title and insert "amending RCW 47.56.030, 47.56.040, 47.56.070, 47.56.076, 47.56.078, 47.56.120, 47.56.240, 35.74.050, 36.120.050, 36.73.040, 47.29.060, 47.58.030, 47.60.010, and 53.34.010; reenacting and amending RCW 43.79A.040; adding new sections to chapter 47.56 RCW; repealing RCW 47.56.0761 and 47.56.080; and declaring an emergency."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1773 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Clibborn spoke in favor of passage of the bill.

Representative Ericksen spoke against passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 1773, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 1773, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 60, Nays - 33, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hudgins, Hunt, Hunter, Jarrett, Kagi, Kenney, Kessler, Kirby, Lantz, Lias, Linville, Loomis, McCoy, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 60.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Dunn, Ericksen, Haler, Hasegawa, Herrera, Hinkle, Hurst, Kelley, Kretz, Kristiansen, McCune, McDonald, Newhouse, Orcutt, Pearson, Priest, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 33.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 1773, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2014 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 64.34.440 and 1992 c 220 s 25 are each amended to read as follows:

(1)(a) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condominium notice of the conversion and provide those persons with the public offering statement no later than ~~((ninety))~~ one hundred twenty days before the tenants and any subtenant in possession are required to vacate. The notice must:

(i) Set forth generally the rights of tenants and subtenants under this section ~~((and shall))~~;

(ii) Be delivered pursuant to notice requirements set forth in RCW 59.12.040; and

(iii) Expressly state whether there is a county or city relocation assistance program for tenants or subtenants of conversion condominiums in the jurisdiction in which the property is located. If the county or city does have a relocation assistance program, the following must also be included in the notice:

(A) A summary of the terms and conditions under which relocation assistance is paid; and

(B) Contact information for the city or county relocation assistance program, which must include, at a minimum, a telephone number of the city or county department that administers the relocation assistance program for conversion condominiums.

(b) No tenant or subtenant may be required to vacate upon less than ~~((ninety))~~ one hundred twenty days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period except as provided in (c) of this subsection.

(c) At the declarant's option, the declarant may provide all tenants in a single building with an option to terminate their lease or rental agreements without cause or consequence after providing the declarant with thirty days' notice. In such case, tenants continue to have access to relocation assistance under subsection (6)(e) of this section.

(d) Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(e) The city or county in which the property is located may require the declarant to forward a copy of the conversion notice required in (a) of this subsection to the appropriately designated department or agency in the city or county for the purpose of maintaining a list of conversion condominium projects proposed in the jurisdiction.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeror than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the

housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; ~~(and)~~

~~(e)(i) A declarant shall pay relocation assistance ((not to exceed five hundred dollars per unit shall be paid)), in an amount to be determined by the city or county, which may not exceed a sum equal to three months of the tenant's or subtenant's rent at the time the conversion notice required under subsection (1) of this section is received, to tenants and subtenants;~~

~~(A) Who do not elect ((not)) to purchase a unit ((and));~~

~~(B) Who are in lawful occupancy for residential purposes of a unit; and~~

~~(C) Whose ((monthly)) annual household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of ((+));~~

~~(I) The ((monthly)) annual median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located(;) or ((+))~~

~~(II) If the condominium is not within a standard metropolitan statistical area, the ((monthly)) annual median income for comparably sized households in the state of Washington, as defined and determined by said department.~~

The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or

subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by the tenant or subtenant to the landlord may be offset against the relocation assistance;

(ii) Elderly or special needs tenants who otherwise meet the requirements of (e)(i)(A) of this subsection shall receive relocation assistance, the greater of:

(A) The sum described in (e)(i) of this subsection; or

(B) The sum of actual relocation expenses of the tenant, up to a maximum of one thousand five hundred dollars in excess of the sum described in (e)(i) of this subsection, which may include costs associated with the physical move, first month's rent, and the security deposit for the dwelling unit to which the tenant is relocating, rent differentials for up to a six-month period, and any other reasonable costs or fees associated with the relocation. Receipts for relocation expenses must be provided to the declarant by eligible tenants, and declarants shall provide the relocation assistance to tenants in a timely manner. The city or county may provide additional guidelines for the relocation assistance;

(iii) For the purposes of this subsection (6)(e):

(A) "Special needs" means, but is not limited to, a chronic mental illness or physical disability, a developmental disability, or other condition affecting cognition, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long lasting, and severely limits a person's mental or physical capacity for self-care; and

(B) "Elderly" means a person who is at least sixty-five years of age;

(f) Except as authorized under (g) of this subsection, a declarant and any dealer shall not begin any construction, remodeling, or repairs to any interior portion of an occupied building that is to be converted to a condominium during the one hundred twenty-day notice period provided for in subsection (1) of this section unless all residential tenants and residential subtenants who have elected not to purchase a unit and who are in lawful occupancy in the building have vacated the premises. For the purposes of this subsection:

(i) "Construction, remodeling, or repairs" means the work that is done for the purpose of converting the condominium, not work that is done to maintain the building or lot for the residential use of the existing tenants or subtenants;

(ii) "Occupied building" means a stand-alone structure occupied by tenants and does not include other stand-alone buildings located on the property or detached common area facilities; and

(g)(i) If a declarant or dealer has offered existing tenants an option to terminate an existing lease or rental agreement without cause or consequence as authorized under subsection (1)(c) of this section, a declarant and any dealer may begin construction, remodeling, or repairs to interior portions of an occupied building (A) to repair or remodel vacant units to be used as model units, if the repair or remodel is limited to one model for each unit type in the building, (B) to repair or remodel a vacant unit or common area for use as a sales office, or (C) to do both.

(ii) The work performed under this subsection (6)(g) must not violate the tenant's or subtenant's rights of quiet enjoyment during the one hundred twenty-day notice period.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate

the creation of the condominium or the conveyance of any interest therein.

Sec. 2. RCW 82.02.020 and 2006 c 149 s 3 are each amended to read as follows:

Except only as expressly provided in chapters 67.28 and 82.14 RCW, the state preempts the field of imposing taxes upon retail sales of tangible personal property, the use of tangible personal property, parimutuel wagering authorized pursuant to RCW 67.16.060, conveyances, and cigarettes, and no county, town, or other municipal subdivision shall have the right to impose taxes of that nature. Except as provided in RCW 64.34.440 and 82.02.050 through 82.02.090, no county, city, town, or other municipal corporation shall impose any tax, fee, or charge, either direct or indirect, on the construction or reconstruction of residential buildings, commercial buildings, industrial buildings, or on any other building or building space or appurtenance thereto, or on the development, subdivision, classification, or reclassification of land. However, this section does not preclude dedications of land or easements within the proposed development or plat which the county, city, town, or other municipal corporation can demonstrate are reasonably necessary as a direct result of the proposed development or plat to which the dedication of land or easement is to apply.

This section does not prohibit voluntary agreements with counties, cities, towns, or other municipal corporations that allow a payment in lieu of a dedication of land or to mitigate a direct impact that has been identified as a consequence of a proposed development, subdivision, or plat. A local government shall not use such voluntary agreements for local off-site transportation improvements within the geographic boundaries of the area or areas covered by an adopted transportation program authorized by chapter 39.92 RCW. Any such voluntary agreement is subject to the following provisions:

(1) The payment shall be held in a reserve account and may only be expended to fund a capital improvement agreed upon by the parties to mitigate the identified, direct impact;

(2) The payment shall be expended in all cases within five years of collection; and

(3) Any payment not so expended shall be refunded with interest to be calculated from the original date the deposit was received by the county and at the same rate applied to tax refunds pursuant to RCW 84.69.100; however, if the payment is not expended within five years due to delay attributable to the developer, the payment shall be refunded without interest.

No county, city, town, or other municipal corporation shall require any payment as part of such a voluntary agreement which the county, city, town, or other municipal corporation cannot establish is reasonably necessary as a direct result of the proposed development or plat.

Nothing in this section prohibits cities, towns, counties, or other municipal corporations from collecting reasonable fees from an applicant for a permit or other governmental approval to cover the cost to the city, town, county, or other municipal corporation of processing applications, inspecting and reviewing plans, or preparing detailed statements required by chapter 43.21C RCW.

This section does not limit the existing authority of any county, city, town, or other municipal corporation to impose special assessments on property specifically benefitted thereby in the manner prescribed by law.

Nothing in this section prohibits counties, cities, or towns from imposing or permits counties, cities, or towns to impose water, sewer, natural gas, drainage utility, and drainage system charges: PROVIDED, That no such charge shall exceed the proportionate

share of such utility or system's capital costs which the county, city, or town can demonstrate are attributable to the property being charged: PROVIDED FURTHER, That these provisions shall not be interpreted to expand or contract any existing authority of counties, cities, or towns to impose such charges.

Nothing in this section prohibits a transportation benefit district from imposing fees or charges authorized in RCW 36.73.120 nor prohibits the legislative authority of a county, city, or town from approving the imposition of such fees within a transportation benefit district.

Nothing in this section prohibits counties, cities, or towns from imposing transportation impact fees authorized pursuant to chapter 39.92 RCW.

Nothing in this section prohibits counties, cities, or towns from requiring property owners to provide relocation assistance to tenants under RCW 59.18.440 and 59.18.450.

Nothing in this section limits the authority of counties, cities, or towns to implement programs consistent with RCW 36.70A.540, nor to enforce agreements made pursuant to such programs.

This section does not apply to special purpose districts formed and acting pursuant to Titles 54, 57, or 87 RCW, nor is the authority conferred by these titles affected.

NEW SECTION. Sec. 3. A new section is added to chapter 64.34 RCW to read as follows:

(1) All cities and counties planning under RCW 36.70A.040, which have allowed any conversion condominiums within the jurisdiction within the previous twelve-month period, must report annually to the department of community, trade, and economic development the following information:

(a) The total number of apartment units converted into condominiums;

(b) The total number of conversion condominium projects; and

(c) The total number of apartment tenants who receive relocation assistance.

(2) Upon completion of a conversion condominium project, a city or county may require the declarant to provide the information described in subsection (1) of this section to the appropriately designated department or agency in the city or county for the purpose of complying with subsection (1) of this section.

Sec. 4. RCW 59.18.200 and 2003 c 7 s 1 are each amended to read as follows:

(1)(a) When premises are rented for an indefinite time, with monthly or other periodic rent reserved, such tenancy shall be construed to be a tenancy from month to month, or from period to period on which rent is payable, and shall be terminated by written notice of twenty days or more, preceding the end of any of the months or periods of tenancy, given by either party to the other.

(b) Any tenant who is a member of the armed forces, including the national guard and armed forces reserves, or that tenant's spouse or dependant, may terminate a rental agreement with less than twenty days' notice if the tenant receives reassignment or deployment orders that do not allow a twenty-day notice.

(2)(a) Whenever a landlord (~~(plans to change any apartment or apartments to a condominium form of ownership or)~~) plans to change to a policy of excluding children, the landlord shall give a written notice to a tenant at least ninety days before termination of the tenancy to effectuate such change in policy. Such ninety-day notice shall be in lieu of the notice required by subsection (1) of this section. However, if after giving the ninety-day notice the change in policy is

delayed, the notice requirements of subsection (1) of this section shall apply unless waived by the tenant.

(b) Whenever a landlord plans to change any apartment or apartments to a condominium form of ownership, the landlord shall provide a written notice to a tenant at least one hundred twenty days before termination of the tenancy, in compliance with RCW 64.34.440(1), to effectuate such change. The one hundred twenty-day notice is in lieu of the notice required in subsection (1) of this section. However, if after providing the one hundred twenty-day notice the change to a condominium form of ownership is delayed, the notice requirements in subsection (1) of this section apply unless waived by the tenant.

NEW SECTION. Sec. 5. This act does not apply to any conversion condominiums for which a notice required under RCW 64.34.440(1) has been delivered before the effective date of this act.

NEW SECTION. Sec. 6. This act takes effect August 1, 2008."

On page 1, line 1 of the title, after "condominiums;" strike the remainder of the title and insert "amending RCW 64.34.440, 82.02.020, and 59.18.200; adding a new section to chapter 64.34 RCW; creating a new section; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2014 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Chase spoke in favor of passage of the bill.

Representative Armstrong spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2014, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2014, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 64, Nays - 29, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hasegawa, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Liias, Linville, Loomis, McCoy, McIntire,

Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Priest, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 64.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Dunn, Ericksen, Haler, Herrera, Hinkle, Kretz, Kristiansen, McCune, McDonald, Newhouse, Orcutt, Pearson, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 29.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2014, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2176 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. A new section is added to chapter 2.43 RCW to read as follows:

(1) Each trial court organized under this title and Titles 3 and 35 RCW must develop a written language assistance plan to provide a framework for the provision of interpreter services for non-English-speaking persons accessing the court system in both civil and criminal legal matters. The language assistance plan must include, at a minimum, provisions addressing the following:

(a) Procedures to identify and assess the language needs of non-English-speaking persons using the court system;

(b) Procedures for the appointment of interpreters as required under RCW 2.43.030. Such procedures shall not require the non-English-speaking person to make the arrangements for the interpreter to appear in court;

(c) Procedures for notifying court users of the right to and availability of interpreter services. Such information shall be prominently displayed in the courthouse in the five foreign languages that census data indicates are predominate in the jurisdiction;

(d) A process for providing timely communication with non-English speakers by all court employees who have regular contact with the public and meaningful access to court services, including access to services provided by the clerk's office;

(e) Procedures for evaluating the need for translation of written materials, prioritizing those translation needs, and translating the highest priority materials. These procedures should take into account the frequency of use of forms by the language group, and the cost of orally interpreting the forms;

(f) A process for requiring and providing training to judges, court clerks, and other court staff on the requirements of the language

assistance plan and how to effectively access and work with interpreters; and

(g) A process for ongoing evaluation of the language assistance plan and monitoring of the implementation of the language assistance plan.

(2) Each court, when developing its language assistance plan, must consult with judges, court administrators and court clerks, interpreters, and members of the community, such as domestic violence organizations, pro bono programs, courthouse facilitators, legal services programs, and/or other community groups whose members speak a language other than English.

(3) Each court must provide a copy of its language assistance plan to the interpreter commission established by supreme court rule for approval prior to receiving state reimbursement for interpreter costs under this chapter.

(4) Each court receiving reimbursement for interpreter costs under RCW 2.42.120 or 2.43.040 must provide to the administrative office of the courts by November 15, 2009, a report detailing an assessment of the need for interpreter services for non-English speakers in court-mandated classes or programs, the extent to which interpreter services are currently available for court-mandated classes or programs, and the resources that would be required to ensure that interpreters are provided to non-English speakers in court-mandated classes or programs. The report shall also include the amounts spent annually on interpreter services for fiscal years 2005, 2006, 2007, 2008, and 2009. The administrative office of the courts shall compile these reports and provide them along with the specific reimbursements provided, by court and fiscal year, to the appropriate committees of the legislature by December 15, 2009.

Sec. 2. RCW 2.42.120 and 1985 c 389 s 12 are each amended to read as follows:

(1) If a hearing impaired person is a party or witness at any stage of a judicial or quasi-judicial proceeding in the state or in a political subdivision, including but not limited to civil and criminal court proceedings, grand jury proceedings, proceedings before a magistrate, juvenile proceedings, adoption proceedings, mental health commitment proceedings, and any proceeding in which a hearing impaired person may be subject to confinement or criminal sanction, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(2) If the parent, guardian, or custodian of a juvenile brought before a court is hearing impaired, the appointing authority shall appoint and pay for a qualified interpreter to interpret the proceedings.

(3) If a hearing impaired person participates in a program or activity ordered by a court as part of the sentence or order of disposition, required as part of a diversion agreement or deferred prosecution program, or required as a condition of probation or parole, the appointing authority shall appoint and pay for a qualified interpreter to interpret exchange of information during the program or activity.

(4) If a law enforcement agency conducts a criminal investigation involving the interviewing of a hearing impaired person, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. Whenever a law enforcement agency conducts a criminal investigation involving the interviewing of a minor child whose parent, guardian, or custodian is hearing impaired, whether as a victim, witness, or suspect, the appointing authority shall appoint and pay for a qualified interpreter throughout the investigation. No

employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(5) If a hearing impaired person is arrested for an alleged violation of a criminal law the arresting officer or the officer's supervisor shall, at the earliest possible time, procure and arrange payment for a qualified interpreter for any notification of rights, warning, interrogation, or taking of a statement. No employee of the law enforcement agency who has responsibilities other than interpreting may be appointed as the qualified interpreter.

(6) Where it is the policy and practice of a court of this state or of a political subdivision to appoint and pay counsel for persons who are indigent, the appointing authority shall appoint and pay for a qualified interpreter for hearing impaired persons to facilitate communication with counsel in all phases of the preparation and presentation of the case.

(7) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where a qualified interpreter is appointed for a hearing impaired person by a judicial officer in a proceeding before a court under subsection (1), (2), or (3) of this section in compliance with the provisions of RCW 2.42.130 and 2.42.170.

Sec. 3. RCW 2.43.040 and 1989 c 358 s 4 are each amended to read as follows:

(1) Interpreters appointed according to this chapter are entitled to a reasonable fee for their services and shall be reimbursed for actual expenses which are reasonable as provided in this section.

(2) In all legal proceedings in which the non-English-speaking person is a party, or is subpoenaed or summoned by the appointing authority or is otherwise compelled by the appointing authority to appear, including criminal proceedings, grand jury proceedings, coroner's inquests, mental health commitment proceedings, and other legal proceedings initiated by agencies of government, the cost of providing the interpreter shall be borne by the governmental body initiating the legal proceedings.

(3) In other legal proceedings, the cost of providing the interpreter shall be borne by the non-English-speaking person unless such person is indigent according to adopted standards of the body. In such a case the cost shall be an administrative cost of the governmental body under the authority of which the legal proceeding is conducted.

(4) The cost of providing the interpreter is a taxable cost of any proceeding in which costs ordinarily are taxed.

(5) Subject to the availability of funds specifically appropriated therefor, the administrative office of the courts shall reimburse the appointing authority for up to one-half of the payment to the interpreter where an interpreter is appointed by a judicial officer in a proceeding before a court at public expense and:

(a) The interpreter appointed is an interpreter certified by the administrative office of the courts or is a qualified interpreter registered by the administrative office of the courts in a noncertified language, or where the necessary language is not certified or registered, the interpreter has been qualified by the judicial officer pursuant to this chapter;

(b) The court conducting the legal proceeding has an approved language assistance plan that complies with section 1 of this act; and

(c) The fee paid to the interpreter for services is in accordance with standards established by the administrative office of the courts.

Sec. 4. RCW 2.56.030 and 2007 c 496 s 302 are each amended to read as follows:

The administrator for the courts shall, under the supervision and direction of the chief justice:

(1) Examine the administrative methods and systems employed in the offices of the judges, clerks, stenographers, and employees of the courts and make recommendations, through the chief justice, for the improvement of the same;

(2) Examine the state of the dockets of the courts and determine the need for assistance by any court;

(3) Make recommendations to the chief justice relating to the assignment of judges where courts are in need of assistance and carry out the direction of the chief justice as to the assignments of judges to counties and districts where the courts are in need of assistance;

(4) Collect and compile statistical and other data and make reports of the business transacted by the courts and transmit the same to the chief justice to the end that proper action may be taken in respect thereto;

(5) Prepare and submit budget estimates of state appropriations necessary for the maintenance and operation of the judicial system and make recommendations in respect thereto;

(6) Collect statistical and other data and make reports relating to the expenditure of public moneys, state and local, for the maintenance and operation of the judicial system and the offices connected therewith;

(7) Obtain reports from clerks of courts in accordance with law or rules adopted by the supreme court of this state on cases and other judicial business in which action has been delayed beyond periods of time specified by law or rules of court and make report thereof to supreme court of this state;

(8) Act as secretary of the judicial conference referred to in RCW 2.56.060;

(9) Submit annually, as of February 1st, to the chief justice, a report of the activities of the administrator's office for the preceding calendar year including activities related to courthouse security;

(10) Administer programs and standards for the training and education of judicial personnel;

(11) Examine the need for new superior court and district court judge positions under an objective workload analysis. The results of the objective workload analysis shall be reviewed by the board for judicial administration which shall make recommendations to the legislature. It is the intent of the legislature that an objective workload analysis become the basis for creating additional district and superior court positions, and recommendations should address that objective;

(12) Provide staff to the judicial retirement account plan under chapter 2.14 RCW;

(13) Attend to such other matters as may be assigned by the supreme court of this state;

(14) Within available funds, develop a curriculum for a general understanding of child development, placement, and treatment resources, as well as specific legal skills and knowledge of relevant statutes including chapters 13.32A, 13.34, and 13.40 RCW, cases, court rules, interviewing skills, and special needs of the abused or neglected child. This curriculum shall be completed and made available to all juvenile court judges, court personnel, and service providers and be updated yearly to reflect changes in statutes, court rules, or case law;

(15) Develop, in consultation with the entities set forth in RCW 2.56.150(3), a comprehensive statewide curriculum for persons who act as guardians ad litem under Title 13 or 26 RCW. The curriculum shall be made available July 1, 2008, and include specialty sections on child development, child sexual abuse, child physical abuse, child neglect, domestic violence, clinical and forensic investigative and

interviewing techniques, family reconciliation and mediation services, and relevant statutory and legal requirements. The curriculum shall be made available to all superior court judges, court personnel, and all persons who act as guardians ad litem;

(16) Develop a curriculum for a general understanding of crimes of malicious harassment, as well as specific legal skills and knowledge of RCW 9A.36.080, relevant cases, court rules, and the special needs of malicious harassment victims. This curriculum shall be made available to all superior court and court of appeals judges and to all justices of the supreme court;

(17) Develop, in consultation with the criminal justice training commission and the commissions established under chapters 43.113, 43.115, and 43.117 RCW, a curriculum for a general understanding of ethnic and cultural diversity and its implications for working with youth of color and their families. The curriculum shall be available to all superior court judges and court commissioners assigned to juvenile court, and other court personnel. Ethnic and cultural diversity training shall be provided annually so as to incorporate cultural sensitivity and awareness into the daily operation of juvenile courts statewide;

(18) Authorize the use of closed circuit television and other electronic equipment in judicial proceedings. The administrator shall promulgate necessary standards and procedures and shall provide technical assistance to courts as required;

(19) Develop a Washington family law handbook in accordance with RCW 2.56.180;

(20) Administer state funds for improving the operation of the courts and provide support for court coordinating councils, under the direction of the board for judicial administration;

(21)(a) Administer and distribute amounts appropriated from the equal justice subaccount under RCW 43.08.250(2) for district court judges' and qualifying elected municipal court judges' salary contributions. The administrator for the courts shall develop a distribution formula for these amounts that does not differentiate between district and elected municipal court judges.

(b) A city qualifies for state contribution of elected municipal court judges' salaries under (a) of this subsection if:

(i) The judge is serving in an elected position;

(ii) The city has established by ordinance that a full-time judge is compensated at a rate equivalent to at least ninety-five percent, but not more than one hundred percent, of a district court judge salary or for a part-time judge on a pro rata basis the same equivalent; and

(iii) The city has certified to the office of the administrator for the courts that the conditions in (b)(i) and (ii) of this subsection have been met;

(22) Subject to the availability of funds specifically appropriated therefor, assist courts in the development and implementation of language assistance plans required under section 1 of this act."

On page 1, line 1 of the title, after "services;" strike the remainder of the title and insert "amending RCW 2.42.120, 2.43.040, and 2.56.030; and adding a new section to chapter 2.43 RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND ENGROSSED SECOND

SUBSTITUTE HOUSE BILL NO. 2176 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Lantz and Rodne spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Engrossed Second Substitute House Bill No. 2176, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Engrossed Second Substitute House Bill No. 2176, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2176, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2472 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that recreational opportunities are instrumental in promoting human health and well-being and are part of the heritage of Washington

state. State trust lands, aquatic lands, and other state-owned lands managed by the department of natural resources provide significant recreational opportunities, along with other social, economic, and environmental benefits. Lands managed by the department of natural resources provide, among other values:

- (a) Renewable energy resources;
- (b) Sustainable revenue for school construction, local governments, and other state institutions;
- (c) Recreational and educational opportunities;
- (d) Habitat for fish and wildlife;
- (e) Clean air and water; and
- (f) Funding for restoration and public access to state-owned aquatic lands.

(2) The legislature further finds that the state's population has nearly doubled from three million four hundred thousand to six million five hundred thousand since the multiple use concept was adopted under chapter 79.10 RCW, and is projected to increase by another two million two hundred thousand by 2030. Population growth has increased demand for recreational access and presents current and future challenges that must be addressed, such as: Increasing potential for conflict with adjacent and nearby land uses, including residential land uses; new forms of trail-based recreation that compete with traditional uses; the rapid increase of motorized and mechanized recreation; changes in ownership patterns of large land holdings across the state; the incompatibility of certain human activities with environmental protections for endangered species, clean water, clean air, climate impacting emissions, and habitat; and increased competition for funding.

(3) The legislature further finds that efforts by the department of natural resources to consolidate state trust lands will provide more opportunities for citizens to access larger blocks of state-owned lands. Therefore, it is prudent to reexamine the policies for recreational access on state-owned lands and establish a vision for the future with recommended policy improvements that are:

- (a) Environmentally responsible;
- (b) Sustainably funded; and
- (c) Compatible with trust land and state land management obligations.

NEW SECTION. Sec. 2. (1) A work group is established to make recommendations to improve recreation on state trust lands, aquatic lands, and other state-owned lands managed by the department of natural resources.

(2) The work group's recommendations to improve recreation on state-owned lands must be compatible with adjacent and nearby land uses, including residential land uses. The work group shall examine relevant existing laws and rules and recommend policy changes and funding alternatives for consideration by the legislature to ensure safe, sustainable, and enjoyable recreational access. In conducting this work, the work group must consider: The legal obligations for trusts, aquatic lands, and natural areas; consistency with environmental standards needed to protect lands and natural systems; and related work group recommendations such as the Puget Sound action agenda defined in chapter 90.71 RCW, the Washington biodiversity strategy created in executive order 04-02, and the invasive species council recommendations defined in chapter 79A.25 RCW. The work group must provide recommendations on ways to coordinate trail maintenance work with volunteer organizations on state-owned lands.

(3) The work group is comprised of a balanced representation of individuals with recreational interests and knowledge regarding specific regions of the state. The work group must consist of no more

than twenty-eight members appointed by the commissioner of public lands in consultation with the following entities:

- (a) Recreational associations and organizations;
- (b) Environmental protection associations and organizations;
- (c) Corporate and community leaders;
- (d) Major landowners;
- (e) Local governments;
- (f) Tribal governments;
- (g) The United States forest service;
- (h) The parks and recreation commission;
- (i) The recreation and conservation office;
- (j) The department of fish and wildlife;
- (k) State trust land beneficiaries;
- (l) State land leaseholders and contractors;
- (m) A representative of the governor, appointed by the governor;

and

(n) Members of the senate appointed by the president of the senate and members of the house of representatives appointed by the speaker of the house of representatives.

(4) The commissioner of public lands, or the commissioner's designee, shall serve as chair, and the department of natural resources shall provide technical and staff support for the work group created by this section.

(5) Work group members that are not employees of state or federal agencies shall be compensated as provided in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. Costs associated with the work group must be paid by the department of natural resources from the appropriation made available to the department of natural resources for the purpose of this study.

(6) The work group shall conduct a minimum of two open public workshops to solicit input from key stakeholders, citizens, and local jurisdictions, at least one of which must be conducted in a location east of the crest of the Cascade mountain range.

(7) The work group shall hold meetings, at diverse locations throughout the state, to gather input from key stakeholders, citizens, and local jurisdictions regarding the group's proposed recommendations.

(8) The work group shall coordinate with the stakeholder recreational advisory committees appointed or established by the commissioner of public lands.

(9) The commissioner of public lands shall submit to the appropriate standing committees of the legislature, no later than December 1, 2008, a progress report with preliminary findings and recommendations. The commissioner of public lands must submit a final report by December 1, 2009, with findings and recommendations for legislation that is necessary to implement the work group's findings.

(a) The reports must include an assessment of how various kinds of recreation affect the costs and risks to:

- (i) The interests of beneficiaries of state lands;
- (ii) Private landowners, federal landowners, and state government due to increased wildfire risks;
- (iii) Local and state government due to personal injury and property damage;
- (iv) Natural habitat, water quality, and air quality; and
- (v) The land uses and management plans of adjacent landowners.

(b) The reports must include recommendations for appropriate fund sources to mitigate these identified risks."

On page 1, line 4 of the title, after "resources;" strike the remainder of the title and insert "and creating new sections."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2472 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Blake and Pearson spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2472, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2472, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2472, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 2510 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 41.48.030 and 2007 c 218 s 72 are each amended to read as follows:

(1) The governor is hereby authorized to enter on behalf of the state into an agreement with the federal secretary of health(~~(, education, and welfare)~~) and human services consistent with the terms and provisions of this chapter, for the purpose of extending the benefits of the federal old-age and survivors insurance system to employees of the state or any political subdivision not members of an existing retirement system, or to members of a retirement system established by the state or by a political subdivision thereof or by an institution of higher learning with respect to services specified in such agreement which constitute "employment" as defined in RCW 41.48.020. Such agreement may contain such provisions relating to coverage, benefits, contributions, effective date, modification and termination of the agreement, administration, and other appropriate provisions as the governor and secretary of health(~~(, education, and welfare)~~) and human services shall agree upon, but, except as may be otherwise required by or under the social security act as to the services to be covered, such agreement shall provide in effect that(~~(=)~~):

(a) Benefits will be provided for employees whose services are covered by the agreement (and their dependents and survivors) on the same basis as though such services constituted employment within the meaning of Title II of the social security act;

(b) The state will pay to the secretary of the treasury, at such time or times as may be prescribed under the social security act, contributions with respect to wages (as defined in RCW 41.48.020), equal to the sum of the taxes which would be imposed by the federal insurance contributions act if the services covered by the agreement constituted employment within the meaning of that act;

(c) Such agreement shall be effective with respect to services in employment covered by the agreement or modification thereof performed after a date specified therein but in no event may it be effective with respect to any such services performed prior to the first day of the calendar year immediately preceding the calendar year in which such agreement or modification of the agreement is accepted by the secretary of health(~~(, education and welfare)~~) and human services;

(d) All services which constitute employment as defined in RCW 41.48.020 and are performed in the employ of the state by employees of the state, shall be covered by the agreement;

(e) All services which (i) constitute employment as defined in RCW 41.48.020, (ii) are performed in the employ of a political subdivision of the state, and (iii) are covered by a plan which is in conformity with the terms of the agreement and has been approved by the governor under RCW 41.48.050, shall be covered by the agreement; (~~and~~)

(f) As modified, the agreement shall include all services described in either (~~paragraph~~) (d) or (~~paragraph~~) (e) of this subsection and performed by individuals to whom section 218(c)(3)(C) of the social security act is applicable, and shall provide that the service of any such individual shall continue to be covered by the agreement in case he or she thereafter becomes eligible to be a member of a retirement system; (~~and~~)

(g) As modified, the agreement shall include all services described in either (~~paragraph~~) (d) or (~~paragraph~~) (e) of this

subsection and performed by individuals in positions covered by a retirement system with respect to which the governor has issued a certificate to the secretary of health(~~(, education, and welfare)~~) and human services pursuant to subsection (5) of this section; and

(h) Law enforcement officers and firefighters of each political subdivision of this state who are covered by the Washington law enforcement officers' and firefighters' retirement system act (~~(chapter 209, Laws of 1969 ex. sess.) as now in existence or hereafter amended~~), chapter 41.26 RCW, shall constitute a separate "coverage group" for purposes of the agreement entered into under this section and for purposes of section 218 of the social security act. (~~To the extent that the agreement between this state and the federal secretary of health, education, and welfare in existence on the date of the adoption of this subsection is inconsistent with this subsection, the governor shall seek to modify the inconsistency.~~)

(2) Any instrumentality jointly created by this state and any other state or states is hereby authorized, upon the granting of like authority by such other state or states, (a) to enter into an agreement with the secretary of health(~~(, education, and welfare)~~) and human services whereby the benefits of the federal old-age and survivors insurance system shall be extended to employees of such instrumentality, (b) to require its employees to pay (and for that purpose to deduct from their wages) contributions equal to the amounts which they would be required to pay under RCW 41.48.040(1) if they were covered by an agreement made pursuant to subsection (1) of this section, and (c) to make payments to the secretary of the treasury in accordance with such agreement, including payments from its own funds, and otherwise to comply with such agreements. Such agreement shall, to the extent practicable, be consistent with the terms and provisions of subsection (1) of this section and other provisions of this chapter.

(3) The governor is empowered to authorize a referendum, and to designate an agency or individual to supervise its conduct, in accordance with the requirements of section 218(d)(3) of the social security act, and subsection (4) of this section on the question of whether service in all positions covered by a retirement system established by the state or by a political subdivision thereof should be excluded from or included under an agreement under this chapter. If a retirement system covers positions of employees of the state of Washington, of the institutions of higher learning, and positions of employees of one or more of the political subdivisions of the state, then for the purpose of the referendum as provided (~~herein~~) in this section, there may be deemed to be a separate retirement system with respect to employees of the state, or any one or more of the political subdivisions, or institutions of higher learning and the governor shall authorize a referendum upon request of the subdivisions' or institutions' of higher learning governing body: PROVIDED HOWEVER, That if a referendum of state employees generally fails to produce a favorable majority vote then the governor may authorize a referendum covering positions of employees in any state department who are compensated in whole or in part from grants made to this state under Title III of the federal social security act: PROVIDED, That any city or town affiliated with the statewide city employees retirement system organized under chapter 41.44 RCW may at its option agree to a plan submitted by the board of trustees of (~~said~~) that statewide city employees retirement system for inclusion under an agreement under this chapter if the referendum to be held as provided (~~herein~~) in this section indicates a favorable result: PROVIDED FURTHER, That the teachers' retirement system be considered one system for the purpose of the referendum except as applied to the several colleges of education. The notice of referendum required by section 218(d)(3)(C) of the social security act to be given

to employees shall contain or shall be accompanied by a statement, in such form and such detail as the agency or individual designated to supervise the referendum shall deem necessary and sufficient, to inform the employees of the rights which will accrue to them and their dependents and survivors, and the liabilities to which they will be subject, if their services are included under an agreement under this chapter.

(4) The governor, before authorizing a referendum, shall require the following conditions to be met:

(a) The referendum shall be by secret written ballot on the question of whether service in positions covered by such retirement system shall be excluded from or included under the agreement between the governor and the secretary of health(~~(-education, and welfare))~~ and human services provided for in (~~(RCW 41.48.030(1))~~) subsection (1) of this section;

(b) An opportunity to vote in such referendum shall be given and shall be limited to eligible employees;

(c) Not less than ninety days' notice of such referendum shall be given to all such employees;

(d) Such referendum shall be conducted under the supervision (~~(f))~~ of the governor or (~~(g))~~ of an agency or individual designated by the governor;

(e)(i) The proposal for coverage shall be approved only if a majority of the eligible employees vote in favor of including services in such positions under the agreement;

(ii) Coverage obtained through a divided referendum process shall extend coverage to law enforcement officers, firefighters, and employees of political subdivisions of this state, who have membership in a qualified retirement system, allowing them to obtain medicare coverage only (HI-only). In such a divided referendum process, those members voting in favor of medicare coverage constitute a separate coverage group;

(f) The state legislature, in the case of a referendum affecting the rights and liabilities of state employees covered under the state employees' retirement system and employees under the teachers' retirement system, and in all other cases the local legislative authority or governing body, shall have specifically approved the proposed plan and approved any necessary structural adjustment to the existing system to conform with the proposed plan;

(g) In the case of a referendum authorized under section 218(d)(6) of the social security act and (e)(ii) of this subsection, the retirement system will be divided into two parts or divisions. One part or division of the retirement system shall be composed of positions of those members of the system who desire coverage under the agreement as permitted by this section. The remaining part or division of the retirement system shall be composed of positions of those members who do not desire coverage under such an agreement. Each part or division is a separate retirement system for the purposes of section 218(d) of the social security act. The positions of individuals who become members of the system after the coverage is extended shall be included in the part or division of the system composed of members desiring the coverage with the exception of positions that are excluded in the agreement.

(5) Upon receiving satisfactory evidence that with respect to any such referendum the conditions specified in subsection (4) of this section and section 218(d)(3) of the social security act have been met, the governor shall so certify to the secretary of health(~~(-education, and welfare))~~ and human services.

(6) If the legislative body of any political subdivision of this state certifies to the governor that a referendum has been held under the terms of RCW 41.48.050(1)(i) and gives notice to the governor of termination of social security for any coverage group of the

political subdivision, the governor shall give two years advance notice in writing to the federal department of health(~~(-education, and welfare))~~ and human services of (~~(such)~~) the termination of the agreement entered into under this section with respect to (~~(said)~~) that coverage group."

On page 1, line 3 of the title, after "process;" strike the remainder of the title and insert "and amending RCW 41.48.030."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 2510 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Simpson and Warnick spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 2510, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 2510, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

HOUSE BILL NO. 2510, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2514 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that the resident population of orca whales in Washington waters (*Orcinus orca*), commonly referred to as the southern residents, are enormously significant to the state. These highly social, intelligent, and playful marine mammals, which the legislature designated as the official marine mammal of the state of Washington, serve as a symbol of the Pacific Northwest and illustrate the biological diversity and rich natural heritage that all Washington citizens and its visitors enjoy.

However, the legislature also finds that the southern resident orcas are currently in a serious decline. Southern residents experienced an almost twenty percent decline between 1996 and 2001. The federal government listed this orca population as depleted in 2003, and as an endangered species in 2005. The federal government has identified impacts from vessels as a significant threat to these marine mammals.

In 2006, after listing the southern resident orcas as endangered, the federal government designated critical orca habitat and released a proposed recovery plan for the southern resident orcas. The federal government has initiated the process to adopt orca conservation rules, but this process may be lengthy. Additionally, although existing whale and wildlife viewing guidelines are an excellent educational resource, these guidelines are voluntary measures that cannot be enforced.

Therefore, the legislature intends to protect southern resident orca whales from impacts from vessels, and to educate the public on how to reduce the risk of disturbing these important marine mammals.

NEW SECTION. Sec. 2. A new section is added to chapter 77.15 RCW to read as follows:

(1) Except as provided in subsection (2) of this section, it is unlawful to:

(a) Approach, by any means, within three hundred feet of a southern resident orca whale (*Orcinus orca*);

(b) Cause a vessel or other object to approach within three hundred feet of a southern resident orca whale;

(c) Intercept a southern resident orca whale. A person intercepts a southern resident orca whale when that person places a vessel or allows a vessel to remain in the path of a whale and the whale approaches within three hundred feet of that vessel;

(d) Fail to disengage the transmission of a vessel that is within three hundred feet of a southern resident orca whale, for which the vessel operator is strictly liable; or

(e) Feed a southern resident orca whale, for which any person feeding a southern resident orca whale is strictly liable.

(2) A person is exempt from subsection (1) of this section where:

(a) A reasonably prudent person in that person's position would determine that compliance with the requirements of subsection (1) of this section will threaten the safety of the vessel, the vessel's crew or passengers, or is not feasible due to vessel design limitations, or

because the vessel is restricted in its ability to maneuver due to wind, current, tide, or weather;

(b) That person is lawfully participating in a commercial fishery and is engaged in actively setting, retrieving, or closely tending commercial fishing gear;

(c) That person is acting in the course of official duty for a state, federal, tribal, or local government agency; or

(d) That person is acting pursuant to and consistent with authorization from a state or federal government agency.

(3) Nothing in this section is intended to conflict with existing rules regarding safe operation of a vessel or vessel navigation rules.

(4) For the purpose of this section, "vessel" includes aircraft, canoes, fishing vessels, kayaks, personal watercraft, rafts, recreational vessels, tour boats, whale watching boats, vessels engaged in whale watching activities, or other small craft including power boats and sail boats.

(5) A violation of this section is a natural resource infraction punishable under chapter 7.84 RCW.

NEW SECTION. Sec. 3. The legislature encourages the state's law enforcement agencies to utilize existing statutes and regulations to protect southern resident orca whales from impacts from vessels, including the vessel operation and enforcement standards contained in chapter 79A.60 RCW.

NEW SECTION. Sec. 4. A new section is added to chapter 77.12 RCW to read as follows:

The department and the state parks and recreation commission shall disseminate information about section 2 of this act, whale and wildlife viewing guidelines, and other responsible wildlife viewing messages to educate Washington's citizens on how to reduce the risk of disturbing southern resident orca whales. The department and the state parks and recreation commission must, at minimum, disseminate this information on their internet sites and through appropriate agency publications, brochures, and other information sources. The department and the state parks and recreation commission shall also attempt to reach the state's boating community by coordinating with appropriate state and nongovernmental entities to provide this information at marinas, boat shows, boat dealers, during boating safety training courses, and in conjunction with vessel registration or licensing.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "vessels;" strike the remainder of the title and insert "adding a new section to chapter 77.15 RCW; adding a new section to chapter 77.12 RCW; creating new sections; and prescribing penalties."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2514 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representative Quall spoke in favor of passage of the bill.

Representative Kretz spoke against the passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 2514, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 2514, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 71, Nays - 22, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunn, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hasegawa, Herrera, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Wood and Mr. Speaker - 71.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Ericksen, Haler, Hinkle, Kretz, Kristiansen, Newhouse, Orcutt, Pearson, Rodne, Ross, Schindler, Schmick and Warnick - 22.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND SUBSTITUTE HOUSE BILL NO. 2514, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2533 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the policy of the state to encourage the joint use of utility poles, to promote competition for the provision of telecommunications and information services, and to recognize the value of the infrastructure of locally regulated utilities. To achieve these objectives, the legislature intends to establish a consistent cost-based formula for calculating pole attachment rates,

which will ensure greater predictability and consistency in pole attachment rates statewide, as well as ensure that locally regulated utility customers do not subsidize licensees. The legislature further intends to continue working through issues related to pole attachments with interested parties in an open and collaborative process in order to minimize the potential for disputes going forward.

Sec. 2. RCW 54.04.045 and 1996 c 32 s 5 are each amended to read as follows:

(1) As used in this section:

(a) "Attachment" means the affixation or installation of any wire, cable, or other physical material capable of carrying electronic impulses or light waves for the carrying of intelligence for telecommunications or television, including, but not limited to cable, and any related device, apparatus, or auxiliary equipment upon any pole owned or controlled in whole or in part by one or more locally regulated utilities where the installation has been made with the necessary consent.

(b) "Licensee" means any person, firm, corporation, partnership, company, association, joint stock association, or cooperatively organized association, which is authorized to construct attachments upon, along, under, or across public ways.

(c) "Locally regulated utility" means a public utility district not subject to rate or service regulation by the utilities and transportation commission.

~~((e))~~ (d) "Nondiscriminatory" means that pole owners may not arbitrarily differentiate among or between similar classes of ~~((persons))~~ licensees approved for attachments.

(2) All rates, terms, and conditions made, demanded, or received by a locally regulated utility for attachments to its poles must be just, reasonable, nondiscriminatory, and sufficient. A locally regulated utility shall levy attachment space rental rates that are uniform for the same class of service within the locally regulated utility service area.

(3) A just and reasonable rate must be calculated as follows:

(a) One component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to that portion of the pole, duct, or conduit used for the pole attachment, including a share of the required support and clearance space, in proportion to the space used for the pole attachment, as compared to all other uses made of the subject facilities and uses that remain available to the owner or owners of the subject facilities;

(b) The other component of the rate shall consist of the additional costs of procuring and maintaining pole attachments, but may not exceed the actual capital and operating expenses of the locally regulated utility attributable to the share, expressed in feet, of the required support and clearance space, divided equally among the locally regulated utility and all attaching licensees, in addition to the space used for the pole attachment, which sum is divided by the height of the pole; and

(c) The just and reasonable rate shall be computed by adding one-half of the rate component resulting from (a) of this subsection to one-half of the rate component resulting from (b) of this subsection.

(4) For the purpose of establishing a rate under subsection (3)(a) of this section, the locally regulated utility may establish a rate according to the calculation set forth in subsection (3)(a) of this section or it may establish a rate according to the cable formula set forth by the federal communications commission by rule as it existed on the effective date of this section, or such subsequent date as may

be provided by the federal communications commission by rule, consistent with the purposes of this section.

(5) Except in extraordinary circumstances, a locally regulated utility must respond to a licensee's application to enter into a new pole attachment contract or renew an existing pole attachment contract within forty-five days of receipt, stating either:

(a) The application is complete; or

(b) The application is incomplete, including a statement of what information is needed to make the application complete.

(6) Within sixty days of an application being deemed complete, the locally regulated utility shall notify the applicant as to whether the application has been accepted for licensing or rejected. In extraordinary circumstances, and with the approval of the applicant, the locally regulated utility may extend the sixty-day timeline under this subsection. If the application is rejected, the locally regulated utility must provide reasons for the rejection. A request to attach may only be denied on a nondiscriminatory basis (a) where there is insufficient capacity; or (b) for reasons of safety, reliability, or the inability to meet generally applicable engineering standards and practices.

(7) Nothing in this section shall be construed or is intended to confer upon the utilities and transportation commission any authority to exercise jurisdiction over locally regulated utilities."

On page 1, line 2 of the title, after "utilities;" strike the remainder of the title and insert "amending RCW 54.04.045; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2533 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives McCoy and Crouse spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 2533, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2533, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 92, Nays - 1, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse,

Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmitt, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 92.

Voting nay: Representative Van De Wege - 1.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2533, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2549 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that our primary care system is severely faltering and the number of people choosing primary care as a profession is decreasing dramatically. Primary care providers include family medicine and general internal medicine physicians, pediatricians, naturopathic physicians, advanced registered nurse practitioners, and physician assistants. A strong primary care system has been shown to improve health outcomes and quality and to reduce overall health system costs. To improve the health and well-being of the people in the state of Washington; enhance the recruitment, retention, performance, and satisfaction of primary care providers; and control costs, our statewide system of primary care providers needs to be rapidly expanded, improved, and supported, in line with current research and professional innovations.

The legislature further finds that a medical home can best deliver the patient-centered approach that can manage chronic diseases, address acute illnesses, and provide effective prevention. A medical home is a place where health care is accessible and compassionate. It is built on evidence-based strategies with a team approach. Each patient receives medically necessary acute, chronic, prevention, and wellness services, as well as other medically appropriate dental and behavioral services, and community support services, all which are tailored to the individual needs of the patient. Development and maintenance of medical homes require changes in the reimbursement of primary care providers in medical home practices. There is a critical need to identify reimbursement strategies to appropriately finance this model of delivering medical care.

NEW SECTION. Sec. 2. (1) Within funds appropriated for this purpose, and with the goal of catalyzing and providing financial incentives for the rapid expansion of primary care practices that use the medical home model, the department of health shall offer primary care practices an opportunity to participate in a medical home collaborative program, as authorized under RCW 43.70.533. Qualifying primary care practices must be willing and able to adopt and maintain medical home models, as defined by the department of social and health services in its November 2007 report to the legislature concerning implementation of chapter 5, Laws of 2007.

(2) The collaborative program shall be structured to promote adoption of medical homes in a variety of primary care practice settings throughout the state and consider different populations, geographic locations, including at least one location that would agree to operate extended hours, which could include nights or weekends, and other factors to allow a broad application of medical home adoption, including rural communities and areas that are medically underserved. The collaborative program shall assist primary care practices to implement the medical home requirements and provide the full complement of primary care services as established by the medical home definition in this section. Key goals of the collaborative program are to:

- (a) Develop common and minimal core components to promote a reasonable level of consistency among medical homes in the state;
- (b) Allow for standard measurement of outcomes; and
- (c) Promote adoption, and use of the latest techniques in effective and cost-efficient patient-centered integrated health care.

Medical home collaborative participants must agree to provide data on patients' experience with the program and health outcome measures. The department of health shall consult with the Puget Sound health alliance and other interested organizations when selecting specific measures to be used by primary care providers participating in the medical home collaborative.

(3) The medical home collaborative shall be coordinated with the Washington health information collaborative, the health information infrastructure advisory board, and other efforts directed by RCW 41.05.035. If the health care authority makes grants to primary care practices for implementation of health information technology during state fiscal year 2009, it shall make an effort to make these grants to primary care providers participating in the medical home collaborative.

(4) The department of health shall issue an annual report to the health care committees of the legislature on the progress and outcome of the medical home collaborative. The reports shall include:

- (a) Effectiveness of the collaborative in promoting medical homes and associated health information technology, including an assessment of the rate at which the medical home model is being adopted throughout the state;
- (b) Identification of best practices; an assessment of how the collaborative participants have affected health outcomes, quality of care, utilization of services, cost-efficiencies, and patient satisfaction;
- (c) An assessment of how the pilots improve primary care provider satisfaction and retention; and
- (d) Any additional legislative action that would promote further medical home adoption in primary care settings.

The first annual report shall be submitted to the legislature by January 1, 2009 with the final report due to the legislature by December 31, 2011.

NEW SECTION. Sec. 3. (1) As part of the five-year plan to change reimbursement required under section 1, chapter 259, Laws of 2007, the health care authority and department of social and health

services must expand their assessment on changing reimbursement for primary care to support adoption of medical homes to include medicare, other federal and state payors, and third-party payors, including health carriers under Title 48 RCW and other self-funded payors.

(2) The health care authority shall also collaborate with the Puget Sound health alliance, if that organization pursues a project on medical home reimbursement. The goal of the collaboration is to identify appropriate medical home reimbursement strategies and provider performance measurements for all payors, such as providing greater reimbursement rates for primary care physicians, and to garner support among payors and providers to adopt payment strategies that support medical home adoption and use.

(3) The health care authority shall work with providers to develop reimbursement mechanisms that would reward primary care providers participating in the medical home collaborative program that demonstrate improved patient outcomes and provide activities including, but not limited to, the following:

- (a) Ensuring that all patients have access to and know how to use a nurse consultant;
- (b) Encouraging female patients to have a mammogram on the evidence-based recommended schedule;
- (c) Effectively implementing strategies designed to reduce patients' use of emergency room care in cases that are not emergencies;
- (d) Communicating with patients through electronic means; and
- (e) Effectively managing blood sugar levels of patients with diabetes.

(4) The health care authority and the department of social and health services shall report their findings to the health care committees of the legislature by January 1, 2009, with a recommended timeline for adoption of payment and provider performance strategies and recommended legislative changes should legislative action be necessary.

NEW SECTION. Sec. 4. This act expires December 31, 2011.

NEW SECTION. Sec. 5. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "projects;" strike the remainder of the title and insert "creating new sections; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2549 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Seaquist spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed Second Substitute House Bill No. 2549, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Second Substitute House Bill No. 2549, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Erickson, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SECOND SUBSTITUTE HOUSE BILL NO. 2549, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2582 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. It is the intent of the legislature to improve access to higher education for all residents and ensure that students have the necessary resources and support services to attain their educational goals while keeping families strong. For many students, the lack of affordable, accessible, quality child care on or in close proximity to colleges and universities is a barrier to completion of their higher education goals. Further, it is the intent of the legislature to adopt policies that, to the extent possible, leverage existing resources and maximize educational outcomes by supporting affordable, accessible, and quality child care programs.

Sec. 2. RCW 28B.135.010 and 1999 c 375 s 1 are each amended to read as follows:

Two Washington accounts for student child care in higher education are established. The higher education coordinating board shall administer the program for the four-year institutions of higher education and the state board for community and technical colleges shall administer the program for the two-year institutions of higher education. Through these programs the boards ~~((may))~~ shall award ~~((on a competitive basis))~~ either competitive or matching child care grants to state institutions of higher education to encourage programs to address the need for high quality, accessible, and affordable child care for students at higher education institutions. The grants shall be used exclusively for the provision of quality child care services for students at institutions of higher education. The university or college administration and student government association, or its equivalent, of each institution receiving the award ~~((shall))~~ may contribute financial support in an amount equal to or greater than the child care grant received by the institution.

Sec. 3. RCW 28B.135.030 and 2005 c 490 s 8 are each amended to read as follows:

The higher education coordinating board ~~((shall administer the program for four-year institutions of higher education. The state board for community and technical colleges shall administer the program for community and technical colleges. The higher education coordinating board and the state board for community and technical colleges))~~ shall have the following powers and duties in administering ~~((each))~~ the program for the four-year institutions of higher education:

- (1) To adopt rules necessary to carry out the program;
- (2) To establish one or more review committees to assist in the evaluation of proposals for funding. ~~The review committees ((shall include but not be limited to individuals from the Washington association for the education of young children and the child care resource and referral network))~~ may receive input from parents, educators, and other experts in the field of early childhood education for this purpose;
- (3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. ~~((During the 1999-2001 biennium))~~ The guidelines shall be consistent with the following desired outcomes of increasing access to quality child care for students, ((addressing the demand for infant and toddler care;)) providing affordable child care alternatives ((; creating more cooperative preschool programs, creating models that can be replicated at other institutions)) for students, creating a partnership between university or college administrations, university or college foundations, and student government associations, or ((its)) their equivalents ((and increasing efficiency and innovation at campus child care centers));
- (4) To ~~((establish guidelines for an allocation system based on factors that include but are not limited to:))~~ proportionally distribute the amount of money available in the trust fund ((; characteristics of the institutions including the size of the faculty and student body; and the number of child care grants received)) based on the financial support for child care received by the student government associations or their equivalents. Student government associations may solicit funds from private organizations and targeted fund-raising campaigns as part of their financial support for child care;
- (5) To solicit grant proposals and provide information to the institutions of higher education about the program; ~~((and))~~

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants; and

(7) To report to the appropriate committees of the legislature by December 15, 2008, and every two years thereafter, on the status of program design and implementation at the four-year institutions of higher education. The report shall include but not be limited to summary information on the institutions receiving child care grant allocations, the amount contributed by each university or college administration and student government association for the purposes of child care including expenditures and reports for the previous biennium, services provided by each institutional child care center, the number of students using such services, and identifiable unmet need.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.135 RCW to read as follows:

The state board for community and technical colleges shall have the following powers and duties in administering the program established in RCW 28B.135.010 for the two-year institutions of higher education:

(1) To adopt rules necessary to carry out the program;

(2) To establish, if deemed necessary, one or more review committees to assist in the evaluation of proposals for funding. The review committees may receive input from parents, educators, and other experts in the field of early childhood education for this purpose;

(3) To establish each biennium specific guidelines for submitting grant proposals consistent with the overall goals of the program. The guidelines shall be consistent with the following desired outcomes of increasing access to quality child care for students, providing affordable child care alternatives for students, creating more cooperative preschool programs or other alternative parent education models, creating models that can be replicated at other institutions, creating a partnership between college administrations, college foundations, and student government associations, or their equivalents, and increasing innovation at campus child care centers;

(4) To establish guidelines for an allocation system based on factors that include but are not limited to: The amount of money available in the trust fund and the financial support for child care received by the student government associations or their equivalents. Student government associations may solicit funds from private organizations and targeted fund-raising campaigns as part of their financial support for child care;

(5) To solicit grant proposals and provide information to the institutions of higher education about the program;

(6) To establish reporting, evaluation, accountability, monitoring, and dissemination requirements for the recipients of the grants; and

(7) To report to the appropriate committees of the legislature by December 15, 2008, and every two years thereafter, on the status of program design and implementation within the community and technical college system. The report shall include but not be limited to summary information on the institutions receiving child grant allocations, the amount contributed by each college administration and student government association for the purposes of child care, including expenditures and reports for the previous biennium, services provided by each institutional child care center, the number of students using such services, and identifiable unmet need."

On page 1, line 1 of the title, after "education;" strike the remainder of the title and insert "amending RCW 28B.135.010 and 28B.135.030; adding a new section to chapter 28B.135 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2582 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Roberts and Anderson spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2582, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2582, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2582, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2639 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION, Sec. 1. The legislature finds that it is in the public interest for public utility districts to develop renewable energy projects to meet requirements enacted by the people in Initiative Measure No. 937 and goals of diversifying energy resource portfolios. By developing more efficient and cost-effective renewable energy projects, public utility districts will keep power costs as low as possible for their customers. Consolidating and clarifying statutory provisions governing various aspects of public utility district renewable energy project development will reduce planning time and expense to meet these objectives.

Sec. 2. RCW 39.34.030 and 2004 c 190 s 1 are each amended to read as follows:

(1) Any power or powers, privileges or authority exercised or capable of exercise by a public agency of this state may be exercised and enjoyed jointly with any other public agency of this state having the power or powers, privilege or authority, and jointly with any public agency of any other state or of the United States to the extent that laws of such other state or of the United States permit such joint exercise or enjoyment. Any agency of the state government when acting jointly with any public agency may exercise and enjoy all of the powers, privileges and authority conferred by this chapter upon a public agency.

(2) Any two or more public agencies may enter into agreements with one another for joint or cooperative action pursuant to the provisions of this chapter(~~(PROVIDED)~~), except that any such joint or cooperative action by public agencies which are educational service districts and/or school districts shall comply with the provisions of RCW 28A.320.080. Appropriate action by ordinance, resolution or otherwise pursuant to law of the governing bodies of the participating public agencies shall be necessary before any such agreement may enter into force.

(3) Any such agreement shall specify the following:

(a) Its duration;

(b) The precise organization, composition and nature of any separate legal or administrative entity created thereby together with the powers delegated thereto, provided such entity may be legally created. Such entity may include a nonprofit corporation organized pursuant to chapter 24.03 or 24.06 RCW whose membership is limited solely to the participating public agencies or a partnership organized pursuant to chapter 25.04 or 25.05 RCW whose partners are limited solely to participating public agencies, or a limited liability company organized under chapter 25.15 RCW whose membership is limited solely to participating public agencies, and the funds of any such corporation (~~(or)~~), partnership, or limited liability company shall be subject to audit in the manner provided by law for the auditing of public funds;

(c) Its purpose or purposes;

(d) The manner of financing the joint or cooperative undertaking and of establishing and maintaining a budget therefor;

(e) The permissible method or methods to be employed in accomplishing the partial or complete termination of the agreement and for disposing of property upon such partial or complete termination; and

(f) Any other necessary and proper matters.

(4) In the event that the agreement does not establish a separate legal entity to conduct the joint or cooperative undertaking, the agreement shall contain, in addition to ~~((items))~~ provisions specified in subsection (3)(a), (c), (d), (e), and (f) ((enumerated in subdivision (3) hereof)) of this section, ((contain)) the following:

(a) Provision for an administrator or a joint board responsible for administering the joint or cooperative undertaking. In the case of a joint board, public agencies that are party to the agreement shall be represented; and

(b) The manner of acquiring, holding and disposing of real and personal property used in the joint or cooperative undertaking. Any joint board is authorized to establish a special fund with a state, county, city, or district treasurer servicing an involved public agency designated "Operating fund of joint board".

(5) No agreement made pursuant to this chapter relieves any public agency of any obligation or responsibility imposed upon it by law except that:

(a) To the extent of actual and timely performance thereof by a joint board or other legal or administrative entity created by an agreement made ~~((hereunder))~~ pursuant to this chapter, the performance may be offered in satisfaction of the obligation or responsibility; and

(b) With respect to one or more public agencies purchasing or otherwise contracting through a bid, proposal, or contract awarded by another public agency or by a group of public agencies, any statutory obligation to provide notice for bids or proposals that applies to the public agencies involved is satisfied if the public agency or group of public agencies that awarded the bid, proposal, or contract complied with its own statutory requirements and either (i) posted the bid or solicitation notice on a web site established and maintained by a public agency, purchasing cooperative, or similar service provider, for purposes of posting public notice of bid or proposal solicitations, or (ii) provided an access link on the state's web portal to the notice.

(6) Financing of joint projects by agreement shall be as provided by law.

Sec. 3. RCW 54.44.020 and 1997 c 230 s 2 are each amended to read as follows:

(1) Except as provided in subsections (2) and (3) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, any such cities and public utility districts which operate electric generating facilities or distribution systems and any joint operating agency shall have power and authority to participate and enter into agreements with each other and with electrical companies which are subject to the jurisdiction of the Washington utilities and transportation commission or the public utility commissioner of Oregon, hereinafter called "regulated utilities", and with rural electric cooperatives, including generation and transmission cooperatives for the undivided ownership of any type of electric generating plants and facilities, including, but not limited to, nuclear and other thermal power generating plants and facilities and transmission facilities including, but not limited to, related transmission facilities, hereinafter called "common facilities", and for the planning, financing, acquisition, construction, operation and maintenance thereof. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof and shall own and control a like percentage of the electrical output thereof.

(2) Cities of the first class, public utility districts organized under chapter 54.08 RCW, and joint operating agencies organized under chapter 43.52 RCW, shall have the power and authority to participate and enter into agreements for the undivided ownership of a coal-fired thermal electric generating plant and facility placed in operation before July 1, 1975, including related common facilities, and for the planning, financing, acquisition, construction, operation, and maintenance of the plant and facility. It shall be provided in such agreements that each city, public utility district, or joint operating agency shall own a percentage of any common facility equal to the percentage of the money furnished or the value of property supplied by the city, district, or agency, for the acquisition and construction of the facility, and shall own and control a like percentage of the electrical output thereof. Cities of the first class, public utility districts, and joint operating agencies may enter into agreements under this subsection with each other, with regulated utilities, with rural electric cooperatives, with electric companies subject to the jurisdiction of the regulatory commission of any other state, and with any power marketer subject to the jurisdiction of the federal energy regulatory commission.

(3)(a) Except as provided in subsections (1) and (2) of this section, cities of the first class, public utility districts organized under chapter 54.08 RCW, any cities that operate electric generating facilities or distribution systems, any joint operating agency organized under chapter 43.52 RCW, or any separate legal entity comprising two or more thereof organized under chapter 39.34 RCW shall, either directly or as co-owners of a separate legal entity, have power and authority to participate and enter into agreements described in (b) and (c) of this subsection with each other, and with any of the following, either directly or as co-owners of a separate legal entity:

(i) Any public agency, as that term is defined in RCW 39.34.020;

(ii) Electrical companies that are subject to the jurisdiction of the Washington utilities and transportation commission or the regulatory commission of any state; and

(iii) Rural electric cooperatives and generation and transmission cooperatives or any wholly owned subsidiaries of either rural electric cooperatives or generation and transmission cooperatives.

(b) Agreements may provide for:

(i) The undivided ownership, or indirect ownership in the case of a separate legal entity, of common facilities that include any type of electric generating plant powered by an eligible renewable resource, as defined in RCW 19.285.030, and transmission facilities including, but not limited to, related transmission facilities, and for the planning, financing, acquisition, construction, operation, and maintenance thereof; and

(ii) The formation, operation, and ownership of a separate legal entity that may own the common facilities.

(c) Agreements must provide that each city, public utility district, or joint operating agency:

(i) Owns a percentage of any common facility or a percentage of any separate legal entity equal to the percentage of the money furnished or the value of property supplied by it for the acquisition and construction thereof; and

(ii) Owns and controls, or has a right to own and control in the case of a separate legal entity, a like percentage of the electrical output thereof.

(d) Any entity in which a public utility district participates, either directly or as co-owner of a separate legal entity, in constructing or developing a common facility pursuant to this subsection shall comply with the provisions of chapter 39.12 RCW.

(4) Each participant shall defray its own interest and other payments required to be made or deposited in connection with any financing undertaken by it to pay its percentage of the money furnished or value of property supplied by it for the planning, acquisition and construction of any common facility, or any additions or betterments thereto. The agreement shall provide a uniform method of determining and allocating operation and maintenance expenses of the common facility.

~~((4))~~ (5) Each city, public utility district, joint operating agency, regulated utility, and cooperatives participating in the direct or indirect ownership or operation of a common facility described in subsections (1) through (3) of this section shall pay all taxes chargeable to its share of the common facility and the electric energy generated thereby under applicable statutes as now or hereafter in effect, and may make payments during preliminary work and construction for any increased financial burden suffered by any county or other existing taxing district in the county in which the common facility is located, pursuant to agreement with such county or taxing district.

Sec. 4. RCW 25.15.005 and 2002 c 296 s 3 are each amended to read as follows:

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

(1) "Certificate of formation" means the certificate referred to in RCW 25.15.070, and the certificate as amended.

(2) "Event of dissociation" means an event that causes a person to cease to be a member as provided in RCW 25.15.130.

(3) "Foreign limited liability company" means an entity that is formed under:

(a) The limited liability company laws of any state other than this state; or

(b) The laws of any foreign country that is: (i) An unincorporated association, (ii) formed under a statute pursuant to which an association may be formed that affords to each of its members limited liability with respect to the liabilities of the entity, and (iii) not required, in order to transact business or conduct affairs in this state, to be registered or qualified under Title 23B or 24 RCW, or any other chapter of the Revised Code of Washington authorizing the formation of a domestic entity and the registration or qualification in this state of similar entities formed under the laws of a jurisdiction other than this state.

(4) "Limited liability company" and "domestic limited liability company" means a limited liability company having one or more members that is organized and existing under this chapter.

(5) "Limited liability company agreement" means any written agreement of the members, or any written statement of the sole member, as to the affairs of a limited liability company and the conduct of its business which is binding upon the member or members.

(6) "Limited liability company interest" means a member's share of the profits and losses of a limited liability company and a member's right to receive distributions of the limited liability company's assets.

(7) "Manager" or "managers" means, with respect to a limited liability company that has set forth in its certificate of formation that it is to be managed by managers, the person, or persons designated in accordance with RCW 25.15.150(2).

(8) "Member" means a person who has been admitted to a limited liability company as a member as provided in RCW

25.15.115 and who has not been dissociated from the limited liability company.

(9) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, government, governmental subdivision, agency, or instrumentality, or a separate legal entity comprised of two or more of these entities, or any other legal or commercial entity.

(10) "Professional limited liability company" means a limited liability company which is organized for the purpose of rendering professional service and whose certificate of formation sets forth that it is a professional limited liability company subject to RCW 25.15.045.

(11) "Professional service" means the same as defined under RCW 18.100.030.

(12) "State" means the District of Columbia or the Commonwealth of Puerto Rico or any state, territory, possession, or other jurisdiction of the United States other than the state of Washington.

Sec. 5. RCW 54.16.180 and 1999 c 69 s 1 are each amended to read as follows:

(1) A district may sell and convey, lease, or otherwise dispose of all or any part of its works, plants, systems, utilities and properties, after proceedings and approval by the voters of the district, as provided for the lease or disposition of like properties and facilities owned by cities and towns(~~(- PROVIDED FURTHER, That)~~). The affirmative vote of three-fifths of the voters voting at an election on the question of approval of a proposed sale, shall be necessary to authorize such a sale(~~(- PROVIDED FURTHER, That)~~).

(2) A district may, without the approval of the voters, sell, convey, lease, or otherwise dispose of all or any part of the property owned by it(~~(-)~~) that is located:

(a) Outside its boundaries, to another public utility district, city, town or other municipal corporation (~~(without the approval of the voters)~~); or (~~may sell, convey, lease, or otherwise dispose of to any person or public body, any part, either~~)

(b) Within or without its boundaries, which has become unserviceable, inadequate, obsolete, worn out or unfit to be used in the operations of the system and which is no longer necessary, material to, and useful in such operations, (~~(without the approval of the voters: PROVIDED FURTHER, That)~~) to any person or public body.

(3) A district may sell, convey, lease or otherwise dispose of items of equipment or materials to any other district, to any cooperative, mutual, consumer-owned or investor-owned utility, to any federal, state, or local government agency, to any contractor employed by the district or any other district, utility, or agency, or any customer of the district or of any other district or utility, from the district's stores without voter approval or resolution of the district's board, if such items of equipment or materials cannot practicably be obtained on a timely basis from any other source, and the amount received by the district in consideration for any such sale, conveyance, lease, or other disposal of such items of equipment or materials is not less than the district's cost to purchase such items or the reasonable market value of equipment or materials(~~(- PROVIDED FURTHER, That a public utility)~~).

(4) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand may sell and convey to a city of the first class, which owns its own water system, all or any part of a water system owned by (~~said public utility~~) the district where a portion of it is located within the boundaries of (~~such~~) the city, without approval of the

voters, upon such terms and conditions as the district shall determine(~~(- PROVIDED FURTHER, That)~~).

(5) A (~~public utility~~) district located in a county with a population of from twelve thousand to less than eighteen thousand and bordered by the Columbia river may, separately or in connection with the operation of a water system, or as part of a plan for acquiring or constructing and operating a water system, or in connection with the creation of another or subsidiary local utility district, (~~may~~) provide for the acquisition or construction, additions or improvements to, or extensions of, and operation of, a sewage system within the same service area as in the judgment of the district commission is necessary or advisable (~~(in order)~~) to eliminate or avoid any existing or potential danger to (~~the~~) public health (~~(by reason of the)~~) due to lack of sewerage facilities or (~~(by reason of the)~~) inadequacy of existing facilities(~~(- AND PROVIDED FURTHER, That a public utility)~~).

(6) A district located within a county with a population of from one hundred twenty-five thousand to less than two hundred ten thousand bordering on Puget Sound may sell and convey to any city or town with a population of less than ten thousand all or any part of a water system owned by (~~said public utility~~) the district without approval of the voters upon such terms and conditions as the district shall determine.

(7) A district may sell and convey, lease, or otherwise dispose of, to any person or entity without approval of the voters and upon such terms and conditions as it determines, all or any part of an electric generating project owned directly or indirectly by the district, regardless of whether the project is completed, operable, or operating, as long as:

(a) The project is or would be powered by an eligible renewable resource as defined in RCW 19.285.030; and

(b) The district, or the separate legal entity in which the district has an interest in the case of indirect ownership, has:

(i) The right to lease the project or to purchase all or any part of the energy from the project during the period in which it does not have a direct or indirect ownership interest in the project; and

(ii) An option to repurchase the project or part thereof sold, conveyed, leased, or otherwise disposed of at or below fair market value upon termination of the lease of the project or termination of the right to purchase energy from the project. ((Public utility))

(8) Districts are municipal corporations for the purposes of this section (~~(and the)~~). A commission shall be held to be the legislative body (~~(and the)~~), a president and secretary shall have the same powers and perform the same duties as (~~the~~) a mayor and city clerk, and the district resolutions (~~(of the districts)~~) shall be held to be ordinances within the meaning of (~~the~~) statutes governing the sale, lease, or other disposal of public utilities owned by cities and towns.

Sec. 6. RCW 42.24.080 and 1995 c 301 s 72 are each amended to read as follows:

(1) All claims presented against any county, city, district or other municipal corporation or political subdivision by persons furnishing materials, rendering services or performing labor, or for any other contractual purpose, shall be audited, before payment, by an auditing officer elected or appointed pursuant to statute or, in the absence of statute, an appropriate charter provision, ordinance or resolution of the municipal corporation or political subdivision. Such claims shall be prepared for audit and payment on a form and in the manner prescribed by the state auditor. The form shall provide for the authentication and certification by such auditing officer that the materials have been furnished, the services rendered (~~(or)~~), the labor performed as described, or that any advance payment is due and

payable pursuant to a contract or is available as an option for full or partial fulfillment of a contractual obligation, and that the claim is a just, due and unpaid obligation against the municipal corporation or political subdivision~~((~~and~~)).~~ No claim shall be paid without such authentication and certification~~((~~PROVIDED, That the certificates~~))~~.

(2) Certification as to claims of officers and employees of a county, city, district or other municipal corporation or political subdivision, for services rendered, shall be made by the person charged with ~~((the duty of))~~ preparing and submitting vouchers for ~~((the))~~ payment of services~~((~~and~~)).~~ He or she shall certify that the claim is just, true and unpaid, ~~((which certificate))~~ and that certification shall be part of the voucher."

On page 1, line 2 of the title, after "agencies;" strike the remainder of the title and insert "amending RCW 39.34.030, 54.44.020, 25.15.005, 54.16.180, and 42.24.080; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2639 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Takko and Warnick spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2639, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2639, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer,

Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2639, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 2641 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. (1) The legislature finds that in the last ten years, significant progress has been made to identify and monitor accountability and performance measures in higher education, both internally in institutions and externally in the legislative and state policymaking environment.

(2) However, the legislature further finds that opportunities exist to promote greater visibility of performance measures among policymakers and among the public consumers of higher education. Policy decisions, including decisions about resource allocation, should be made with greater knowledge and a shared understanding about the tradeoffs between resources, flexibility, and desired outcomes. A forum should be created to allow discussion among policymakers and institution leaders about setting outcome-oriented priorities, targeting of investments, linking operating and capital planning, and creating a longer-term view than the biennial budget cycle typically permits.

(3) Therefore, the legislature intends to implement a process for such discussions, agreements, and planning to occur. The process of crafting higher education performance agreements will be pilot-tested over a six-year period with the public four-year institutions of higher education beginning in 2008.

NEW SECTION. Sec. 2. A new section is added to chapter 28B.10 RCW to read as follows:

(1) As used in this section and sections 3 and 4 of this act, a performance agreement is an agreement reached between the state and the governing board of an institution of higher education and approved by the legislature using the process provided in section 4 of this act.

(2) The purpose of a performance agreement is to develop and communicate a six-year plan developed jointly by state policymakers and an institution of higher education that aligns goals, priorities, desired outcomes, flexibility, institutional mission, accountability, and levels of resources.

(3) Beginning in 2008, performance agreements shall be pilot-tested with the public four-year institutions of higher education.

NEW SECTION. Sec. 3. A new section is added to chapter 28B.10 RCW to read as follows:

(1) Performance agreements shall address but not be limited to the following issues:

(a) Indicators that measure outcomes concerning cost, quality, timeliness of student progress toward degrees and certifications, and articulation between and within the K-12 and higher education systems;

(b) Benchmarks and goals for long-term degree production, including discrete benchmarks and goals in particular fields of study;

(c) The level of resources necessary to meet the performance outcomes, benchmarks, and goals, subject to legislative appropriation;

(d) The prioritization of four-year institution capital budget projects by the office of financial management; and

(e) Indicators that measure outcomes concerning recruitment, retention, and success of students, faculty, and staff from diverse, underrepresented communities.

(2) The goals and outcomes identified in a performance agreement shall be linked to the role, mission, and strategic plan of the institution of higher education and aligned with the statewide strategic master plan for higher education.

(3) Performance agreements may also include grants to an institution, under the terms of the agreement, of flexibility or waivers from state controls or rules. The agreement may identify areas where statutory change is necessary to grant an institution flexibility or waivers of state agency rules.

(4) The following areas may not be included in a performance agreement:

(a) Flexibility or waivers of requirements in a collective bargaining agreement negotiated under chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW;

(b) Flexibility or waivers of administrative rules or processes governed by chapter 28B.52, 41.56, 41.59, 41.76, or 41.80 RCW;

(c) Rules, processes, duties, rights, and responsibilities of the academic faculty as contained in the faculty codes of the four-year institution;

(d) Flexibility or waivers of requirements under chapter 39.12 RCW;

(e) Flexibility or waivers of administrative rules or other regulations that address health and safety, civil rights, and nondiscrimination laws that apply to institutions of higher education; and

(f) State laws covering terms and conditions of employment, including but not limited to salaries, job security, and health, retirement, unemployment, or any other employment benefits.

NEW SECTION. Sec. 4. A new section is added to chapter 28B.10 RCW to read as follows:

(1) A state performance agreement committee is created to represent the state in developing performance agreements under this section and sections 2 and 3 of this act. The committee is composed of representatives from the governor's office, the office of financial management, the higher education coordinating board, the office of the superintendent of public instruction, two members of the senate appointed by the secretary of the senate, and two members of the house of representatives appointed by the speaker of the house of representatives. The state performance agreement committee shall be staffed by personnel from the higher education coordinating board.

(2) Each of the participating institutions shall develop a preliminary draft of a performance agreement with input from students and faculty. The governing boards of the public four-year institutions of higher education shall designate performance agreement representatives for each institution respectively that shall include two faculty members at those institutions bargaining under chapter 41.76 RCW, at least one of whom shall be appointed by the

exclusive collective bargaining agent and the other appointed by the faculty governance organization of that institution. If the participating pilot institution does not bargain under chapter 41.76 RCW, then two faculty members shall be appointed by the faculty governance organization of that institution. The associated student governments or their equivalents shall designate two performance agreement representatives at those institutions. Starting with the preliminary drafts, the state performance agreement committee and representatives of each institution shall develop revised draft performance agreements for each institution and submit the revised drafts to the governor and the fiscal and higher education committees of the legislature no later than September 1, 2008.

(3) After receiving informal input on the revised draft performance agreements, particularly regarding the levels of resources assumed in the agreements, the state committee and institution representatives shall develop final proposed performance agreements and submit the agreements to the governor and the office of financial management by November 1, 2008, for consideration in development of the governor's 2009-2011 operating and capital budget recommendations.

(4) The state committee shall submit any legislation necessary to implement a performance agreement to the higher education committees of the senate and house of representatives.

(5) All cost items contained within a performance agreement are subject to legislative appropriation.

(6) If the legislature affirms, through a proviso in the 2009-2011 omnibus appropriations act, that the omnibus appropriations act and the 2009 capital budget act enacted by the legislature align with the proposed performance agreements, the performance agreements shall take effect beginning July 1, 2009, through June 30, 2015. If the legislature affirms, through a proviso in the 2009-2011 omnibus appropriations act or through inaction, that the omnibus appropriations act and/or the 2009 capital budget act are not aligned with the proposed performance agreements, the state committee and institution representatives shall redraft the agreements to align with the enacted budgets, and the redrafted agreements shall take effect beginning September 1, 2009, through June 30, 2015.

(7) The legislature, the state committee, and the institution representatives shall repeat the process described in subsection (6) of this section for each subsequent omnibus appropriations and capital budget act enacted between the 2010 and 2014 legislative sessions to ensure that the performance agreements are updated as necessary to align with enacted omnibus appropriations and capital budget acts.

NEW SECTION. Sec. 5. A new section is added to chapter 44.28 RCW to read as follows:

The joint committee shall conduct an evaluation of the higher education performance agreement pilot test under sections 2 through 4 of this act and make recommendations regarding changes to the substance or process of creating the agreements, including whether the performance agreement process should be continued and expanded to include additional higher education institutions. The evaluation shall be submitted to the governor and the higher education committees of the senate and house of representatives by November 1, 2014."

On page 1, line 1 of the title, after "agreements;" strike the remainder of the title and insert "adding new sections to chapter 28B.10 RCW; adding a new section to chapter 44.28 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 2641 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Jarrett and Anderson spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 2641, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 2641, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 92, Nays - 1, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 92.

Voting nay: Representative Hasegawa - 1.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED HOUSE BILL NO. 2641, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2666 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The intent of this chapter is to promote the public interest, support the availability of long-term care coverage, establish standards for long-term care coverage, facilitate public understanding and comparison of long-term care contract benefits, protect persons insured under long-term care insurance policies and certificates, protect applicants for long-term care policies from unfair or deceptive sales or enrollment practices, and provide for flexibility and innovation in the development of long-term care insurance coverage.

NEW SECTION. Sec. 2. This chapter applies to all long-term care insurance policies, contracts, or riders delivered or issued for delivery in this state on or after January 1, 2009. This chapter does not supersede the obligations of entities subject to this chapter to comply with other applicable laws to the extent that they do not conflict with this chapter, except that laws and regulations designed and intended to apply to medicare supplement insurance policies shall not be applied to long-term care insurance.

(1) Coverage advertised, marketed, or offered as long-term care insurance shall comply with the provisions of this chapter. Any coverage, policy, or rider advertised, marketed, or offered as long-term care or nursing home insurance shall comply with the provisions of this chapter.

(2) Individual and group long-term care contracts issued prior to January 1, 2009, remain governed by chapter 48.84 RCW and rules adopted thereunder.

(3) This chapter is not intended to prohibit approval of long-term care funded through life insurance.

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

(1) "Applicant" means: (a) In the case of an individual long-term care insurance policy, the person who seeks to contract for benefits; and (b) in the case of a group long-term care insurance policy, the proposed certificate holder.

(2) "Certificate" includes any certificate issued under a group long-term care insurance policy that has been delivered or issued for delivery in this state.

(3) "Commissioner" means the insurance commissioner of Washington state.

(4) "Issuer" includes insurance companies, fraternal benefit societies, health care service contractors, health maintenance organizations, or other entity delivering or issuing for delivery any long-term care insurance policy, contract, or rider.

(5) "Long-term care insurance" means an insurance policy, contract, or rider that is advertised, marketed, offered, or designed to provide coverage for at least twelve consecutive months for a covered person. Long-term care insurance maybe on an expense incurred, indemnity, prepaid, or other basis, for one or more necessary or medically necessary diagnostic, preventive, therapeutic, rehabilitative, maintenance, or personal care services, provided in a setting other than an acute care unit of a hospital. Long-term care insurance includes any policy, contract, or rider that provides for payment of benefits based upon cognitive impairment or the loss of functional capacity.

(a) Long-term care insurance includes group and individual annuities and life insurance policies or riders that provide directly or supplement long-term care insurance. However, long-term care insurance does not include life insurance policies that: (i) Accelerate

the death benefit specifically for one or more of the qualifying events of terminal illness, medical conditions requiring extraordinary medical intervention, or permanent institutional confinement; (ii) provide the option of a lump-sum payment for those benefits; and (iii) do not condition the benefits or the eligibility for the benefits upon the receipt of long-term care.

(b) Long-term care insurance also includes qualified long-term care insurance contracts.

(c) Long-term care insurance does not include any insurance policy, contract, or rider that is offered primarily to provide coverage for basic medicare supplement, basic hospital expense, basic medical-surgical expense, hospital confinement indemnity, major medical expense, disability income, related income, asset protection, accident only, specified disease, specified accident, or limited benefit health.

(6) "Group long-term care insurance" means a long-term care insurance policy or contract that is delivered or issued for delivery in this state and is issued to:

(a) One or more employers; one or more labor organizations; or a trust or the trustees of a fund established by one or more employers or labor organizations for current or former employees, current or former members of the labor organizations, or a combination of current and former employees or members, or a combination of such employers, labor organizations, trusts, or trustees; or

(b) A professional, trade, or occupational association for its members or former or retired members, if the association:

(i) Is composed of persons who are or were all actively engaged in the same profession, trade, or occupation; and

(ii) Has been maintained in good faith for purposes other than obtaining insurance; or

(c)(i) An association, trust, or the trustees of a fund established, created, or maintained for the benefit of members of one or more associations. Before advertising, marketing, or offering long-term care coverage in this state, the association or associations, or the insurer of the association or associations, must file evidence with the commissioner that the association or associations have at the time of such filing at least one hundred persons who are members and that the association or associations have been organized and maintained in good faith for purposes other than that of obtaining insurance; have been in active existence for at least one year; and have a constitution and bylaws that provide that:

(A) The association or associations hold regular meetings at least annually to further the purposes of the members;

(B) Except for credit unions, the association or associations collect dues or solicit contributions from members; and

(C) The members have voting privileges and representation on the governing board and committees of the association.

(ii) Thirty days after filing the evidence in accordance with this section, the association or associations will be deemed to have satisfied the organizational requirements, unless the commissioner makes a finding that the association or associations do not satisfy those organizational requirements.

(d) A group other than as described in (a), (b), or (c) of this subsection subject to a finding by the commissioner that:

(i) The issuance of the group policy is not contrary to the best interest of the public;

(ii) The issuance of the group policy would result in economies of acquisition or administration; and

(iii) The benefits are reasonable in relation to the premiums charged.

(7) "Policy" includes a document such as an insurance policy, contract, subscriber agreement, rider, or endorsement delivered or issued for delivery in this state by an insurer, fraternal benefit society,

health care service contractor, health maintenance organization, or any similar entity authorized by the insurance commissioner to transact the business of long-term care insurance.

(8) "Qualified long-term care insurance contract" or "federally tax-qualified long-term care insurance contract" means:

(a) An individual or group insurance contract that meets the requirements of section 7702B(b) of the internal revenue code of 1986, as amended; or

(b) The portion of a life insurance contract that provides long-term care insurance coverage by rider or as part of the contract and that satisfies the requirements of sections 7702B(b) and (e) of the internal revenue code of 1986, as amended.

NEW SECTION. Sec. 4. A group long-term care insurance policy may not be offered to a resident of this state under a group policy issued in another state to a group described in section 3(6)(d) of this act, unless this state or another state having statutory and regulatory long-term care insurance requirements substantially similar to those adopted in this state has made a determination that such requirements have been met.

NEW SECTION. Sec. 5. (1) A long-term care insurance policy or certificate may not define "preexisting condition" more restrictively than as a condition for which medical advice or treatment was recommended by or received from a provider of health care services, within six months preceding the effective date of coverage of an insured person, unless the policy or certificate applies to group long-term care insurance under section 3(6) (a), (b), or (c) of this act.

(2) A long-term care insurance policy or certificate may not exclude coverage for a loss or confinement that is the result of a preexisting condition unless the loss or confinement begins within six months following the effective date of coverage of an insured person, unless the policy or certificate applies to a group as defined in section 3(6)(a) of this act.

(3) The commissioner may extend the limitation periods for specific age group categories in specific policy forms upon finding that the extension is in the best interest of the public.

(4) An issuer may use an application form designed to elicit the complete health history of an applicant and underwrite in accordance with that issuer's established underwriting standards, based on the answers on that application. Unless otherwise provided in the policy or certificate and regardless of whether it is disclosed on the application, a preexisting condition need not be covered until the waiting period expires.

(5) A long-term care insurance policy or certificate may not exclude or use waivers or riders to exclude, limit, or reduce coverage or benefits for specifically named or described preexisting diseases or physical conditions beyond the waiting period.

NEW SECTION. Sec. 6. No long-term care insurance policy may:

(1) Be canceled, nonrenewed, or otherwise terminated on the grounds of the age or the deterioration of the mental or physical health of the insured individual or certificate holder;

(2) Contain a provision establishing a new waiting period in the event existing coverage is converted to or replaced by a new or other form within the same company, except with respect to an increase in benefits voluntarily selected by the insured individual or group policyholder;

(3) Provide coverage for skilled nursing care only or provide significantly more coverage for skilled care in a facility than coverage for lower levels of care;

(4) Condition eligibility for any benefits on a prior hospitalization requirement;

(5) Condition eligibility for benefits provided in an institutional care setting on the receipt of a higher level of institutional care;

(6) Condition eligibility for any benefits other than waiver of premium, postconfinement, postacute care, or recuperative benefits on a prior institutionalization requirement;

(7) Include a postconfinement, postacute care, or recuperative benefit unless:

(a) Such requirement is clearly labeled in a separate paragraph of the policy or certificate entitled "Limitations or Conditions on Eligibility for Benefits;" and

(b) Such limitations or conditions specify any required number of days of preconfinement or postconfinement;

(8) Condition eligibility for noninstitutional benefits on the prior receipt of institutional care;

(9) A long-term care insurance policy or certificate may be field-issued if the compensation to the field issuer is not based on the number of policies or certificates issued. For purposes of this section, "field-issued" means a policy or certificate issued by a producer or a third-party administrator of the policy pursuant to the underwriting authority by an issuer and using the issuer's underwriting guidelines.

NEW SECTION. Sec. 7. (1) Long-term care insurance applicants may return a policy or certificate for any reason within thirty days after its delivery and to have the premium refunded.

(2) All long-term care insurance policies and certificates shall have a notice prominently printed on or attached to the first page of the policy stating that the applicant may return the policy or certificate within thirty days after its delivery and to have the premium refunded.

(3) Refunds or denials of applications must be made within thirty days of the return or denial.

(4) This section shall not apply to certificates issued pursuant to a policy issued to a group defined in section 3(6)(a) of this act.

NEW SECTION. Sec. 8. (1) An outline of coverage must be delivered to a prospective applicant for long-term care insurance at the time of initial solicitation through means that prominently direct the attention of the recipient to the document and its purpose.

(a) The commissioner must prescribe a standard format, including style, arrangement, overall appearance, and the content of an outline of coverage.

(b) When an insurance producer makes a solicitation in person, he or she must deliver an outline of coverage before presenting an application or enrollment form.

(c) In a direct response solicitation, the outline of coverage must be presented with an application or enrollment form.

(d) If a policy is issued to a group as defined in section 3(6)(a) of this act, an outline of coverage is not required to be delivered, if the information that the commissioner requires to be included in the outline of coverage is in other materials relating to enrollment. Upon request, any such materials must be made available to the commissioner.

(2) If an issuer approves an application for a long-term care insurance contract or certificate, the issuer must deliver the contract or certificate of insurance to the applicant within thirty days after the date of approval. A policy summary must be delivered with an individual life insurance policy that provides long-term care benefits within the policy or by rider. In a direct response solicitation, the

issuer must deliver the policy summary, upon request, before delivery of the policy, if the applicant requests a summary.

(a) The policy summary shall include:

(i) An explanation of how the long-term care benefit interacts with other components of the policy, including deductions from any applicable death benefits;

(ii) An illustration of the amount of benefits, the length of benefits, and the guaranteed lifetime benefits if any, for each covered person;

(iii) Any exclusions, reductions, and limitations on benefits of long-term care;

(iv) A statement that any long-term care inflation protection option required by section 12 of this act is not available under this policy; and

(v) If applicable to the policy type, the summary must also include:

(A) A disclosure of the effects of exercising other rights under the policy;

(B) A disclosure of guarantees related to long-term care costs of insurance charges; and

(C) Current and projected maximum lifetime benefits.

(b) The provisions of the policy summary may be incorporated into a basic illustration required under chapter 48.23A RCW, or into the policy summary which is required under rules adopted by the commissioner.

NEW SECTION. Sec. 9. If a long-term care benefit funded through a life insurance policy by the acceleration of the death benefit is in benefit payment status, a monthly report must be provided to the policyholder. The report must include:

(1) A record of all long-term care benefits paid out during the month;

(2) An explanation of any changes in the policy resulting from paying the long-term care benefits, such as a change in the death benefit or cash values; and

(3) The amount of long-term care benefits that remain to be paid.

NEW SECTION. Sec. 10. All long-term care denials must be made within sixty days after receipt of a written request made by a policyholder or certificate holder, or his or her representative. All denials of long-term care claims by the issuer must provide a written explanation of the reasons for the denial and make available to the policyholder or certificate holder all information directly related to the denial.

NEW SECTION. Sec. 11. (1) An issuer may rescind a long-term care insurance policy or certificate or deny an otherwise valid long-term care insurance claim if:

(a) A policy or certificate has been in force for less than six months and upon a showing of misrepresentation that is material to the acceptance for coverage; or

(b) A policy or certificate that has been in force for at least six months but less than two years, upon a showing of misrepresentation that is both material to the acceptance for coverage and that pertains to the condition for which benefits are sought.

(2) After a policy or certificate has been in force for two years it is not contestable upon the grounds of misrepresentation alone. Such a policy or certificate may be contested only upon a showing that the insured knowingly and intentionally misrepresented relevant facts relating to the insured's health.

(3) An issuer's payments for benefits under a long-term care insurance policy or certificate may not be recovered by the issuer if the policy or certificate is rescinded.

(4) This section does not apply to the remaining death benefit of a life insurance policy that accelerates benefits for long-term care that are governed by RCW 48.23.050 the state's life insurance incontestability clause. In all other situations, this section shall apply to life insurance policies that accelerate benefits for long-term care.

NEW SECTION. Sec. 12. (1) The commissioner must establish minimum standards for inflation protection features.

(2) An issuer must comply with the rules adopted by the commissioner that establish minimum standards for inflation protection features.

NEW SECTION. Sec. 13. (1) Except as provided by this section, a long-term care insurance policy may not be delivered or issued for delivery in this state unless the policyholder or certificate holder has been offered the option of purchasing a policy or certificate that includes a nonforfeiture benefit. The offer of a nonforfeiture benefit may be in the form of a rider that is attached to the policy. If a policyholder or certificate holder declines the nonforfeiture benefit, the issuer must provide a contingent benefit upon lapse that is available for a specified period of time following a substantial increase in premium rates.

(2) If a group long-term care insurance policy is issued, the offer required in subsection (1) of this section must be made to the group policyholder. However, if the policy is issued as group long-term care insurance as defined in section 3(6)(d) of this act other than to a continuing care retirement community or other similar entity, the offering shall be made to each proposed certificate holder.

(3) The commissioner must adopt rules specifying the type or types of nonforfeiture benefits to be offered as part of long-term care insurance policies and certificates, the standards for nonforfeiture benefits, and the rules regarding contingent benefit upon lapse, including a determination of the specified period of time during which a contingent benefit upon lapse will be available and the substantial premium rate increase that triggers a contingent benefit upon lapse.

NEW SECTION. Sec. 14. A person may not sell, solicit, or negotiate long-term care insurance unless he or she is appropriately licensed as an insurance producer and has successfully completed long-term care coverage education that meets the requirements of this section.

(1) All long-term care education required by this chapter must meet the requirements of chapter 48.17 RCW and rules adopted by the commissioner.

(2)(a)(i) After January 1, 2009, prior to soliciting, selling, or negotiating long-term care insurance coverage, an insurance producer must successfully complete a one-time education course consisting of no fewer than eight hours on long-term care coverage, long-term care services, state and federal regulations and requirements for long-term care and qualified long-term care insurance coverage, changes or improvements in long-term care services or providers, alternatives to the purchase of long-term care insurance coverage, the effect of inflation on benefits and the importance of inflation protection, and consumer suitability standards and guidelines.

(ii) In order to continue soliciting, selling, or negotiating long-term care coverage in this state, all insurance producers selling, soliciting, or negotiating long-term care insurance coverage prior to the effective date of this act must successfully complete the

eight-hour, one-time long-term care education and training course no later than July 1, 2009.

(b) In addition to the one-time education and training requirement set forth in (a) of this subsection, insurance producers who engage in the solicitation, sale, or negotiation of long-term care insurance coverage must successfully complete no fewer than four hours every twenty-four months of continuing education specific to long-term care insurance coverage and issues. Long-term care insurance coverage continuing education shall consist of topics related to long-term care insurance, long-term care services, and, if applicable, qualified state long-term care insurance partnership programs, including, but not limited to, the following:

(i) State and federal regulations and requirements and the relationship between qualified state long-term care insurance partnership programs and other public and private coverage of long-term care services, including medicaid;

(ii) Available long-term care services and providers;

(iii) Changes or improvements in long-term care services or providers;

(iv) Alternatives to the purchase of private long-term care insurance;

(v) The effect of inflation on benefits and the importance of inflation protection;

(vi) This chapter and chapters 48.84 and 48.85 RCW; and

(vii) Consumer suitability standards and guidelines.

(3) The insurance producer education required by this section shall not include training that is issuer or company product-specific or that includes any sales or marketing information, materials, or training, other than those required by state or federal law.

(4) Issuers shall obtain verification that an insurance producer receives training required by this section before that producer is permitted to sell, solicit, or otherwise negotiate the issuer's long-term care insurance products.

(5) Issuers shall maintain records subject to the state's record retention requirements and shall make evidence of that verification available to the commissioner upon request.

(6)(a) Issuers shall maintain records with respect to the training of its producers concerning the distribution of its long-term care partnership policies that will allow the commissioner to provide assurance to the state department of social and health services, medicaid division, that insurance producers engaged in the sale of long-term care insurance contracts have received the training required by this section and any rules adopted by the commissioner, and that producers have demonstrated an understanding of the partnership policies and their relationship to public and private coverage of long-term care, including medicaid, in this state.

(b) These records shall be maintained in accordance with the state's record retention requirements and shall be made available to the commissioner upon request.

(7) The satisfaction of these training requirements for any state shall be deemed to satisfy the training requirements of this state.

NEW SECTION. Sec. 15. Issuers and their agents, if any, must determine whether issuing long-term care insurance coverage to a particular person is appropriate, except in the case of a life insurance policy that accelerates benefits for long-term care.

(1) An issuer must:

(a) Develop and use suitability standards to determine whether the purchase or replacement of long-term care coverage is appropriate for the needs of the applicant or insured;

(b) Train its agents in the use of the issuer's suitability standards; and

(c) Maintain a copy of its suitability standards and make the standards available for inspection, upon request.

(2) The following must be considered when determining whether the applicant meets the issuer's suitability standards:

(a) The ability of the applicant to pay for the proposed coverage and any other relevant financial information related to the purchase of or payment for coverage;

(b) The applicant's goals and needs with respect to long-term care and the advantages and disadvantages of long-term care coverage to meet those goals or needs; and

(c) The values, benefits, and costs of the applicant's existing health or long-term care coverage, if any, when compared to the values, benefits, and costs of the recommended purchase or replacement.

(3) The sale or transfer of any suitability information provided to the issuer or agent by the applicant to any other person or business entity is prohibited.

(4)(a) The commissioner shall adopt, by rule, forms of consumer-friendly personal worksheets that issuers and their agents must use for applications for long-term care coverage.

(b) The commissioner may require each issuer to file its current forms of suitability standards and personal worksheets with the commissioner.

NEW SECTION. Sec. 16. A person engaged in the issuance or solicitation of long-term care coverage shall not engage in unfair methods of competition or unfair or deceptive acts or practices, as such methods, acts, or practices are defined in chapter 48.30 RCW, or as defined by the commissioner.

NEW SECTION. Sec. 17. An issuer or an insurance producer who violates a law or rule relating to the regulation of long-term care insurance or its marketing shall be subject to a fine of up to three times the amount of the commission paid for each policy involved in the violation or up to ten thousand dollars, whichever is greater.

NEW SECTION. Sec. 18. (1) The commissioner must adopt rules that include standards for full and fair disclosure setting forth the manner, content, and required disclosures for the sale of long-term care insurance policies, terms of renewability, initial and subsequent conditions of eligibility, nonduplication of coverage provisions, coverage of dependents, preexisting conditions, termination of insurance, continuation or conversion, probationary periods, limitations, exceptions, reductions, elimination periods, requirements for replacement, recurrent conditions, and definitions of terms. The commissioner must adopt rules establishing loss ratio standards for long-term care insurance policies. The commissioner must adopt rules to promote premium adequacy and to protect policyholders in the event of proposed substantial rate increases, and to establish minimum standards for producer education, marketing practices, producer compensation, producer testing, penalties, and reporting practices for long-term care insurance.

(2) The commissioner shall adopt rules establishing standards protecting patient privacy rights, rights to receive confidential health care services, and standards for an issuer's timely review of a claim denial upon request of a covered person.

(3) The commissioner may adopt reasonable rules to effectuate any provision of this chapter in accordance with the requirements of chapter 34.05 RCW.

Sec. 19. RCW 48.84.010 and 1986 c 170 s 1 are each amended to read as follows:

This chapter may be known and cited as the "long-term care insurance act" and is intended to govern the content and sale of long-term care insurance and long-term care benefit contracts issued before January 1, 2009, as defined in this chapter. This chapter shall be liberally construed to promote the public interest in protecting purchasers of long-term care insurance from unfair or deceptive sales, marketing, and advertising practices. The provisions of this chapter shall apply in addition to other requirements of Title 48 RCW.

Sec. 20. RCW 48.43.005 and 2007 c 296 s 1 and 2007 c 259 s 32 are each reenacted and 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) "Basic health plan" means the plan described under chapter 70.47 RCW, as revised from time to time.

(3) "Basic health plan model plan" means a health plan as required in RCW 70.47.060(2)(e).

(4) "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.

(5) "Catastrophic health plan" means:

(a) 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

(b) 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; or

(c) Any health benefit plan that provides benefits for hospital inpatient and outpatient services, professional and prescription drugs provided in conjunction with such hospital inpatient and outpatient services, and excludes or substantially limits outpatient physician services and those services usually provided in an office setting.

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. The adjusted amount shall apply on the following January 1st.

(6) "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.

(7) "Concurrent review" means utilization review conducted during a patient's hospital stay or course of treatment.

(8) "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.

(9) "Dependent" means, at a minimum, the enrollee's legal spouse and unmarried dependent children who qualify for coverage under the enrollee's health benefit plan.

(10) "Eligible employee" means an employee who works on a full-time basis with a normal work week of thirty or more hours. The term includes a self-employed individual, including a sole proprietor, a partner of a partnership, and may include an independent contractor, if the self-employed individual, sole proprietor, partner, or independent contractor is included as an employee under a health benefit plan of a small employer, but does not work less than thirty hours per week and derives at least seventy-five percent of his or her income from a trade or business through which he or she has attempted to earn taxable income and for which he or she has filed the appropriate internal revenue service form. Persons covered under a health benefit plan pursuant to the consolidated omnibus budget reconciliation act of 1986 shall not be considered eligible employees for purposes of minimum participation requirements of chapter 265, Laws of 1995.

(11) "Emergency medical condition" means the emergent and acute onset of a symptom or symptoms, including severe pain, that would lead a prudent layperson acting reasonably to believe that a health condition exists that requires immediate medical attention, if failure to provide medical attention would result in serious impairment to bodily functions or serious dysfunction of a bodily organ or part, or would place the person's health in serious jeopardy.

(12) "Emergency services" means otherwise covered health care services medically necessary to evaluate and treat an emergency medical condition, provided in a hospital emergency department.

(13) "Enrollee point-of-service 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.

(14) "Grievance" means a written complaint submitted by or on behalf of a covered person regarding: (a) Denial of payment for medical services or nonprovision of medical services included in the covered person's health benefit plan, or (b) 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.

(15) "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 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.

(16) "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.

(17) "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.

(18) "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.

(19) "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 ((RCW)) or 48.-- RCW (sections 1 through 18 of this act);

(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; and

(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.

(20) "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.

(21) "Preexisting condition" means any medical condition, illness, or injury that existed any time prior to the effective date of coverage.

(22) "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.

(23) "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.

(24) "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, on at least fifty percent of its working days during the preceding calendar quarter, employed at least two but no more than fifty eligible employees, with a normal work week of thirty or more

hours, the majority of whom were employed within this state, and 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 eligible 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 must derive 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 for a self-employed individual or sole proprietor in an agricultural trade or business, who must derive 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. A self-employed individual or sole proprietor who is covered as a group of one on the day prior to June 10, 2004, shall also be considered a "small employer" to the extent that individual or group of one is entitled to have his or her coverage renewed as provided in RCW 48.43.035(6).

(25) "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.

(26) "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.

Sec. 21. RCW 48.85.010 and 1995 1st sp.s. c 18 s 76 are each amended to read as follows:

The department of social and health services shall, in conjunction with the office of the insurance commissioner, coordinate a long-term care insurance program entitled the Washington long-term care partnership, whereby private insurance and medicaid funds shall be used to finance long-term care. For individuals purchasing a long-term care insurance policy or contract governed by chapter 48.84 (~~RCW~~) or 48.--RCW (sections 1 through 18 of this act) and meeting the criteria prescribed in this chapter, and any other terms as specified by the office of the insurance commissioner and the department of social and health services, this program shall allow for the exclusion of some or all of the individual's assets in determination of medicaid eligibility as approved by the federal health care financing administration.

NEW SECTION. Sec. 22. Sections 1 through 18 of this act constitute a new chapter in Title 48 RCW.

NEW SECTION. Sec. 23. 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. 24. This act takes effect January 1, 2009."

On page 1, line 1 of the title, after "insurance;" strike the remainder of the title and insert "amending RCW 48.84.010 and 48.85.010; reenacting and amending RCW 48.43.005; adding a new chapter to Title 48 RCW; prescribing penalties; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2666 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Morrell and Hinkle spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2666, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2666, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2666, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 2674 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 18.19.020 and 2001 c 251 s 18 are each amended to read as follows:

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

(1) "Agency" means an agency or facility operated, licensed, or certified by the state of Washington.

(2) "Agency affiliated counselor" means a person registered under this chapter who is engaged in counseling and employed by an agency.

(3) "Certified adviser" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in section 4 of this act.

(4) "Certified counselor" means a person certified under this chapter who is engaged in private practice counseling to the extent authorized in section 4 of this act.

(5) "Client" means an individual who receives or participates in counseling or group counseling.

~~((2))~~ (6) "Counseling" means employing any therapeutic techniques, including but not limited to social work, mental health counseling, marriage and family therapy, and hypnotherapy, for a fee that offer, assist or attempt to assist an individual or individuals in the amelioration or adjustment of mental, emotional, or behavioral problems, and includes therapeutic techniques to achieve sensitivity and awareness of self and others and the development of human potential. For the purposes of this chapter, nothing may be construed to imply that the practice of hypnotherapy is necessarily limited to counseling.

~~((3))~~ (7) "Counselor" means an individual, practitioner, therapist, or analyst who engages in the practice of counseling to the public for a fee, including for the purposes of this chapter, hypnotherapists.

~~((4))~~ (8) "Department" means the department of health.

~~((5))~~ (9) "Hypnotherapist" means a person registered under this chapter who is practicing hypnosis as a modality.

(10) "Private practice counseling" means the practice of counseling by a certified counselor or certified adviser as specified in section 4 of this act.

(11) "Psychotherapy" means the practice of counseling using diagnosis of mental disorders according to the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994, and the development of treatment plans for counseling based on diagnosis of mental disorders in accordance with established practice standards.

(12) "Secretary" means the secretary of the department or the secretary's designee.

Sec. 2. RCW 18.19.030 and 2001 c 251 s 19 are each amended to read as follows:

~~((No))~~ A person may not, ((for a fee or)) as a part of his or her position as an employee of a state agency, practice counseling without being registered to practice as an agency affiliated counselor by the department under this chapter unless exempt under RCW 18.19.040.

NEW SECTION. Sec. 3. A new section is added to chapter 18.19 RCW to read as follows:

A person may not, for a fee or as a part of his or her position as an employee of a state agency, practice hypnotherapy without being registered to practice as a hypnotherapist by the department under this chapter unless exempt under RCW 18.19.040.

NEW SECTION. Sec. 4. A new section is added to chapter 18.19 RCW to read as follows:

The scope of practice of certified counselors and certified advisers consists exclusively of the following:

(1) Appropriate screening of the client's level of functional impairment using the global assessment of functioning as described in the fourth edition of the diagnostic and statistical manual of mental disorders, published in 1994. Recognition of a mental or physical disorder or a global assessment of functioning score of sixty or less requires that the certified counselor or certified adviser refer the client to a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, for diagnosis and treatment;

(2) Certified counselors and certified advisers may counsel and guide a client in adjusting to life situations, developing new skills, and making desired changes, in accordance with the theories and techniques of a specific counseling method and established practice standards, if the client has a global assessment of functioning score greater than sixty;

(3) Certified counselors may counsel and guide a client in adjusting to life situations, developing new skills, and making desired changes if the client has a global assessment of functioning score of sixty or less if:

(a) The client has been referred to the certified counselor by a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, and care is provided as part of a plan of treatment developed by the referring practitioner who is actively treating the client. The certified counselor must adhere to any conditions related to the certified counselor's role as specified in the plan of care; or

(b) The certified counselor referred the client to seek diagnosis and treatment from a physician, osteopathic physician, psychiatric registered nurse practitioner, or licensed mental health practitioner, as defined by the secretary, and the client refused, in writing, to seek treatment from the other provider. The certified counselor may provide services to the client consistent with a treatment plan developed by the certified counselor and the consultant or supervisor with whom the certified counselor has a written consultation or supervisory agreement. A certified counselor shall not be a sole treatment provider for a client with a global assessment of functioning score of less than fifty.

Sec. 5. RCW 18.19.040 and 2001 c 251 s 20 are each amended to read as follows:

Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a profession by a person who is either registered, certified, licensed, or similarly regulated under the laws of

this state and who is performing services within the person's authorized scope of practice, including any attorney admitted to practice law in this state when providing counseling incidental to and in the course of providing legal counsel;

(2) The practice of counseling by an employee or trainee of any federal agency, or the practice of counseling by a student of a college or university, if the employee, trainee, or student is practicing solely under the supervision of and accountable to the agency, college, or university, through which he or she performs such functions as part of his or her position for no additional fee other than ordinary compensation;

(3) The practice of counseling by a person ~~((without a mandatory charge))~~ for no compensation;

(4) The practice of counseling by persons offering services for public and private nonprofit organizations or charities not primarily engaged in counseling for a fee when approved by the organizations or agencies for whom they render their services;

(5) Evaluation, consultation, planning, policy-making, research, or related services conducted by social scientists for private corporations or public agencies;

(6) The practice of counseling by a person under the auspices of a religious denomination, church, or organization, or the practice of religion itself;

(7) The practice of counseling by peer counselors who use their own experience to encourage and support people with similar conditions or activities related to the training of peer counselors; and

(8) Counselors ~~((whose residency is not))~~ who reside outside Washington state from providing up to ten days per quarter of training or workshops in the state, as long as they ~~((don't))~~ do not hold themselves out to be registered or certified in Washington state.

Sec. 6. RCW 18.19.050 and 2001 c 251 s 21 are each amended to read as follows:

(1) In addition to any other authority provided by law, the secretary has the following authority:

(a) To adopt rules, in accordance with chapter 34.05 RCW, necessary to implement this chapter;

(b) To set all registration, certification, and renewal fees in accordance with RCW 43.70.250 and to collect and deposit all such fees in the health professions account established under RCW 43.70.320;

(c) To establish forms and procedures necessary to administer this chapter;

(d) To hire clerical, administrative, and investigative staff as needed to implement this chapter;

(e) To issue a registration or certification to any applicant who has met the requirements for registration or certification; and

(f) To ~~((develop a dictionary of recognized professions and occupations providing counseling services to the public included under this chapter))~~ establish education equivalency, examination, supervisory, consultation, and continuing education requirements for certified counselors and certified advisers.

(2) The uniform disciplinary act, chapter 18.130 RCW, governs the issuance and denial of registrations and certifications and the discipline of registrants under this chapter. The secretary shall be the disciplining authority under this chapter. ~~((The absence of educational or training requirements for counselors registered under this chapter or the counselor's use of nontraditional nonabusive therapeutic techniques shall not, in and of itself, give the secretary authority to unilaterally determine the training and competence or to define or restrict the scope of practice of such individuals.))~~

(3) The department shall publish and disseminate information ~~((in order))~~ to educate the public about the responsibilities of counselors, the types of counselors, and the rights and responsibilities of clients established under this chapter. ~~((Solely for the purposes of administering this education requirement,))~~ The secretary ~~((shall))~~ may assess an additional fee for each application and renewal ~~((equal to five percent of the fee. The revenue collected from the assessment fee may be appropriated by the legislature for the department's use in educating consumers pursuant to this section. The authority to charge the assessment fee shall terminate on June 30, 1994))~~ to fund public education efforts under this section.

Sec. 7. RCW 18.19.060 and 2001 c 251 s 22 are each amended to read as follows:

~~((Persons registered under this chapter))~~ Certified counselors and certified advisers shall provide clients at the commencement of any program of treatment with accurate disclosure information concerning their practice, in accordance with guidelines developed by the department, that will inform clients of the purposes of and resources available under this chapter, including the right of clients to refuse treatment, the responsibility of clients for choosing the provider and treatment modality which best suits their needs, and the extent of confidentiality provided by this chapter, the department, another agency, or other jurisdiction. The disclosure statement must inform the client of the certified counselor's or certified adviser's consultation arrangement or supervisory agreement as defined in rules adopted by the secretary. The disclosure information provided by the certified counselor or certified adviser, the receipt of which shall be acknowledged in writing by the certified counselor or certified adviser and the client, shall include any relevant education and training, the therapeutic orientation of the practice, the proposed course of treatment where known, any financial requirements, referral resources, and such other information as the department may require by rule. The disclosure information shall also include a statement that ~~((registration))~~ the certification of an individual under this chapter does not include a recognition of any practice standards, nor necessarily imply the effectiveness of any treatment. Certified counselors and certified advisers must also disclose that they are not credentialed to diagnose mental disorders or to conduct psychotherapy as defined by the secretary by rule. The client is not liable for any fees or charges for services rendered prior to receipt of the disclosure statement.

Sec. 8. RCW 18.19.090 and 1991 c 3 s 24 are each amended to read as follows:

~~((The secretary shall issue a registration to any applicant who submits, on forms provided by the secretary, the applicant's name, address, occupational title, name and location of business, and other information as determined by the secretary, including information necessary to determine whether there are grounds for denial of registration or issuance of a conditional registration under this chapter or chapter 18.130 RCW. Applicants for registration shall register as counselors or may register as hypnotherapists if employing hypnosis as a modality. Applicants shall, in addition, provide in their titles a description of their therapeutic orientation, discipline, theory, or technique.))~~ (1) Application for agency affiliated counselor, certified counselor, certified adviser, or hypnotherapist must be made on forms approved by the secretary. The secretary may require information necessary to determine whether applicants meet the qualifications for the credential and whether there are any grounds for denial of the credential, or for issuance of a conditional credential, under this chapter or chapter 18.130 RCW. The application for

agency affiliated counselor, certified counselor, or certified adviser must include a description of the applicant's orientation, discipline, theory, or technique. Each applicant shall pay a fee determined by the secretary as provided in RCW 43.70.250, which shall accompany the application.

(2) Applicants for agency affiliated counselor must provide satisfactory documentation that they are employed by an agency or have an offer of employment from an agency.

(3) At the time of application for initial certification, applicants for certified counselor prior to July 1, 2010, are required to:

(a) Have been registered for no less than five years at the time of application for an initial certification;

(b) Have held a valid, active registration that is in good standing and be in compliance with any disciplinary process and orders at the time of application for an initial certification;

(c) Show evidence of having completed course work in risk assessment, ethics, appropriate screening and referral, and Washington state law and other subjects identified by the secretary;

(d) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(e) Have a written consultation agreement with a credential holder who meets the qualifications established by the secretary.

(4) Unless eligible for certification under subsection (3) of this section, applicants for certified counselor or certified adviser are required to:

(a)(i) Have a bachelor's degree in a counseling-related field, if applying for certified counselor; or

(ii) Have an associate degree in a counseling-related field and a supervised internship, if applying for certified adviser;

(b) Pass an examination in risk assessment, ethics, appropriate screening and referral, and Washington state law, and other subjects as determined by the secretary; and

(c) Have a written supervisory agreement with a supervisor who meets the qualifications established by the secretary.

(5) Each applicant shall include payment of the fee determined by the secretary as provided in RCW 43.70.250.

NEW SECTION. Sec. 9. A new section is added to chapter 18.19 RCW to read as follows:

Agency affiliated counselors shall notify the department if they are either no longer employed by the agency identified on their application or are now employed with another agency, or both. Agency affiliated counselors may not engage in the practice of counseling unless they are currently affiliated with an agency.

Sec. 10. RCW 18.19.100 and 1996 c 191 s 5 are each amended to read as follows:

The secretary shall establish administrative procedures, administrative requirements, continuing education, and fees for renewal of ~~((registrations))~~ credentials as provided in RCW 43.70.250 and 43.70.280. When establishing continuing education requirements for agency affiliated counselors, the secretary shall consult with the appropriate state agency director responsible for licensing, certifying, or operating the relevant agency practice setting.

Sec. 11. RCW 18.225.010 and 2001 c 251 s 1 are each amended to read as follows:

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

(1) "Advanced social work" means the application of social work theory and methods including emotional and biopsychosocial assessment, psychotherapy under the supervision of a licensed independent clinical social worker, case management, consultation, advocacy, counseling, and community organization.

(2) "Applicant" means a person who completes the required application, pays the required fee, is at least eighteen years of age, and meets any background check requirements and uniform disciplinary act requirements.

(3) "Associate" means a prelicensure candidate who has a graduate degree in a mental health field under RCW 18.225.090 and is gaining the supervision and supervised experience necessary to become a licensed independent clinical social worker, a licensed advanced social worker, a licensed mental health counselor, or a licensed marriage and family therapist.

(4) "Committee" means the Washington state mental health counselors, marriage and family therapists, and social workers advisory committee.

~~((4))~~ (5) "Department" means the department of health.

~~((5))~~ (6) "Disciplining authority" means the department.

~~((6))~~ (7) "Independent clinical social work" means the diagnosis and treatment of emotional and mental disorders based on knowledge of human development, the causation and treatment of psychopathology, psychotherapeutic treatment practices, and social work practice as defined in advanced social work. Treatment modalities include but are not limited to diagnosis and treatment of individuals, couples, families, groups, or organizations.

~~((7))~~ (8) "Marriage and family therapy" means the diagnosis and treatment of mental and emotional disorders, whether cognitive, affective, or behavioral, within the context of relationships, including marriage and family systems. Marriage and family therapy involves the professional application of psychotherapeutic and family systems theories and techniques in the delivery of services to individuals, couples, and families for the purpose of treating such diagnosed nervous and mental disorders. The practice of marriage and family therapy means the rendering of professional marriage and family therapy services to individuals, couples, and families, singly or in groups, whether such services are offered directly to the general public or through organizations, either public or private, for a fee, monetary or otherwise.

~~((8))~~ (9) "Mental health counseling" means the application of principles of human development, learning theory, psychotherapy, group dynamics, and etiology of mental illness and dysfunctional behavior to individuals, couples, families, groups, and organizations, for the purpose of treatment of mental disorders and promoting optimal mental health and functionality. Mental health counseling also includes, but is not limited to, the assessment, diagnosis, and treatment of mental and emotional disorders, as well as the application of a wellness model of mental health.

~~((9))~~ (10) "Secretary" means the secretary of health or the secretary's designee.

Sec. 12. RCW 18.225.020 and 2001 c 251 s 2 are each amended to read as follows:

A person must not represent himself or herself as a licensed advanced social worker, a licensed independent clinical social worker, a licensed mental health counselor, ~~((or))~~ a licensed marriage and family therapist, a licensed social work associate--advanced, a licensed social work associate--independent clinical, a licensed mental health counselor associate, or a licensed marriage and family therapist associate, without being licensed by the department.

NEW SECTION. Sec. 13. A new section is added to chapter 18.225 RCW to read as follows:

(1) The secretary shall issue an associate license to any applicant who demonstrates to the satisfaction of the secretary that the applicant meets the following requirements for the applicant's practice area and submits a declaration that the applicant is working toward full licensure in that category:

(a) Licensed social worker associate--advanced or licensed social worker associate--independent clinical: Graduation from a master's degree or doctoral degree educational program in social work accredited by the council on social work education and approved by the secretary based upon nationally recognized standards.

(b) Licensed mental health counselor associate: Graduation from a master's degree or doctoral degree educational program in mental health counseling or a related discipline from a college or university approved by the secretary based upon nationally recognized standards.

(c) Licensed marriage and family therapist associate: Graduation from a master's degree or doctoral degree educational program in marriage and family therapy or graduation from an educational program in an allied field equivalent to a master's degree or doctoral degree in marriage and family therapy approved by the secretary based upon nationally recognized standards.

(2) Associates may not provide independent social work, mental health counseling, or marriage and family therapy for a fee, monetary or otherwise. Associates must work under the supervision of an approved supervisor.

(3) Associates shall provide each client or patient, during the first professional contact, with a disclosure form according to RCW 18.225.100, disclosing that he or she is an associate under the supervision of an approved supervisor.

(4) The department shall adopt by rule what constitutes adequate proof of compliance with the requirements of this section.

(5) Applicants are subject to the denial of a license or issuance of a conditional license for the reasons set forth in chapter 18.130 RCW.

(6) An associate license may be renewed no more than four times.

Sec. 14. RCW 18.225.150 and 2001 c 251 s 15 are each amended to read as follows:

The secretary shall establish by rule the procedural requirements and fees for renewal of a license or associate license. Failure to renew shall invalidate the license or associate license and all privileges granted by the license. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure. If a license has lapsed for a period longer than three years, the person shall demonstrate competence to the satisfaction of the secretary by taking continuing education courses, or meeting other standards determined by the secretary. If an associate license has lapsed, the person shall submit an updated declaration, in accordance with rules adopted by the department, that the person is working toward full licensure.

Sec. 15. RCW 18.205.020 and 1998 c 243 s 2 are each amended to read as follows:

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

(1) "Certification" means a voluntary process recognizing an individual who qualifies by examination and meets established educational prerequisites, and which protects the title of practice.

(2) "Certified chemical dependency professional" means an individual certified in chemical dependency counseling, under this chapter.

(3) "Certified chemical dependency professional trainee" means an individual working toward the education and experience requirements for certification as a chemical dependency professional.

~~(4)~~ "Chemical dependency counseling" means employing the core competencies of chemical dependency counseling to assist or attempt to assist an alcohol or drug addicted person to develop and maintain abstinence from alcohol and other mood-altering drugs.

~~((4))~~ (5) "Committee" means the chemical dependency certification advisory committee established under this chapter.

~~((5))~~ (6) "Core competencies of chemical dependency counseling" means competency in the nationally recognized knowledge, skills, and attitudes of professional practice, including assessment and diagnosis of chemical dependency, chemical dependency treatment planning and referral, patient and family education in the disease of chemical dependency, individual and group counseling with alcoholic and drug addicted individuals, relapse prevention counseling, and case management, all oriented to assist alcoholic and drug addicted patients to achieve and maintain abstinence from mood-altering substances and develop independent support systems.

~~((6))~~ (7) "Department" means the department of health.

~~((7))~~ (8) "Health profession" means a profession providing health services regulated under the laws of this state.

~~((8))~~ (9) "Secretary" means the secretary of health or the secretary's designee.

Sec. 16. RCW 18.205.030 and 2000 c 171 s 41 are each amended to read as follows:

No person may represent oneself as a certified chemical dependency professional or certified chemical dependency professional trainee or use any title or description of services of a certified chemical dependency professional or certified chemical dependency professional trainee without applying for certification, meeting the required qualifications, and being certified by the department of health, unless otherwise exempted by this chapter.

Sec. 17. RCW 18.205.040 and 1998 c 243 s 4 are each amended to read as follows:

Nothing in this chapter shall be construed to authorize the use of the title "certified chemical dependency professional" or "certified chemical dependency professional trainee" when treating patients in settings other than programs approved under chapter 70.96A RCW.

NEW SECTION. Sec. 18. A new section is added to chapter 18.205 RCW to read as follows:

(1) The secretary shall issue a trainee certificate to any applicant who demonstrates to the satisfaction of the secretary that he or she is working toward the education and experience requirements in RCW 18.205.090.

(2) A trainee certified under this section shall submit to the secretary for approval a declaration, in accordance with rules adopted by the department, that he or she is enrolled in an approved education program and actively pursuing the experience requirements in RCW 18.205.090. This declaration must be updated with the trainee's annual renewal.

(3) A trainee certified under this section may practice only under the supervision of a certified chemical dependency professional. The first fifty hours of any face-to-face client contact must be under direct observation. All remaining experience must be under supervision in accordance with rules adopted by the department.

(4) A certified chemical dependency professional trainee provides chemical dependency assessments, counseling, and case management with a state regulated agency and can provide clinical services to patients consistent with his or her education, training, and experience as approved by his or her supervisor.

(5) A trainee certification may only be renewed four times.

(6) Applicants are subject to denial of a certificate or issuance of a conditional certificate for the reasons set forth in chapter 18.130 RCW.

NEW SECTION. Sec. 19. A new section is added to chapter 18.19 RCW to read as follows:

The Washington state certified counselors and hypnotherapist advisory committee is established.

(1) The committee is comprised of seven members. Two committee members must be certified counselors or certified advisers. Two committee members must be hypnotherapists. Three committee members must be consumers and represent the public at large and may not hold any mental health care provider license, certification, or registration.

(2) Two committee members must be appointed for a term of one year, two committee members must be appointed for a term of two years, and three committee members must be appointed for a term of three years. Subsequent committee members must be appointed for terms of three years. A person may not serve as a committee member for more than two consecutive terms.

(3)(a) Each committee member must be a resident of the state of Washington.

(b) A committee member may not hold an office in a professional association for their profession.

(c) Advisory committee members may not be employed by the state of Washington.

(d) Each professional committee member must have been actively engaged in their profession for five years immediately preceding appointment.

(e) The consumer committee members must represent the general public and be unaffiliated directly or indirectly with the professions credentialed under this chapter.

(4) The secretary shall appoint the committee members.

(5) Committee members are immune from suit in an action, civil or criminal, based on the department's disciplinary proceedings or other official acts performed in good faith.

(6) Committee members must be compensated in accordance with RCW 43.03.240, including travel expenses in carrying out his or her authorized duties in accordance with RCW 43.03.050 and 43.03.060.

(7) The committee shall elect a chair and vice-chair.

NEW SECTION. Sec. 20. To practice counseling, all registered counselors must obtain another health profession credential by July 1, 2010. The registered counselor credential is abolished July 1, 2010.

NEW SECTION. Sec. 21. Sections 1, 2, 7 through 9, and 11 through 19 of this act take effect July 1, 2009.

NEW SECTION. Sec. 22. The department of health may not issue any new registered counselor credentials after July 1, 2009.

NEW SECTION. Sec. 23. (1) The department of health shall report to the legislature and the governor by December 15, 2011, on:

(a) The number of registered counselors who become certified counselors or certified advisers;

(b) The number, status, type, and outcome of disciplinary actions involving certified counselors and certified advisers beginning on the effective date of this section; and

(c) The state of education equivalency, examination, supervisory, consultation, and continuing education requirements established under this act.

(2) The department of health shall also report on cost savings or expenditures to administer the provisions of this act and make recommendations regarding future reports or evaluations.

NEW SECTION. Sec. 24. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "counselors;" strike the remainder of the title and insert "amending RCW 18.19.020, 18.19.030, 18.19.040, 18.19.050, 18.19.060, 18.19.090, 18.19.100, 18.225.010, 18.225.020, 18.225.150, 18.205.020, 18.205.030, and 18.205.040; adding new sections to chapter 18.19 RCW; adding a new section to chapter 18.225 RCW; adding a new section to chapter 18.205 RCW; creating new sections; and providing an effective date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 2674 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Barlow and Hinkle spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 2674, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 2674, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 90, Nays - 3, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell,

Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hurst, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 90.

Voting nay: Representatives Hunter, Jarrett and Schual-Berke - 3.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND SUBSTITUTE HOUSE BILL NO. 2674, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2746 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds and declares that units of state and local government purchasing large amounts of fuel in the regular course of performing their function should have substantial flexibility in acquiring fuel to obtain predictability and control of fuel costs, and to maximize the use of renewable fuels. The legislature hereby declares its intent to allow certain units of government that regularly purchase large amounts of fuel to explore and implement strategies that are designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs.

NEW SECTION. Sec. 2. A new section is added to chapter 35.58 RCW to read as follows:

(1) In performing the metropolitan transportation function, metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW may explore and implement strategies designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs. These strategies may include, but are not limited to, futures contracts, hedging, swap transactions, option contracts, costless collars, and long-term storage.

(2) Metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW that choose to implement the strategies authorized in this section must submit periodic reports to the transportation committees of the

legislature on the status of any such implemented strategies. Each report must include a description of each contract established to mitigate fuel costs, the amounts of fuel covered by the contracts, the cost mitigation results, and any related recommendations. The first report must be submitted within one year of implementation.

NEW SECTION. Sec. 3. A new section is added to chapter 35.58 RCW to read as follows:

If metropolitan municipal corporations and counties that have assumed the rights, powers, functions, and obligations of metropolitan municipal corporations under chapter 36.56 RCW choose to implement the strategies authorized in section 2 of this act, the state is not liable for any financial losses that may be incurred as the result of participating in such strategies.

NEW SECTION. Sec. 4. A new section is added to chapter 47.60 RCW to read as follows:

In performing the function of operating its ferry system, the department may, subject to the availability of amounts appropriated for this specific purpose and after consultation with the department of general administration's office of state procurement, explore and implement strategies designed to reduce the overall cost of fuel and mitigate the impact of market fluctuations and pressure on both short-term and long-term fuel costs. These strategies may include, but are not limited to, futures contracts, hedging, swap transactions, option contracts, costless collars, and long-term storage. The department shall periodically submit a report to the transportation committees of the legislature and the office of state procurement on the status of any such implemented strategies, including cost mitigation results, a description of each contract established to mitigate fuel costs, the amounts of fuel covered by the contracts, the cost mitigation results, and any related recommendations. The first report must be submitted within one year of implementation."

On page 1, line 1 of the title, after "fuel;" strike the remainder of the title and insert "adding new sections to chapter 35.58 RCW; adding a new section to chapter 47.60 RCW; and creating a new section."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2746 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Jarrett and Ross spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2746, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2746, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2746, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SUBSTITUTE HOUSE BILL NO. 2881 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.32.215 and 2003 c 57 s 2 are each amended to read as follows:

(1) An applicant holding a valid license and currently engaged in practice in another state may be granted a license without examination required by this chapter, on the payment of any required fees, if the applicant:

(a) Is a graduate of a dental college, school, or dental department of an institution approved by the commission under RCW 18.32.040(1); or

(b)(i) Has practiced in another state for at least four years; and

(ii) Has completed a one-year postdoctoral residency approved by the commission. The residency may have been completed outside Washington.

(2) The commission may also require the applicant to: ~~((+))~~ (a) File with the commission documentation certifying the applicant is licensed to practice in another state; and ~~((+))~~ (b) provide information as the commission deems necessary pertaining to the conditions and criteria of the Uniform Disciplinary Act, chapter 18.130 RCW, and to demonstrate to the commission a knowledge of Washington law pertaining to the practice of dentistry.

NEW SECTION. Sec. 2. A new section is added to chapter 18.32 RCW to read as follows:

By November 15, 2009, the commission shall report to the governor and the legislature with recommendations for appropriate standards for issuing a license to a foreign-trained dentist. The recommendations shall consider the balance between maintaining assurances that Washington's dental professionals are well-qualified and planning for an adequate supply of dentists to meet the future needs of Washington's diverse urban and rural communities. In addition to considering the use of standards established by accreditation organizations, the recommendations shall consider other options to reduce barriers to licensure.

NEW SECTION. Sec. 3. This act expires July 1, 2010."

On page 1, line 1 of the title, after "dentistry;" strike the remainder of the title and insert "amending RCW 18.32.215; adding a new section to chapter 18.32 RCW; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SUBSTITUTE HOUSE BILL NO. 2881 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Morrell and Condotta spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Substitute House Bill No. 2881, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Substitute House Bill No. 2881, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-

Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SUBSTITUTE HOUSE BILL NO. 2881, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 4, 2008

Mr. Speaker:

The Senate has passed HOUSE BILL NO. 3088 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 18.260.110 and 2007 c 269 s 11 are each amended to read as follows:

Nothing in this chapter may be construed to prohibit or restrict:

(1) The practice of a dental assistant in the discharge of official duties by dental assistants in the United States federal services on federal reservations, including but not limited to the armed services, coast guard, public health service, veterans' bureau, or bureau of Indian affairs; ((or))

(2) Expanded function dental auxiliary education and training programs approved by the commission and the practice as an expanded function dental auxiliary by students in expanded function dental auxiliary education and training programs approved by the commission, when acting under the direction and supervision of persons licensed under chapter 18.29 or 18.32 RCW;

(3) Dental assistant education and training programs, and the practice of dental assisting by students in dental assistant education and training programs approved by the commission or offered at a school approved or licensed by the workforce training and education coordinating board, higher education coordinating board, state board for community and technical colleges, or Washington state skill centers certified by the office of the superintendent of public instruction, when acting under the direction and supervision of persons registered or licensed under this chapter or chapter 18.29 or 18.32 RCW; or

(4) The practice of a volunteer dental assistant providing services under the supervision of a licensed dentist in a charitable dental clinic, as approved by the commission in rule."

On page 1, line 2 of the title, after "programs;" strike the remainder of the title and insert "and amending RCW 18.260.110."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to HOUSE BILL NO. 3088 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Green spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of House Bill No. 3088, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of House Bill No. 3088, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Lias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

HOUSE BILL NO. 3088, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 5, 2008

Mr. Speaker:

The Senate has passed ENGROSSED SUBSTITUTE HOUSE BILL NO. 3096 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. **Sec. 1.** The legislature finds that the replacement of the vulnerable state route number 520 bridge is a matter of urgency for the safety of Washington's traveling public and the needs of the transportation system in central Puget Sound. The state route number 520 bridge is forty-four years old and has a useful remaining life of between thirteen and eighteen years. While one hundred fifteen thousand vehicles travel on the bridge each day, there is an ever present likelihood that wind or an earthquake could suddenly destroy the bridge or render it unusable. Therefore, the

state must develop a comprehensive approach to fund a state route number 520 bridge replacement to be constructed by 2018.

NEW SECTION. Sec. 2. A new section is added to chapter 47.01 RCW to read as follows:

(1) The state route number 520 bridge replacement and HOV project shall be designed to provide six total lanes, with two lanes that are for transit and high-occupancy vehicle travel, and four general purpose lanes.

(2) The state route number 520 bridge replacement and HOV project shall be designed to accommodate effective connections for transit, including high capacity transit, to the light rail station at the University of Washington.

NEW SECTION. Sec. 3. A new section is added to chapter 47.56 RCW to read as follows:

The state route number 520 bridge replacement and HOV project finance plan must include:

(1) Recognition of revenue sources that include: One billion seven hundred million dollars in state and federal funds allocated to the project; one billion five hundred million dollars to two billion dollars in tolling revenue, including early tolls that could begin in late 2009; eighty-five million dollars in federal urban partnership grant funds; and other contributions from private and other government sources; and

(2) Recognition of savings to be realized from:

(a) Potential early construction of traffic improvements from the eastern Lake Washington shoreline to 108th Avenue Northeast in Bellevue;

(b) Early construction of a single string of pontoons to support two lanes that are for transit and high-occupancy vehicle travel and four general purpose lanes;

(c) Preconstruction tolling to reduce total financing costs; and

(d) A deferral of the sales taxes paid on construction costs.

NEW SECTION. Sec. 4. A new section is added to chapter 47.56 RCW to read as follows:

(1) Following the submission of the report required in section 6 of this act, the department may seek authorization from the legislature to collect tolls on the existing state route number 520 bridge or on a replacement state route number 520 bridge.

(2) The schedule of toll charges must be established by the transportation commission and collected in a manner determined by the department.

NEW SECTION. Sec. 5. A new section is added to chapter 47.56 RCW to read as follows:

The department shall work with the federal highways administration to determine the necessary actions for receiving federal authorization to toll the Interstate 90 floating bridge. The department must periodically report the status of those discussions to the governor and the joint transportation committee.

NEW SECTION. Sec. 6. (1) The executive director of the Puget Sound regional council, the secretary of the department of transportation or his or her designee, and a member of the state transportation commission from King county shall form a state route number 520 tolling implementation committee.

(2) The committee must:

(a) Evaluate the potential diversion of traffic from state route number 520 to other parts of the transportation system, including state route number 522 and local roadways, when tolls are

implemented on state route number 520 or other corridors, and recommend mitigation measures to address the diversion;

(b) Evaluate the most advanced tolling technology to ensure an efficient and timely trip for users of the state route number 520 bridge;

(c) Evaluate available active traffic management technology to determine the most effective options for technology that could manage congestion on the state route number 520 bridge and other impacted facilities;

(d) Explore opportunities to partner with the business community to reduce congestion and financially contribute to the state route number 520 bridge replacement project;

(e) Confer with the mayors and city councils of jurisdictions adjacent to the state route number 520 corridor, the state route number 522 corridor, and the Interstate 90 corridor regarding the implementation of tolls, the impacts that the implementation of tolls might have on the operation of the corridors, the diversion of traffic to local streets, and potential mitigation measures;

(f) Conduct public work sessions and open houses to provide information to citizens, including users of the bridge and business and freight interests, regarding implementation of tolls on the state route number 520 bridge and solicit citizen views on the following items:

(i) Funding a portion of the state route number 520 bridge replacement project with tolls on the existing bridge;

(ii) Funding the state route number 520 bridge replacement project and improvements on the Interstate 90 bridge with a toll paid by drivers on both bridges;

(iii) Providing incentives and choices for users of the state route number 520 bridge replacement project to use transit and to carpool; and

(iv) Implementing variable tolling as a way to reduce congestion on the facility; and

(g) Provide a report to the governor and the legislature by January 2009.

(3) The department of transportation shall provide staff support to the committee.

NEW SECTION. Sec. 7. A new section is added to chapter 47.01 RCW to read as follows:

(1)(a) Any person involved in the construction of the state route number 520 bridge replacement and HOV project may apply for deferral of state and local sales and use taxes on the site preparation for, the construction of, the acquisition of any related machinery and equipment that will become a part of, and the rental of equipment for use in, the project.

(b) Application shall be made to the department of revenue in a form and manner prescribed by the department of revenue. The application must contain information regarding estimated or actual costs, time schedules for completion and operation, and other information required by the department of revenue. The department of revenue shall approve the application within sixty days if it meets the requirements of this section.

(2) The department of revenue shall issue a sales and use tax deferral certificate for state and local sales and use taxes imposed or authorized under chapters 82.08, 82.12, and 82.14 RCW and RCW 81.104.170 on the project.

(3) A person granted a tax deferral under this section shall begin paying the deferred taxes in the fifth year after the date certified by the department of revenue as the date on which the project is operationally complete. The project is operationally complete under this section when the replacement bridge is constructed and opened

to traffic. The first payment is due on December 31st of the fifth calendar year after the certified date, with subsequent annual payments due on December 31st of the following nine years. Each payment shall equal ten percent of the deferred tax.

(4) The department of revenue may authorize an accelerated repayment schedule upon request of a person granted a deferral under this section.

(5) Interest shall not be charged on any taxes deferred under this section 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 section. The debt for deferred taxes is not extinguished by insolvency or other failure of any private entity granted a deferral under this section.

(6) Applications and any other information received by the department of revenue under this section are not confidential and are subject to disclosure. Chapter 82.32 RCW applies to the administration of this section.

(7) For purposes of this section, "person" has the same meaning as in RCW 82.04.030 and also includes the department of transportation.

NEW SECTION. Sec. 8. Section 6 of this act expires February 1, 2009."

On page 1, line 2 of the title, after "project;" strike the remainder of the title and insert "adding new sections to chapter 47.01 RCW; adding new sections to chapter 47.56 RCW; creating new sections; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

Representative Clibborn moved that the House concur in the Senate amendment to Engrossed Substitute House Bill No. 3096.

Representative Clibborn spoke in favor of the motion.

Representative Ericksen spoke against the motion.

An electronic roll call was requested.

The Speaker (Representative Morris presiding) stated the question before the House to be the adoption of the motion to concur in the Senate amendment to Engrossed Substitute House Bill No. 3096.

ROLL CALL

The Clerk called the roll on the adoption of the motion to concur in the Senate amendment to Engrossed Substitute House Bill No. 3096, and the motion was adopted by the following vote: Yeas - 62, Nays - 31, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hudgins, Hunt,

Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Liias, Linville, Loomis, McCoy, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 62.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Dunn, Ericksen, Haler, Hasegawa, Herrera, Hinkle, Kretz, Kristiansen, McCune, McDonald, Newhouse, Orcutt, Pearson, Priest, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 31.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

STATEMENT FOR THE JOURNAL

I intended to vote YEA on the motion to concur with the Senate amendment to Engrossed Substitute House Bill No. 3096.

BOB HASEGAWA, 11th District

The House concurred in the Senate amendment to ENGROSSED SUBSTITUTE HOUSE BILL NO. 3096 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representative Clibborn spoke in favor of passage of the bill.

Representative Ericksen spoke against the passage of the bill.

The Speaker (Representative Moeller presiding) stated the question before the House to be the final passage of Engrossed Substitute House Bill No. 3096, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed Substitute House Bill No. 3096, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 62, Nays - 31, Absent - 0, Excused - 5.

Voting yea: Representatives Appleton, Barlow, Blake, Campbell, Chase, Clibborn, Cody, Conway, Darneille, Dickerson, Dunshee, Eddy, Ericks, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Hankins, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Lantz, Liias, Linville, Loomis, McCoy, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, O'Brien, Ormsby, Pedersen, Pettigrew, Quall, Roberts, Rolfes, Santos, Schual-Berke, Seaquist, Sells, Simpson, Sommers, Springer, Sullivan, Takko,

Upthegrove, Van De Wege, Wallace, Wood and Mr. Speaker - 62.

Voting nay: Representatives Ahern, Alexander, Anderson, Armstrong, Bailey, Chandler, Condotta, Crouse, DeBolt, Dunn, Ericksen, Haler, Hasegawa, Herrera, Hinkle, Kretz, Kristiansen, McCune, McDonald, Newhouse, Orcutt, Pearson, Priest, Roach, Rodne, Ross, Schindler, Schmick, Smith, Walsh and Warnick - 31.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED SUBSTITUTE HOUSE BILL NO. 3096, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 3129 with the following amendment:

Strike everything after the enacting clause and insert the following:

"NEW SECTION. Sec. 1. The legislature finds that student interest and participation in online learning continues to grow. At the same time, the legislature, business community, and public are encouraging additional programs for high school students to earn college credits. Fortunately for students attending schools in rural areas, the two trends can be combined to provide learning opportunities that are both rigorous and accessible, and in some cases available free to the student. In 2006-07, more than four thousand five hundred students were able to take an online college course through the running start program, which the community and technical college system makes accessible statewide through its WashingtonOnline consortium. A more concerted effort is needed to make schools and students aware of these opportunities.

NEW SECTION. Sec. 2. A new section is added to chapter 28A.300 RCW to read as follows:

(1) The office of the superintendent of public instruction shall compile information about online learning programs for high school students to earn college credit and place the information on its web site. Examples of information to be compiled and placed on the web site include links to purveyors of online learning programs, comparisons among various types of programs regarding costs or awarding of credit, advantages and disadvantages of online learning programs, and other general assistance and guidance for students, teachers, and counselors in selecting and considering online learning programs. The office shall use the expertise of the digital learning commons and WashingtonOnline to provide assistance and suggest resources.

(2) High schools shall ensure that teachers and counselors have information about online learning programs for high school students to earn college credit and are able to assist parents and students in accessing the information. High schools shall ensure that parents and students have opportunities to learn about online learning programs under this section.

(3) For the purposes of this section, online learning programs for high school students to earn college credit include such programs as the running start program under RCW 28A.600.300 through 28A.600.400, advanced placement courses authorized by the college board, the digital learning commons, University of Washington extension, WashingtonOnline, and other programs and providers that meet qualifications under current laws and rules to offer courses that high schools may accept for credit toward graduation requirements or that offer courses generally accepted for credit by public institutions of higher education in Washington.

Sec. 3. RCW 28A.600.320 and 1994 c 205 s 3 are each amended to read as follows:

A school district shall provide general information about the program to all pupils in grades ten, eleven, and twelve and the parents and guardians of those pupils, including information about the opportunity to enroll in the program through online courses available at community and technical colleges and other state institutions of higher education. To assist the district in planning, a pupil shall inform the district of the pupil's intent to enroll in courses at an institution of higher education for credit. Students are responsible for applying for admission to the institution of higher education.

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, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "credit;" strike the remainder of the title and insert "amending RCW 28A.600.320; adding a new section to chapter 28A.300 RCW; and creating new sections."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 3129 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Quall and Schmick spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 3129, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 3129, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND SUBSTITUTE HOUSE BILL NO. 3129, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed ENGROSSED HOUSE BILL NO. 3142 with the following amendment:

Strike everything after the enacting clause and insert the following:

"**Sec. 1.** RCW 43.185A.110 and 2007 c 428 s 2 are each amended to read as follows:

(1) The affordable housing land acquisition revolving loan fund program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land for affordable housing development. The department shall contract with the Washington state housing finance commission to administer the affordable housing land acquisition revolving loan fund program. Within this program, the Washington state housing finance commission shall establish and administer the Washington state housing finance commission land acquisition revolving loan fund.

(2) As used in this chapter, "market rate" means the current average market interest rate that is determined at the time any individual loan is closed upon using a widely recognized current market interest rate measurement to be selected for use by the Washington state housing finance commission with the department's approval. This interest rate must be noted in an attachment to the closing documents for each loan.

(3) Under the affordable housing land acquisition revolving loan fund program:

(a) Loans may be made to purchase land on which to develop affordable housing. In addition to affordable housing, facilities intended to provide supportive services to affordable housing residents and low-income households in the nearby community may be developed on the land.

(b) Eligible organizations applying for a loan must include in the loan application a proposed affordable housing development plan

indicating the number of affordable housing units planned, a description of any other facilities being considered for the property, and an estimated timeline for completion of the development. The Washington state housing finance commission may require additional information from loan applicants and may consider the efficient use of land, project readiness, organizational capacity, and other factors as criteria in awarding loans.

(c) Forty percent of the loans shall go to eligible applicants operating homeownership programs for low-income households in which the households participate in the construction of their homes. Sixty percent of loans shall go to other eligible organizations. If the entire forty percent for applicants operating self-help homeownership programs cannot be lent to these types of applicants, the remainder shall be lent to other eligible organizations.

(d) Within five years of receiving a loan, a loan recipient must present the Washington state housing finance commission with an updated development plan, including a proposed development design, committed and anticipated additional financial resources to be dedicated to the development, and an estimated development schedule, which indicates completion of the development within eight years of loan receipt. This updated development plan must be substantially consistent with the development plan submitted as part of the original loan application as required in (b) of this subsection.

(e) Within eight years of receiving a loan, a loan recipient must develop affordable housing on the property for which the loan was made and place the affordable housing into service.

(f) A loan recipient must preserve the affordable rental housing developed on the property acquired under this section as affordable housing for a minimum of thirty years.

(4) If a loan recipient does not place affordable housing into service on a property for which a loan has been received under this section within the eight-year period specified in subsection (3)(e) of this section, or if a loan recipient fails to use the property for the intended affordable housing purpose consistent with the loan recipient's original affordable housing development plan, then the loan recipient must pay to the Washington state housing finance commission an amount consisting of the principal of the original loan plus compounded interest calculated at the current market rate. The Washington state housing finance commission shall develop guidelines for the time period in which this repayment must take place, which must be noted in the original loan agreement. The Washington state housing finance commission may grant a partial or total exemption from this repayment requirement if it determines that a development is substantially complete or that the property has been substantially used in keeping with the original affordable housing purpose of the loan. Any repayment funds received as a result of noncompliance with loan requirements shall be deposited into the Washington state housing finance commission land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(5) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing land acquisition revolving loan fund program.

(6) Interest rates on property loans granted under this section may not exceed one percent. All loan repayment moneys received shall be deposited into the Washington state housing finance commission affordable housing land acquisition revolving loan fund for the purposes of the affordable housing land acquisition revolving loan fund program.

(7) The Washington state housing finance commission must develop performance measures for the program, which must be

approved by the department, including, at a minimum, measures related to:

(a) The ability of eligible organizations to access land for affordable housing development;

(b) The total number of dwelling units by housing type and the total number of ~~((very))~~ low-income households and persons served; and

(c) The financial efficiency of the program as demonstrated by factors, including the cost per unit developed for affordable housing units in different areas of the state and a measure of the effective use of funds to produce the greatest number of units for low-income households.

(8) By December 1st of each year, beginning in 2007, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature using, at a minimum, the performance measures developed under subsection (7) of this section.

NEW SECTION. Sec. 2. A new section is added to chapter 43.185A RCW to read as follows:

(1) The affordable housing and community facilities rapid response loan program is created in the department to assist eligible organizations, described under RCW 43.185A.040, to purchase land or real property for affordable housing and community facilities preservation or development in rapidly gentrifying neighborhoods or communities with a significant low-income population that is threatened with displacement by such gentrification. The department shall contract with the Washington state housing finance commission to establish and administer the program.

(2) Loans or grants may be made through the affordable housing and community facilities rapid response loan program to purchase land or real property for the preservation or development of affordable housing or community facilities, including reasonable costs and fees.

(3) The Washington state housing finance commission, with approval from the department, may adopt guidelines and requirements that are necessary to administer the affordable housing and community facilities rapid response loan program.

(4) A loan or grant recipient must preserve affordable rental housing acquired or developed under this section as affordable housing for a minimum of thirty years.

(5) Interest rates on loans made under this section may be as low as zero percent but may not exceed three percent. All loan repayment moneys received must be deposited into a program account established by the Washington state housing finance commission for the purpose of making new loans and grants under this section.

(6) By December 1st of each year, beginning in 2008, the Washington state housing finance commission shall report to the department and the appropriate committees of the legislature: The number of loans and grants that were made in the program; for what purposes the loans and grants were made; to whom the loans and grants were made; and when the loans are expected to be paid back."

On page 1, line 1 of the title, after "programs;" strike the remainder of the title and insert "amending RCW 43.185A.110; and adding a new section to chapter 43.185A RCW."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to ENGROSSED HOUSE BILL NO. 3142 and advanced the bill as amended by the Senate to final passage.

**FINAL PASSAGE OF HOUSE BILL
AS SENATE AMENDED**

Representatives Liias and Armstrong spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Engrossed House Bill No. 3142, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Engrossed House Bill No. 3142, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 91, Nays - 2, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Ericksen, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 91.

Voting nay: Representatives Anderson and Hinkle - 2.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

ENGROSSED HOUSE BILL NO. 3142, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

MESSAGE FROM THE SENATE

March 6, 2008

Mr. Speaker:

The Senate has passed SECOND SUBSTITUTE HOUSE BILL NO. 3274 with the following amendment:

Strike everything after the enacting clause and insert the following:

"Sec. 1. RCW 53.08.120 and 2000 c 138 s 210 are each amended to read as follows:

(1) All material and work required by a port district not meeting the definition of public work in RCW 39.04.010(4) may be procured in the open market or by contract and all work ordered may be done by contract or day labor.

(2)(a) All such contracts for work meeting the definition of "public work" in RCW 39.04.010(4), the estimated cost of which exceeds two hundred thousand dollars, shall be awarded using a competitive bid process. The contract must be ~~((not))~~ awarded at public bidding upon notice published in a newspaper of general circulation in the district at least thirteen days before the last date upon which bids will be received, calling for ~~((sealed))~~ bids upon the work, plans and specifications for which shall then be on file in the office of the commission for public inspection. The same notice may call for bids on such work or material based upon plans and specifications submitted by the bidder. The competitive bidding requirements for purchases or public works may be waived pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work.

~~((However))~~ (b) For all contracts related to work meeting the definition of "public work" in RCW 39.04.010(4) that are estimated at two hundred thousand dollars or less, a port district may let contracts using the small works roster process under RCW 39.04.155 in lieu of ~~((calling))~~ advertising for ~~((sealed))~~ bids. Whenever possible, the managing official shall invite at least one proposal from a minority contractor who shall otherwise qualify under this section.

When awarding such a contract for work, when utilizing proposals from the small works roster, the managing official shall give weight to the contractor submitting the lowest and best proposal, and whenever it would not violate the public interest, such contracts shall be distributed equally among contractors, including minority contractors, on the small works roster.

Sec. 2. RCW 39.30.020 and 1974 ex.s. c 74 s 1 are each amended to read as follows:

In addition to any other remedies or penalties contained in any law, municipal charter, ordinance, resolution or other enactment, any municipal officer by or through whom or under whose supervision, in whole or in part, any contract is made in ~~((willful))~~ willful and intentional violation of any law, municipal charter, ordinance, resolution or other enactment requiring competitive bidding or procurement procedures for consulting, architectural, engineering, or other services, upon such contract shall be held liable to a civil penalty of not less than three hundred dollars and may be held liable, jointly and severally with any other such municipal officer, for all consequential damages to the municipal corporation. If, as a result of a criminal action, the violation is found to have been intentional, the municipal officer shall immediately forfeit his or her office. For purposes of this section, "municipal officer" ~~((shall))~~ means an "officer" or "municipal officer" as those terms are defined in RCW 42.23.020(2).

NEW SECTION. Sec. 3. A new section is added to chapter 53.08 RCW to read as follows:

By January 1, 2010, each port with more than ten million dollars in annual gross revenues, excluding grant and loan funds, shall maintain a database on a public web site of all contracts, including public works and personal services. At a minimum, the database shall identify the contractor, the purpose of the contract, effective dates and periods of performance, the cost of the contract and funding

source, any modifications to the contract, and whether the contract was competitively procured or awarded on a sole source basis.

NEW SECTION. Sec. 4. A new section is added to chapter 53.08 RCW to read as follows:

(1) If a port district purchases property for a facility outside the port's jurisdiction, the port district or districts with responsibility for the future property development and use must prepare and implement a communication plan within sixty days after contracting with a site planning consultant. The communication plan must be reasonably calculated to provide property owners and other affected and interested individuals information for review and comment. The plan shall be made available through the planning and predesign phase. The communication plan shall include information about:

- (a) The type and scale of proposed uses on the site;
- (b) The type and scale of business and industrial activities that the development is likely to later attract to the site and to the nearby area;
- (c) The general character and scope of potential impacts on air and water quality, noise, and local and state transportation infrastructure, including state highways, local roads, rail, and shipping.

(2) Information included in the communication plan under subsection (1) of this section may be made available by means of web pages, office inspection and copying of materials, one or more property tours, and public meetings that allow interested citizens to comment to port officials on several occasions over time as the development plans evolve.

(3) Environmental mitigation, habitat restoration, and dredged material disposal projects are exempt from the requirements of this section.

NEW SECTION. Sec. 5. The legislature hereby establishes a policy of open competition for all personal service contracts entered into by port districts unless specifically exempted under this chapter. It is further the intent to provide differentiation between the competitive procurement procedures for personal and professional services contracts.

NEW SECTION. Sec. 6. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Commission" means the elected oversight body of an individual port.

(2) "Competitive solicitation" means a documented formal process providing an equal and open opportunity to qualified parties and culminating in a selection based on criteria, in which criteria other than price may be the primary basis for consideration. The criteria may include such factors as the consultant's fees or costs, ability, capacity, experience, reputation, responsiveness to time limitations, responsiveness to solicitation requirements, quality of previous performance, and compliance with statutes and rules relating to contracts or services.

(3) "Consultant" means an independent individual or firm contracting with a port to perform a service or render an opinion or recommendation according to the consultant's methods and without being subject to the control of the port except as to the result of the work. The port monitors progress under the contract and authorizes payment.

(4) "Emergency" means a set of unforeseen circumstances beyond the control of the port that either:

- (a) Present a real, immediate threat to the proper performance of essential functions; or

(b) May result in material loss or damage to property, bodily injury, or loss of life if immediate action is not taken.

(5) "Evidence of competition" means documentation demonstrating that the port has solicited responses from multiple firms in selecting a consultant.

(6) "Personal service" means professional or technical expertise provided by a consultant to accomplish a specific study, project, task, or other work statement which may not reasonably be required in connection with a public works project meeting the definition in RCW 39.04.010(4). "Personal service" does not include purchased services as defined under subsection (8) of this section or professional services procured using the competitive selection requirements in chapter 39.80 RCW.

(7) "Personal service contract" means an agreement, or any amendment thereto, with a consultant for the rendering of personal services to the port.

(8) "Purchased services" means services provided by a vendor to accomplish routine, continuing, and necessary functions. "Purchased services" includes, but is not limited to, services for equipment maintenance and repair; operation of a physical plant; security; computer hardware and software maintenance; data entry; key punch services; and computer time-sharing, contract programming, and analysis.

(9) "Sole source" means a consultant providing professional or technical expertise of such a unique nature that the consultant is clearly and justifiably the only practicable source to provide the service. The justification shall be based on the uniqueness of the service, sole availability at the location required, or warranty or defect correction service obligations of the consultant.

NEW SECTION. Sec. 7. All personal service contracts shall be entered into pursuant to competitive solicitation, except for:

- (1) Emergency contracts;
- (2) Sole source contracts;
- (3) Contract amendments;

(4) Contracts between a consultant and a port of less than fifty thousand dollars. However, contracts of fifty thousand dollars or greater but less than two hundred thousand dollars shall have documented evidence of competition. Ports shall not structure contracts to evade these requirements; and

(5) Other specific contracts or classes or groups of contracts exempted from the competitive solicitation process by the commission when it has been determined that a competitive solicitation process is not appropriate or cost-effective.

NEW SECTION. Sec. 8. Emergency contracts shall be filed with the commission and made available for public inspection within seven working days following the commencement of work or execution of the contract, whichever occurs first. Documented justification for emergency contracts shall be provided to the commission when the contract is filed.

NEW SECTION. Sec. 9. (1) Sole source contracts shall be filed with the commission and made available for public inspection prior to the proposed starting date of the contract. Documented justification for sole source contracts shall be provided to the commission when the contract is filed. For sole source contracts of fifty thousand dollars or more, documented justification shall include evidence that the port attempted to identify potential consultants.

(2) The commission shall ensure that the costs, fees, or rates negotiated in filed sole source contracts of fifty thousand dollars or more are reasonable.

NEW SECTION. Sec. 10. A port commissioner or employee shall not expend any funds for personal service contracts subject to this chapter unless the port has complied with the competitive procurement and other requirements of this chapter. The port commissioner or employee executing the personal service contracts is responsible for compliance with the requirements of this chapter. Willful and intentional failure to comply with the requirements of this chapter subjects the port commissioner or employee to a civil penalty in the amount of three hundred dollars. A consultant who knowingly violates this chapter in seeking or performing work under a personal services contract is subject to a civil penalty of three hundred dollars or twenty-five percent of the amount of the contract, whichever is greater. The state auditor is responsible for auditing violations of this chapter through its regular financial and accountability audits. The attorney general is responsible for prosecuting violations of this chapter.

NEW SECTION. Sec. 11. (1) Substantial changes in the scope of work specified in the contract or which are substantial additions to the scope of work specified in the formal solicitation document shall be submitted to the commission for a determination as to whether the change warrants the work to be awarded as a new contract.

(2) An amendment or amendments to personal service contracts, if the value of the amendment or amendments, whether singly or cumulatively, exceeds fifty percent of the value of the original contract must be filed with the commission and made available for public inspection prior to the proposed starting date of services under the amendments.

NEW SECTION. Sec. 12. This chapter does not apply to:

- (1) Contracts specifying a fee of less than fifty thousand dollars;
- (2) Contracts awarded to companies that furnish a service where the tariff is established by the utilities and transportation commission or other public entity;
- (3) Intergovernmental agreements awarded to any governmental entity, whether federal, state, or local and any department, division, or subdivision thereof;
- (4) Contracts awarded for services to be performed for a standard fee, when the standard fee is established by the contracting agency or any other governmental entity and a like contract is available to all qualified applicants;
- (5) Contracts for services that are necessary to the conduct of collaborative research if prior approval is granted by the funding source;
- (6) Contracts for professional services which are entered into under chapter 39.80 RCW; and
- (7) Contracts for the employment of expert witnesses for the purposes of litigation or legal services to supplement the expertise of port staff.

NEW SECTION. Sec. 13. (1) The municipal research services center, in cooperation with the Washington public ports association, shall develop guidelines for the effective and efficient management of personal service contracts by all ports. The guidelines must, at a minimum, include:

- (a) Accounting methods, systems, measures, and principles to be used by ports and consultants;
- (b) Precontract procedures for selecting potential consultants based on their qualifications and ability to perform;
- (c) Incorporation of performance measures and measurable benchmarks in contracts, and the use of performance audits;

(d) Uniform contract terms to ensure contract performance and compliance with port, state, and federal standards;

(e) Proper payment and reimbursement methods to ensure that the port receives full value for taxpayer moneys, including cost settlements and cost allowance;

(f) Postcontract procedures, including methods for recovering improperly spent or overspent moneys for disallowance and adjustment;

(g) Adequate contract remedies and sanctions to ensure compliance;

(h) Monitoring, fund tracking, risk assessment, and auditing procedures and requirements;

(i) Financial reporting, record retention, and record access procedures and requirements;

(j) Procedures and criteria for terminating contracts for cause or otherwise; and

(k) Any other subject related to effective and efficient contract management.

(2) The municipal research services center shall submit a status report on the guidelines required by subsection (1) of this section to the governor and the appropriate standing committees of the legislature no later than December 1, 2008.

(3) The Washington public ports association shall publish a guidebook for use by ports containing the guidelines developed under subsection (1) of this section.

(4) The municipal research services center and the Washington public ports association shall each make the guidelines available on their web sites.

NEW SECTION. Sec. 14. (1) A port entering into or amending personal service contracts shall follow the policies adopted by the commission, which shall be based on guidelines developed pursuant to section 13 of this act.

(2) This section applies to ports entering into or renewing contracts after January 1, 2010.

NEW SECTION. Sec. 15. The Washington public ports association shall provide a training course for port personnel responsible for executing and managing personal service contracts. The course must contain training on effective and efficient contract management under the guidelines established under section 13 of this act. Port districts shall require port employees responsible for executing or managing personal service contracts to complete the training course to the satisfaction of the commission.

Sec. 16. RCW 39.04.010 and 2007 c 133 s 1 are each amended to read as follows:

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

(1) "Award" means the formal decision by the state or municipality notifying a responsible bidder with the lowest responsive bid of the ~~((state))~~ state's or municipality's acceptance of the bid and intent to enter into a contract with the bidder.

(2) "Contract" means a contract in writing for the execution of public work for a fixed or determinable amount duly awarded after advertisement and competitive bid, or a contract awarded under the small works roster process in RCW 39.04.155.

(3) "Municipality" means every city, county, town, port district, district, or other public agency authorized by law to require the execution of public work, except drainage districts, diking districts, diking and drainage improvement districts, drainage improvement districts, diking improvement districts, consolidated diking and

drainage improvement districts, consolidated drainage improvement districts, consolidated diking improvement districts, irrigation districts, or other districts authorized by law for the reclamation or development of waste or undeveloped lands.

(4) "Public work" means all work, construction, alteration, repair, or improvement other than ordinary maintenance, executed at the cost of the state or of any municipality, or which is by law a lien or charge on any property therein. All public works, including maintenance when performed by contract shall comply with chapter 39.12 RCW. "Public work" does not include work, construction, alteration, repair, or improvement performed under contracts entered into under RCW 36.102.060(4) or under development agreements entered into under RCW 36.102.060(7) or leases entered into under RCW 36.102.060(8).

(5) "Responsible bidder" means a contractor who meets the criteria in RCW 39.04.350.

(6) "State" means the state of Washington and all departments, supervisors, commissioners, and agencies of the state.

Sec. 17. RCW 39.04.155 and 2007 c 218 s 87, 2007 c 210 s 1, and 2007 c 133 s 4 are each reenacted and amended to read as follows:

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of two hundred thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of general administration in implementing this subsection must be included in any rules providing

for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of general administration under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from one hundred thousand dollars to two hundred thousand dollars, a state agency or local government ~~((other than a port district,))~~ that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by telephone inquiry.

(3) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than thirty-five thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government

shall attempt to distribute opportunities for limited public works projects equitably among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and the retainage requirements of chapter 60.28 RCW, thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, material persons, suppliers, and taxes imposed under Title 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5)(a) A state agency or authorized local government may use the limited public works process of subsection (3) of this section to solicit and award small works roster contracts to small businesses that are registered contractors with gross revenues under one million dollars annually as reported on their federal tax return.

(b) A state agency or authorized local government may adopt additional procedures to encourage small businesses that are registered contractors with gross revenues under two hundred fifty thousand dollars annually as reported on their federal tax returns to submit quotations or bids on small works roster contracts.

(6) As used in this section, "state agency" means the department of general administration, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of general administration to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

Sec. 18. RCW 53.12.270 and 1975 1st ex.s. c 12 s 1 are each amended to read as follows:

(1) The commission may delegate to the managing official of a port district such administrative powers and duties of the commission as it may deem proper for the efficient and proper management of port district operations. Any such delegation shall be authorized by appropriate resolution of the commission, which resolution must also establish guidelines and procedures for the managing official to follow.

(2) The commission shall establish, by resolution, policies to comply with RCW 39.04.280 that set forth the conditions by which competitive bidding requirements for public works contracts may be waived.

NEW SECTION. Sec. 19. Sections 5 through 15 of this act constitute a new chapter in Title 53 RCW.

NEW SECTION. Sec. 20. If specific funding for the purposes of this act, referencing this act by bill or chapter number, is not provided by June 30, 2008, in the omnibus appropriations act, this act is null and void."

On page 1, line 2 of the title, after "districts;" strike the remainder of the title and insert "amending RCW 53.08.120, 39.30.020, 39.04.010, and 53.12.270; reenacting and amending RCW 39.04.155; adding new sections to chapter 53.08 RCW; adding a new chapter to Title 53 RCW; creating a new section; prescribing penalties; and providing an expiration date."

and the same is herewith transmitted.

Thomas Hoemann, Secretary

SENATE AMENDMENT TO HOUSE BILL

There being no objection, the House concurred in the Senate amendment to SECOND SUBSTITUTE HOUSE BILL NO. 3274 and advanced the bill as amended by the Senate to final passage.

FINAL PASSAGE OF HOUSE BILL AS SENATE AMENDED

Representatives Simpson and Warnick spoke in favor of passage of the bill.

The Speaker (Representative Morris presiding) stated the question before the House to be the final passage of Second Substitute House Bill No. 3274, as amended by the Senate.

ROLL CALL

The Clerk called the roll on the final passage of Second Substitute House Bill No. 3274, as amended by the Senate, and the bill passed the House by the following vote: Yeas - 93, Nays - 0, Absent - 0, Excused - 5.

Voting yea: Representatives Ahern, Alexander, Anderson, Appleton, Armstrong, Bailey, Barlow, Blake, Campbell, Chandler, Chase, Clibborn, Cody, Condotta, Conway, Crouse, Darneille, DeBolt, Dickerson, Dunn, Dunshee, Eddy, Ericks, Erickson, Flannigan, Fromhold, Goodman, Grant, Green, Haigh, Haler, Hankins, Hasegawa, Herrera, Hinkle, Hudgins, Hunt, Hunter, Hurst, Jarrett, Kagi, Kelley, Kenney, Kessler, Kirby, Kretz, Kristiansen, Lantz, Liias, Linville, Loomis, McCoy, McCune, McDonald, McIntire, Miloscia, Moeller, Morrell, Morris, Nelson, Newhouse, O'Brien, Orcutt, Ormsby, Pearson, Pedersen, Pettigrew, Priest, Quall, Roach, Roberts, Rodne, Rolfes, Ross, Santos, Schindler, Schmick, Schual-Berke, Seaquist, Sells, Simpson, Smith, Sommers, Springer, Sullivan, Takko, Upthegrove, Van De Wege, Wallace, Walsh, Warnick, Wood and Mr. Speaker - 93.

Excused: Representatives Eickmeyer, Hailey, Skinner, Sump and Williams - 5.

SECOND SUBSTITUTE HOUSE BILL NO. 3274, as amended by the Senate, having received the necessary constitutional majority, was declared passed.

There being no objection, the House reverted to the fifth order of business.

REPORTS OF STANDING COMMITTEES

March 7, 2008

HB 3381 Prime Sponsor, Representative Sommers. Relating to fees to implement programs that protect and improve Washington's health, safety, education, employees, and consumers. Reported by Committee on Appropriations.

MAJORITY recommendation: The substitute bill be substituted therefor and the substitute bill do pass. Signed by Representatives Sommers, Chair; Dunshee, Vice Chair; Cody, Conway, Darneille, Ericks, Fromhold, Grant, Green, Haigh, Hunt, Hunter, Kagi, Kenney, Kessler, Linville, McIntire, Morrell, Pettigrew, Schual-Berke, Seaquist and Sullivan.

MINORITY recommendation: Do not pass. Signed by Representatives Alexander, Ranking Minority Member; Bailey, Assistant Ranking Minority Member; Haler, Assistant Ranking Minority Member; Anderson, Chandler, Kretz, McDonald, Priest, Ross, Schmick and Walsh.

There being no objection, HOUSE BILL NO. 3381 was placed on the Second Reading calendar.

There being no objection, the House advanced to the eleventh order of business.

There being no objection, the House adjourned until 10:00 a.m., March 10, 2008, the 57th Day of the Regular Session.

FRANK CHOPP, Speaker

BARBARA BAKER, Chief Clerk

